

M I N U T E S

SPECIAL COMMITTEE ON HEALTH AND HUMAN RESOURCES

October 31, 1975

Members

Representative Richard B. Walker, Chairman
Representative J. Santford Duncan
Representative Sharon Hess
Representative Norman E. Justice
Representative Marvin L. Littlejohn
Senator William Mulich
Representative Anita Niles
Senator John F. Vermillion

Staff

Emalene Correll, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Myrta Anderson, Legislative Research Department

Other

Jim Scott, Kansas Hospital Association, Topeka, Kansas
Nelson Tilden, Kansas Hospital Association, Topeka, Kansas
Gary Robbins, Kansas State Nurses Association, Topeka, Kansas
Mary Wiersma, Kansas Farm Bureau, Manhattan, Kansas
Gary Caruthers, Kansas Medical Society, Topeka, Kansas
Sister M. Noel Walter, Kansas Catholic Conference, Kansas City,
Kansas
Ira Dennis Hawver, State Department of Health and Environment,
Topeka, Kansas
David H. Jackson, State Department of Health and Environment,
Topeka, Kansas

The meeting was called to order by the Chairman, Representative Richard B. Walker at 9:15 a.m.

A motion was made and seconded to approve the minutes of the October 17, 1975 meeting. Motion carried.

Bill Relating to Health Planning and Development. Attachment No. 1). Since much of this bill is a reiteration of the Public Law, a suggestion was made to reference in Public Law 93-641 wherever possible to reduce the size of the bill. Staff noted that the HSAs are creatures of the federal government so technically nothing needs to be done except to reference in the Public Law and add any additional requirements or duties the Committee wishes. Staff reviewed how Wisconsin drafted their legislation by primarily keying it to 93-641.

By consensus, the Committee took no action and proceeded with the discussion of the bill.

Section 18. This section is from the federal law. An alternative would be to say "Each HSA shall exercise such duties and functions as required by 93-641 and any other duties or functions as prescribed by the state." Duties and functions in this section are required but there are some optional duties in the following sections.

Section 21. Staff noted the Committee may want to consider whether HSAs should be required to utilize existing data from agencies other than other health agencies or should they collect their own data.

Section 24. In answer to a question, staff stated that this section is needed in addition to Section 22(a) because of the annual implementation plan. However, this could be added to Section 22. By consensus Section 24 is to be deleted and this requirement added to Section 22.

Section 25. A question was raised about the money used for these grants and whether or not there would be a problem with agencies giving grants when they were not entitled to do so.

It was noted that the Secretary of HEW can fully approve or conditionally approve an HSA, and a fully approved HSA can later be put on a conditional basis. Only federal money can be used for these grants, as the staff interprets the federal law, and only fully approved and designated HSAs would be able to get funds under Section 1640 of Public Law 93-641. Sentence two of this section relates to that issue, so that there should be no problem. Staff is to check to be sure the federal law, says no grant money will be given to an HSA unless it is fully approved and designated.

Section 26. In answer to questions, staff stated that a PSRO has not been designated for Kansas. The Kansas Medical Society has set up a private nonprofit foundation and has applied for designation as the PSRO.

Section 27. Staff was asked to check what programs are included in the titles listed at the top of page 17.

Section 28. The Chairman noted he had received a number of letters asking if this section would apply to certificate of need. Staff stated that the only way this section would apply to certificate of need would be if this was set out in the rules and regulations by HEW. The Congressional Committee did consider making this a means of enforcement but backed off and it is so reflected in the Committee report. Public opinion is all the HSA can use.

A suggestion was again made to reference in anything taken from the federal act. It was noted that it is more accessible if it is included in the Kansas law.

A question was raised relative to whether any research had been done to indicate the impact of this legislation on health service costs in Kansas. If it is going to put additional costs on people needing service it might be a step in the wrong direction to adopt it in Kansas. Also, how is it going to reflect on other programs such as social welfare?

