

ENCOR Funding Situation

Chronology of Events

- 1) 1970-74 - ENCOR's operating budget has been made up of a combination of county, state and federal funds. County monies obviously have provided the initial source to generate state monies originally legislated as a grant-in-aid program through OMR under LB 855 passed in 1969 (refer to State responsibility attached). These continued county and state funds have been utilized extensively to match various federal funding programs. The major federal source of funds during these years has been Social Security funds received through Title IVA and Title XVI. This one program has represented the most substantial source of on-going service income for the agency. For example, for the fiscal year 1973/74, ENCOR's total expenditure level was \$4,041,034. Of this amount, the Social Security title funds amounted to \$2,312,724 or 57%. In fiscal year 1974/75, ENCOR's total expenditures were \$5,789,463. The amount of federal title funds utilized of these monies totalled \$3,198,289, thus representing 55% of ENCOR's total budget.

- 2) Federal legislation enacted in 1974 changed what used to be Title IVA and Title XVI into a new federal program called Title XX. Although the objectives of the new legislation remain essentially the same — to reduce dependence, increase personal independence and to allow services for persons to return to their home communities from institutions, the law itself opened up the same amount of available federal funds to many different groups of individuals in need of services.

- 3) Since Nebraska is at its ceiling as to the amount of Federal funds available under this program, 18.4 million, and mental retardation programs were receiving a great share of these funds, it was decided by the State Department of Public Welfare and the Governor's Office, that mental retardation programs would have to be cut in order for other groups of individuals to receive a portion of these funds.

- 4) July, 1975. Even though the regulations governing the new Title XX program were federally not to be imposed until October 1, 1975, ENCOR received notice on July 24th that in fact the State of Nebraska was instituting it's Title XX fiscal plan as of July 1, 1975. ENCOR was notified that retro-active back to the July 1 date, that we would be cut from our expected \$410,000 a month (combined State/Federal) funds to \$274,000. This represents a cut of 33%. Thus ENCOR was in the position of having already incurred a \$136,000 deficit for the month of July.

- 5) As a result of the above notification, much work was undertaken by ENCOR directly with the Governor's Office, the Attorney General's Office, the Division of Administrative Services, the Legislative Fiscal Analyst's Office, DPI, OMR and DPW, to attempt to come to some resolution to the problem so that programs would not have to close. Our Board of Directors as well as many Senators, such as Senator Goodrich and Senator Frank Lewis, have also worked at length on the problem. As a result of these efforts, ENCOR was told by the Governor's Office and DPI to continue to run the current level of deficit and not close programs because: 1) an interim measure would be established to allow ENCOR to handle the cash flow problem due to the cut in funds until the Legislative session; and 2) that the Governor had been aware that this problem would arise since the last

Legislative session, and would immediately make a public statement as to a level of funding he would approve and insure for a deficit appropriation when the Legislature meets in January to replace the lost federal funds.

- 6) August. A mechanism was established by the Governor's Office (DAS) and DPI to allow ENCOR to receive an additional \$90,000 a month from the funds allocated to ENCOR during the last Legislative session. It was understood that this supplemental payment would continue until the Governor approved an additional amount of deficit appropriation and until the Legislature met.
- 7) September. Still no word (although extensive efforts were still undertaken by all parties involved) as to the decision by the Governor. ENCOR is told, however, to continue our present level of programming since a decision was to be made public by the Governor.
- 8) October 7th. ENCOR is notified that we will not be receiving our supplemental \$90,000 even for the month of September, nor for any future months.
- 9) Through much activity on the part of ENCOR and officials, ENCOR's supplemental check for \$90,000 for September is reinstated.
- 10) October 13th. ENCOR is notified that no additional supplemental checks will be received since the Governor will not make a statement as to the funding level he will endorse.

Facts:

- 1) Everyone seems to have done everything possible to reinstate a continuation

level of funding — except the Governor — he has not been willing to meet with us nor make a statement.

- 2) At the end of October, ENCOR will have incurred a deficit of \$544,000.
- 3) At ENCOR's current level of expenditures, the estimated deficit for fiscal year 1975/76 totals \$1,400,000 of a total budget of approximately \$7 million if we continue at our current level of expenditures.
- 4) Known revenue sources for ENCOR for fiscal 1975/76 total \$5,593 344.
- 5) ENCOR is currently spending on the average of \$585,000 a month (343,241 in salaries and 244,660 in operating costs to serve our total clientele of 1200.
- 6) If no statement is received by the Governor as to an approved level of funding which brings ENCOR to a continuation level, the Board of Directors, the evening of October 16th, will be put into the position of determining which course of action to take.