It was pointed out that it is not a matter of whether or not Kansas will have HSA's. The question is to what extent can Kansas have input into what the HSA's do and direct their functioning.

It was pointed out that this legislation will be tied into national health insurance at a future date and there is going to be a definite tie with money received by the state for medicare and medicaid programs.

It was noted that planning agencies tended to approve anything submitted to them. By creating the HSA it is thought there will be some control over duplication of services and there will be more coordination, i.e., between hospitals in neighboring counties.

Section 11. Staff reported that after checking, the best they can determine is that in Kansas only nonprofit organizations can be designated as an HSA. Therefore, as the Committee directed, subsections (b) and (c) in Section 11 will be deleted. Staff was asked to check other sections of the bill to see that they comply with this change.

Section 5. Staff reviewed the Committee's request at the last meeting. It was noted that if there were forty members, it would cost as much for them to meet as for the Senate to meet. A motion was made and seconded to insert "27" in the blank in Section 5(a). Motion carried.

Section 2. It was suggested that the definition of a health facility be deleted and the definition used in the present certificate of need act be inserted. Staff noted that the definition in the certificate of need legislation does not cover all facilities covered by the federal act. The definition in the federal

act refers to 1122 regulations. The term "health facility" is a substitute for the term "institutional health services" in the federal act and the definition picks up the language of the 1122 regulations.

The question was raised as to whether or not the fact the state licenses some of the agencies included in this definition but has no control over others would create a problem. Staff stated it was not so much a problem in planning as it might be in other areas. An alternative for control is to enjoin them with a penalty provision.

Staff noted that if the Committee decides to reference in sections of the federal act instead of including them, some of the definitions in Section 2 would not be needed.

Section 5. Noting that the Governor is mandated to appoint two legislators (Chairmen of the House and Senate Public Health and Welfare Committees) to the statewide health coordinating council, the feeling was expressed that legislators should not be on this type of council which has a private agency interest and perhaps an interest in a special type legislation. This also would be taking away a part of the prerogative of the Governor given him by the federal act.

It was pointed out that the federal act states that there must be legislators on the SHCC. Also these Chairman were specified to serve on the SHCC because their committees would handle the legislation in this area and this is one way they can be better informed and do their job better; SHCC will be dealing with HSA's not individual agencies; SHCC is primarily an advisory and liaison group; legislators can be on HSA's and the HSA could designate them as their representative to SHCC.

A motion was made and seconded to reconsider the Committee's action at the last meeting regarding Section 5(3). The motion lost on a 4 to 2 vote.

Section 19. The feeling was expressed that the intent of the federal act was for subareas to follow the same representation and membership guidelines as HSA's. Referencing this section to both Sections 12 and 13 would do this. There would be no problem in the metropolitan area because Kansas City, Kansas is a complete subarea.

A motion was made and seconded to insert "Section 12 and" before "Section 13" in the last line of Section 19. Motion carried.

The problem of taking action against an HSA if it was not performing the duties spelled out in the federal and state law was raised. Providing for such action would give some control over the money, especially the state matching money. Staff suggested that the use of injunctions to keep them from operating as

a private nonprofit corporation in the state if they were not carrying out their duties. Then, if the Secretary of HEW does not do a thorough job of reviewing what an HSA is doing and how the money is being spent, the state will have a handle on it.

A motion was made and seconded to insert language providing for the authority to bring action to enjoin an HSA from operating in the state if it is not carrying out its duties as mandated by federal and state law. In answer to a question, staff stated that action can be brought by filing with the Attorney General. Motion carried.

It was noted that the Kansas City HSA would have to incorporate in Missouri and operate in Kansas as a foreign corporation.

A motion was made and seconded to insert language requiring that nominees from the Kansas City metropolitan HSA must be residents of Kansas. Motion carried.

A motion was made that the bill be shortened by making reference to the federal law wherever possible. After discussion, no action was taken.

Staff was instructed to redraft the bill for Committee consideration.

The meeting was recessed at 11:40 a.m. for lunch and was reconvened by the Chairman at 1:30 p.m.

Certificate of Need Bill. Staff distributed a proposed bill (Attachment No. 2) which defines who needs a certificate of need and the criteria for need which must be found, and which provides for an appeal procedure. Staff noted they had prepared a nonamendatory bill to make a more logical sequence for the statutes and because to amend the present statutes would have necessitated striking entire sections and rewriting them.

Staff noted this bill puts the responsibility for the certificate of need with the state agency as required by the federal act. Under the present statutes, the planning councils had this authority.

Section 1. In the brackets, 65-4012 relates to alcohol treatment facilities and 65-5375 could relate to drug abuse treatment facilities. These references were bracketed so a policy decision as to whether or not to include them could be made. Consensus was to include the bracketed material since it was felt these facilities should also be brought up for review.

40-3204 refers to HMOs which the federal law specifically includes. In Kansas, an HMO must have a certificate of authority from the Insurance Commissioner before they can operate.

The definition of "health facility" conforms to the federal act and is broader than the definition in the present certificate of need statute.

By consensus Section 1(c) is to be changed to read, "State Agency means the secretary of health and environment."

Section 4. By consensus "the proposed project is required for the public convenience and necessity." in the last line page 2 and first line page 3 is to be deleted and "there is a reasonable need apparent for the use of the service." is to be inserted. This is for clarification since as it is now worded, it could apply to a public utility.

Section 5. Staff noted that the present statute refers to expenditures of 5% of the facility's operating expenses or in excess of \$350,000 or to an increase in the licensed bed capacity. The federal act refers to substantial expenditures which may be clarified in the rules and regulations which probably will not be available before next year. However, indications are that \$150,000 is the figure which will be used.

In this section, staff attempted to pick-up the federal law and the present Kansas law. They do not know if the federal act will be interpreted as including the bracketed material. It was included for policy decisions by the Committee. Some states have proceeded by using 1122 of the Social Security Act. Reference was made to the Minnesota law.

Mr. Tilden, Kansas Hospital Association, stated he felt they would be opposed to the 5% since this could include any major machine purchased by a hospital. Percentage figures become outmoded and for this reason were left out of the federal act. Staff noted that under the percentage figure, small hospitals with small budgets would have to have things reviewed that larger hospitals would not have to have reviewed so there would be an inequity in the operation of the percentage figure.

Another option would be to relate expenditure levels to certain types of facilities.

Another policy decision is whether some of the bracketed material should be in the statute or in the rules and regulations.

In answer to a question, staff noted while some things might be subject to change depending on the rules and regulations of HEW, some of the decisions were aside from the federal act and were policy decisions within the state law.

Section 7. Under present statutes, the state agency forwards a copy of the application to the area planning agency for its action. It seems simpler to have the applicant forward a copy to the HSA at the same time it is submitted to the state agency.

Section 9. In answer to a question, staff stated that an HSA would be able to ask for a review only if the state review agency decision disagreed with the recommendation of the HSA.

Section 10 through Section 16. Since Kansas does not have an administrative procedures act, this section spells out the procedures and rules governing hearings. There is provision for the use of a hearing officer if this is desired by the review agency.

Section 22. In line 5 of subsection (b), designating the state agency, as in present law, is a policy question. Should it be the state agency, the HSA's or the SHCC?

Section 23. It was suggested the Committee may want to give consideration to including the state agency and interested parties in this section. The present law does include them and two cases were appealed by people on the basis they were interested parties.

This would not be a de novo trial. The court would be considering the appeal agency and would be determining if the appeal agency acted within its authority and whether or not it made an unreasonable decision based on the facts before it.

Section 24. This section was included so a policy decision could be made.

Section 25. Since this part of the present law would be repealed by this bill, it could be interpreted that any extension given prior to the enactment of this bill would have no limit. The exception would be in cases where the extension was specifically granted until such time as this bill would be enacted and take effect.