**Position Paper - State Responsibility
in the Availability of Community-Based
Programs for the Mentally Retarded of Nebraska**

The Legislature of Nebraska in its 18th Session, 1969, enacted LB 855 as Nebraska State Law. Section 1 states:

"It is hereby declared to be the public policy of the State of Nebraska that a pattern of facilities, programs and services should be available to meet the needs of each mentally retarded person so that a mentally retarded person may have access to facilities, programs and services best suited to them throughout the life of the mentally retarded person. The complexities of mental retardation require a coordination of the facilities, programs and services of the various agencies of the State of Nebraska and those of the communities. Programs and facilities should be planned and provided as part of a continuum of service to mentally retarded persons."

This legislation as well as a subsequent act passed in 1973 (LB 311) established:
1) a commitment on the part of the State to the development of appropriate continuum of service to mentally retarded citizens of Nebraska. In LB 311A, passed by the Unicameral in 1973, Section states that:

"Commencing July 1, 1973, programs for the mentally retarded, whether provided by a school district, educational service unit or the Office of Mental Retardation, shall be the responsibility of the Office."

2) a funding mechanism for joint local/state sponsorship of the necessary programs to meet the specific needs of each mentally retarded citizen. LB 855 as passed

in 1969, established a permissive funding mechanism allowing for a 60% match of State general fund monies for each 40% of local funds generated (tax funds or other local monies). LB 311A (1973) carried this State commitment even further - Section 3 of LB 311A states:

"Commencing July 1, 1973, the Office of Mental Retardation shall provide funds on a matching basis for community-based services, programs and facilities. The Office of Mental Retardation's share shall be seventy-five percent (75%) of that portion of the cost for such services, programs, and facilities as provided by the community, region and State, exclusive of funds provided by the Federal government. The community and region shall provide twenty-five percent (25%) from private or public sources. Funds received by the community from workshops, board and room payments, and receipts from patients or relatives of patients who receive service shall be part of the local match."

It is obvious that with the passage of LB 855 in 1969, 311A in 1973, as well as LB 403 (establishing the right to Education to all), the people's representatives acknowledged the public's responsibility to provide meaningful, productive and high-quality — and human care -- to the retarded citizens of Nebraska, and to take a shared responsibility (as stated in Nebraska statutes) in the funding of these services.

What has been the history after these state commitments? Let's look at fiscal support first.

All fiscal information extracted from independent audit reports

LB 855 Stated 60% State to 40% Local Match

<u>Fiscal Year</u>	<u>Local funds available</u>	<u>60% State funds if fully funded</u>	<u>Actual State allocation</u>	<u>Difference</u>
1970-71	622,498	933,747	126,207	807,540
1971-72	792,916	1,189,374	278,830	910,544
1972-73	929,452	1,394,178	280,538	1,113,640

LB 311A establishes 75% State Match to 25% Local Match

<u>Fiscal Year</u>	<u>Local Match</u>	<u>75% State if funded</u>	<u>Actual State allocation</u>	<u>Difference</u>
1973-74	946,877	2,840,631	701,675	2,138,956
1974-75	1,164,398	3,493,194	1,000,000	2,493,194
1975-76	1,187,912	3,563,736	1,102,486	2,461,250
TOTALS	5,644,053	13,414,860	3,489,736	9,925,124

Total difference between legislative mandate in supporting local programs and the actual dollar appropriation = \$9,925,124.

An additional commitment to the continuous and further development of community services has been clearly stated by the Governor through his signing of the consent decree for Horacek vs. Exon. The consent decree clearly states:

"Whereas, the parties have not determined, as a result of their investigations and efforts, that the best interests of mentally retarded citizens of the State of Nebraska can best be served by entering into an agreement for the continued care and betterment of such mentally retarded citizens as opposed to continuing the pending legislation."

Furthermore, it was agreed to that "all mentally retarded persons, who are capable of being appropriately cared for and habilitated in Nebraska community-based programs, shall be transferred to such programs as expeditiously as possible."..."The Governor agrees that in order to continue his efforts to carry out programs instituted by him and to fulfill the future programs contemplated by this agreement, he shall develop budgets to be submitted to the legislature which will permit the continuation of those programs heretofore instituted by him and the continuation and implementation of such future programs contemplated by this agreement, including expanded community-based facilities."

In addition, Section g(1) and g(2) of the agreement insures that all programs and facilities for the mentally retarded follow the current Standards for Residential Facilities for the Mentally Retarded (J.C.AH/MR). ENCOR has received such certification, Beatrice State Home, having undergone such a survey, failed to comply.