Section 26. Staff noted this is the present law and reflects a policy decision made at the time the present law was enacted. Almost everything done at a state facility would be over the \$150,000 specified earlier in the bill. Although the federal act refers to state facilities being reviewed, staff was not clear about whether or not the federal act would preclude including this section.

Section 27 and 28. These sections relate to enforcement of the act. It is important to have these sections if programs and facilities not licensed by the state are to be included in the definition of health facilities.

Mr. Tilden of the Kansas Hospital Association noted that their organization and others would appreciate an opportunity to react to this bill as it would directly affect them. The Chairman suggested there might be time at the November 12 meeting. Since this conflicts with a Kansas Hospital Association meeting, they will send a written statement to staff to be forwarded to Committee members. The Chairman asked that comments be specific and directed to the proposed bill draft.

Medical Facilities Survey and Construction Act. Staff distributed a proposed bill (Attachment No. 3) which amends the statutes to comply with the federal act.

Section 1. Staff noted that since Kansas has adopted a statute in which a hospital is a medical facility, sections in this bill were amended to comply. Since this terminology appears in the Hospital Licensing Act and possibly in other statutes, staff will prepare another bill to include these other statutes.

Section 2. The use of the term "extended care facility" in subsection (c) was questioned as it was felt the more common term was skilled nursing home. Staff noted there may be a problem here because this relates to facilities eligible for federal assistance rather than facilities meeting certain state requirements. Staff is to check this.

Subsection (h) was deleted and included in subsection (c).

Section 3. In lines 3 and 4 of Section 3 the words "through the division of health" were deleted since the schematic drawing of the department indicates this will be through a separate office. This may be a policy decision.

Other changes are primarily deletions to comply with the previous section or changes for clarification. By consensus verbs throughout the section are to be changed as appropriate, i.e., "make" to "making", "survey" to "surveying", etc.

Section 4. In subsection (d) the order of the phrases was changed to make the order more appropriate. In answer to a question, staff stated that subsections (e) and (f) were present language.

Section 5. A question was raised as to whether a reference to the act creating the statewide health coordination

council should be included. Since there is going to be a bill in this area, including the reference here is not necessary.

Section 6. This section includes the new provisions of the federal act such as modernization and conversion. It was suggested that construction be defined in such a way as to avoid repeating the list of things included each time. Staff indicated this could be done.

Section 8. This section is bracketed because it is not clear whether any federal funds will be available to the secretary. Staff did not want to delete this section without further information on this point. Dennis Hawver, Department of Health and Environment, stated he did not see that it would hurt to leave this language in the bill.

Section 9. This first sentence in the last paragraph on page 5 was bracketed since this requirement would obviously run into a relatively large sum of money and staff could not find anything in the federal act requiring this. Publication is required prior to the hearing. An alternative suggested was that the secretary publish where copies can be obtained. It was noted that once the plan is adopted, it is a public document and is available.

By consensus the words "shall publish a general description of the provisions thereof in at least one newspaper having general circulation in each county in the state, and" be deleted.

It was noted that in some cases the secretary can charge a reasonable fee for copies of plans, etc. By consensus language is to be inserted in this section giving the secretary authority to charge a reasonable fee for copies of the plan.

Staff noted that the new federal act is much more restrictive than the Hill-Burton Act but the procedure is still the same.

The Kansas Hospital Association and the Department of Health and Environment were asked to submit comments relative to this bill. Staff was asked to redraft the bill for further consideration by the Committee.

The next meeting of the Committee will be November 12, 1975. The agenda for the morning session will include hearing from any organizations which wish to make comments on the certificate of need, medical facilities or HSA bill. The afternoon session will be for drafting decisions on these bills.

The Chairman noted a request has been made for the Committee to extend its work beyond the deadline and he has been assured the request will be granted.

The meeting was adjourned at 4:00 p.m.

Prepared by Myrta J. Anderson

Approved by Committee on:

11/12/75
(Date)

RS 1009
FILE No. 1

FOR COMMITTEE DISCUSSION ONLY

_____ BILL NO. _____

By Special Committee on Health and Human Resources

Re Proposal No. 23

AN ACT relating to health planning and development; recognizing certain health planning and development agencies and providing for the composition, powers, duties and functions of such agencies; providing for preparation of a state health plan; repealing K. S. A. 65-193 and K. S. A. 1975 Supp. 65-190, 65-191, 65-192, 65-194, 65-195 and 65-196.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the Kansas health planning and development act.

Sec. 2. As used in this act:

(a) "Provider of health care" means an individual:

(1) Who is a direct provider of health care (including a person licensed to practice medicine and surgery, licensed dentist, registered professional nurse, licensed practical nurse, registered podiatrist, or physician's assistant) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including medical care facilities, long-term care facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by state law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration; or

(2) Who is an indirect provider of health care in that the individual:

(A) Holds a fiduciary position with, or has a fiduciary

interest in, any entity described in subsection (a)(2)(B)(II) or subsection (a)(2)(B)(IV); or

(B) Receives (either directly or through his or her spouse) more than one-tenth of his or her gross annual income from any one of combination of the following:

(I) Fees or other compensation for research into or instruction in the provision of health care.

(II) Entities engaged in the provision of health care or in such research or instruction.

(III) Producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care.

(IV) Entities engaged in producing drugs or such other articles; or

(C) Is a member of the immediate family of an individual described in subsection (a)(1) or in subsection (a)(3)(I), (a)(3)(II) or (a)(3)(IV); or

(D) Is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.

(b) "Health resources" means health services, health professions, personnel, and health facilities, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(c) "Health facility" means medical care facility, psychiatric hospital, health maintenance organization, skilled nursing home, intermediate nursing care home, intermediate personal care home, home health agency, provider of outpatient physical therapy services including speech pathology services, except that such term shall not apply with respect to outpatient physical therapy services performed by a physical therapist in his or her office or in a patient's home, kidney disease treatment center, including centers not located in a medical care facility, health center and family planning clinic.

(d) "Health facility services" means the health services provided through health facilities and includes the entities through which such services are provided.

(e) "Outpatient facility" means a medical facility (located in or apart from an inpatient health facility) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients) which:

(1) Is operated in connection with a hospital, in which patient care is under the professional supervision of persons licensed to practice medicine and surgery in the state, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the state; or

(2) Offers to patients not requiring hospitalization the services of persons licensed to practice medicine and surgery, and which provides to its patients a reasonably full range of diagnostic and treatment services.

(f) "Rehabilitation facility" means a health facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of:

(1) Medical evaluation and services, and

(2) Psychological, social, or vocational evaluation and services, under competent professional supervision; and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with an inpatient health facility defined in subsection (c) or all medical and related health services are prescribed by or are under the general direction of persons licensed to practice medicine and surgery in the state.

(g) "Facility for long term care" means a health facility (including a skilled nursing or intermediate care facility) providing inpatient care for intermediate care and related medical services (1) which is an inpatient health facility (other than an inpatient health facility primarily for the care and treatment of mentally ill or tuberculous patients) or is operated in connec-

tion with an inpatient health facility, and (2) in which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine and surgery in the state.

(h) "Medical facility" means a medical care facility, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, or other facility, as the secretary may designate under public law 93-641, for the provision of health care to ambulatory patients.

(i) "State agency" means the state agency designated as the state health planning and development agency designated under section 1521 of public law 93-641.

(j) "Council" means the statewide health coordinating council as specified in section 1524 of public law 93-641.

(k) "Health systems agency" means an agency designated under section 1512 of public law 93-641.

(l) "Secretary" means the secretary of the department of health, education and welfare of the United States.

(m) "Consumer of health care" means a person who has not been within twelve (12) months preceding appointment under this act a provider of health care.

Sec. 3. The _____ shall be designated as the state health planning and development agency. The _____ shall submit an application to the secretary containing assurances of authority and resources to administer a state administrative program. The _____ shall submit to the secretary for approval a state administrative program for the purpose of carrying out a certificate of need and a health planning and resources development function pursuant to public law 93-641.

Sec. 4. The functions of the state agency shall be:

(a) To conduct the health planning activities of the state and implement those parts of the state health plan and the plans of the health systems agencies within the state which relate to the government of the state.

(b) To prepare, and review and revise an annual preliminary state health plan which shall be based on the health systems plans of the health systems agencies within the state. The preliminary state plan shall be submitted to the council for approval or disapproval and for use in developing the state health plan.

(c) To assist the council in the performance of its functions.

(d) To serve as the designated planning agency of the state for administering state certificate of need programs which apply to health facility services proposed to be offered, developed or changed within the state.

(e) After consideration of recommendations submitted by health systems agencies respecting health facility services proposed to be offered or changed within the state, to make findings as to the need for such services, and, as appropriate, issue or deny a certificate of need.

(f) To review on a periodic basis, but not less than every five (5) years, all health facility services being offered in the state and, after consideration of recommendations submitted by health systems agencies respecting the appropriateness of such services, make public its findings.

(g) To prepare and administer the provisions of the state medical facilities plan as defined in section 1603 of public law 93-641.

Sec. 5. In order to guide and promote health planning and resources development in response to enactment of section 1524 of public law 93-641, there is hereby created a statewide health coordinating council.

(a) The council shall be composed of no more than 27 members. The majority of the members of this council shall be consumers of health care who are not providers of health care, and not less than one-third of the members who are providers of health care shall be direct providers.

(b) The governor shall appoint four (4) voting members from

each health systems agency within the state from a list of at least five (5) nominees from each health systems agency. At least two of the appointees from each health systems agency shall be consumers of health care.

(c) In addition, the governor may [shall] appoint the following voting members:

(1) Two (2) persons nominated by the speaker of the house of representatives, at least one of whom shall be a consumer of health care.

(2) Two (2) persons nominated by the president of the senate, at least one of whom shall be a consumer of health care.

(3) The chairpersons of the public health and welfare committees of the senate and the house of representatives.

(4) The director of the division of health.

(5) Other persons, including those from the medically underserved population, and other representatives of governmental units within the state. The number of persons appointed under this subsection may not exceed forty percent (40%) of the total membership, and at least one-half of whom shall be consumers of health care.]

(d) An individual designated by the chief medical director of the veterans' administration shall be a member.

(e) The council shall select its chairperson from among the membership of the council.

[Sec. 6. The length of terms of the first members appointed by the governor shall be as follows: One-third for four (4) years, one-third for three (3) years, and one-third for two (2) years. Initial appointments shall be made within three (3) months of the designation of the health systems agencies. Subsequent appointments shall be for four-year terms, except an appointment to fill a vacancy shall be for the balance of the unexpired term.]

Sec. 7. (a) The council shall meet at least quarterly or as often as necessary to fulfill its duties.

(b) Meetings and records of the council shall be open to

the public.

Sec. 8. The members of the council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K. S. A. 1975 Supp. 75-3223, or amendments thereto.

Sec. 9. The functions of the council shall be:

(a) To annually review and coordinate the health system plan and annual implementation plan of each health systems agency within the state and report its comments to the secretary.

(b) Guide the state agency in the development of procedures and criteria to be used for integration of the health systems plans into a preliminary state health plan.

(c) Annually prepare, review and revise with the assistance of the state agency the state health plan. In preparing and revising the state health plan, the council shall review and consider the preliminary health plan submitted by the state agency. The council shall conduct a public hearing on the proposed state health plan and shall give interested persons an opportunity to submit their views orally and in writing. Thirty (30) days prior to such hearing the council shall publish notice of its consideration of the proposed plan in at least two (2) newspapers of general circulation in the state. The notice shall include the time and place of the hearing, the place or places at which copies of the proposed plan are available for review and the period during which written comments may be submitted to the council.

(d) Review annually the budget of each health systems agency and report its comments to the secretary.

(e) Recommend a uniform format and methodology for the development of a health systems plan to facilitate incorporation into a preliminary state health plan.

(f) Advise and consult with the state agency in carrying out the state medical facilities plan.

(g) Review applications submitted by health systems agencies for grants under section 1516 (operational grants) and

section 1640 (area health service development fund grants) of public law 93-641 and report its comments to the secretary.

(h) Advise the state agency on the performance of its functions and in the setting of priorities.

(i) Review annually and approve or disapprove any state plan or any application submitted to the secretary as a condition to the receipt of any funds under allotments made to states under public law 93-641, the community mental health centers act (42 U.S.C. 2681) or the comprehensive alcohol abuse and alcoholism prevention, treatment and rehabilitation act of 1970 (42 U.S.C. 4571).

Sec. 10. In conformance with public law 93-641, there is created in each health service area a health systems agency for local health planning and development activities. The health systems agencies shall be those agencies that have entered into agreement with the secretary of health, education and welfare in accordance with the requirements of section 1515 of public law 93-641.

Sec. 11. A health systems agency for a health service area shall be:

(a) A nonprofit private corporation which is incorporated in the state in which the largest part of the population of the health service area resides, which is not a subsidiary of, or otherwise controlled by, any other private or public corporation or other legal entity, and which only engages in health planning and development functions; or

(b) A public regional planning body if (1) it has a governing board composed of a majority of elected officials of units of general local government, or it is authorized by state law, in effect before the date of enactment of the National Health Planning and Resources Development Act of 1974, to carry out health planning and review functions as described in section 1513 of public law 93-641 and (2) its planning area is identical to the health service area; or

(c) A single unit of general local government if the area

of the jurisdiction of that unit is identical to the health service area.

A health systems agency shall not be an educational institution or operate such an institution.

Sec. 12. (a) A health systems agency which is a public regional planning body or unit of general local government shall, in addition to any other governing body, have a governing body for health planning, which is established in accordance with section 13 which shall have the responsibilities of governing bodies, and which has exclusive authority to perform for the agency the functions described in section 1513 of public law 93-641.

(b) A health systems agency which is a nonprofit private corporation shall have a governing body composed, in accordance with section 13, of not less than ten (10) members and not more than thirty (30) members, except that the number of members may exceed thirty (30) if the governing body has established an executive committee composed of not more than twenty-five (25) members of the governing body and has delegated to that executive committee the authority to take action other than the establishment and revision of the health systems plans and annual implementation plans.

Sec. 13. The members of the governing body or the executive committee of an agency shall meet the following requirements:

(a) A majority, but not more than sixty percent (60%) of the members shall be residents of the health service area served by the entity who are consumers of health care and who are broadly representative of the social, economic, linguistic and racial populations, geographic areas of the health service area, and major purchasers of health care.

(b) The remainder of the members shall be residents of the health service area served by the agency who are providers of health care and who represent (1) physicians, particularly practicing physicians, dentists, nurses and other health professionals, (2) health facilities, particularly medical care facili-

ties, long-term care facilities and health maintenance organizations, (3) health care insurers, (4) health professional schools and (5) the allied health professionals. Not less than one-third of the providers of health care who are members of the governing body or executive committee of a health systems agency shall be direct providers of health care.

(c) The membership shall (1) include, either through consumer or provider members, public elected officials and other representatives of governmental authorities in the agency's health service area and representatives of public and private agencies in the area concerned with health, (2) include a percentage of individuals who reside in nonmetropolitan areas within the health service area of which the percentage is equal to the percentage of residents of the area who reside in nonmetropolitan areas, and (3) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the veterans' administration, include, as an ex officio member, an individual whom the chief medical director of the veterans' administration shall have designated for such purpose, and if the agency serves an area in which there is located one or more qualified health maintenance organizations, include at least one member who is representative of such organization.

(d) If, in the exercise of its functions, a governing body or executive committee appoints a subcommittee of its members or an advisory group, it shall make its appointments to any such subcommittee or groups in such a manner as to provide approximately the representation of such subcommittee or group described in this subdivision.

Sec. 14. (a) The governing body (1) shall be responsible for the internal affairs of the health systems agency, including matters relating to the staff of the agency, the agency's budget, and procedures and criteria applicable to its functions; (2) shall be responsible for the establishment of the health systems plan and annual implementation plan; (3) shall be responsible for the approval of grants and contracts made and entered into

under section 21 concerning functions; (4) shall be responsible for the approval of all actions taken pursuant to sections 27 and 28; (5) shall (A) issue an annual report concerning the activities of the agency, (B) include in that report the health systems plan and annual implementation plan developed by the agency and a listing of the agency's income, expenditure assets, and liabilities, and (C) make the report readily available to the residents of the health service area and the various communication media serving such area; and (D) shall reimburse its members for their reasonable costs incurred in attending meetings of the governing body; (6) shall meet at least once in each calendar quarter of a year and shall meet at least two (2) additional times in a year unless its executive committee meets at least two (2) times in that year; and (7) shall (A) conduct its business meetings in public, (B) give adequate notice to the public of such meeting, and (C) make its records and data available upon request to the public.

(b) The governing body and the executive committee, if an executive committee has been established, of a health systems agency shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all of its members and at which a quorum is present. A quorum for a governing body and executive committee shall not be less than one-half of its members.

Sec. 15. (a) A health systems agency shall have a staff which provides the agency with expertise in at least the following: (1) administration, (2) the gathering and analysis of data, (3) health planning, and (4) development and use of health resources. The functions of planning and of development of health resources shall be conducted by staffs with skills appropriate to each function. The size of the professional staff of any health systems agency shall not be less than five (5), except that if the quotient of the population, rounded to the next highest one hundred thousand (100,000) of the health service area which the agency serves divided by one hundred thousand

(100,000) is greater than five (5), the minimum size of the professional staff shall be the lesser of (1) such quotient or (2) twenty-five (25). The members of the staff shall be selected, paid, promoted and discharged in accordance with such systems as the agency may establish, except that the rate of pay for any position shall not be less than the rate of pay prevailing in the health service area for similar positions in other public or private health service entities.

(b) If necessary for the performance of its functions, a health systems agency may employ consultants and may contract with individuals and entities for the provision of services. The responsibility for plan development, review, and comment rests with the health systems agency.

Sec. 16. No individual, as a member or employee of a health systems agency, by reason of his or her performance of any duty, function or activity required or authorized to be undertaken by the health systems agency under this act, shall be liable for the payment of damages under any law of this state or political subdivision thereof, if he or she has acted within the scope of such duty, function or activity, has exercised due care and has acted, with respect to that performance, without malice.

Sec. 17. No health systems agency may accept any funds or contributions of services or facilities from any individual or private entity which has a financial, fiduciary or other direct interest in the development, expansion or support of health resources, unless, in the case of an entity, it is an organization described in section 509(a) of internal revenue code of 1954 and is not directly engaged in the provision of health care in the health service area of the agency. For the purpose of this paragraph, an entity shall not be considered to have such an interest solely on the basis of its providing, directly or indirectly, health care for its employees.

Sec. 18. Each health systems agency shall:

(a) Make such reports, in such form and containing such information, concerning its structure, operation, performance of

functions and other matters that may be from time to time required, and keep such records and afford such access to the secretary and the council in compliance with the provisions of this act and public law 93-641.

(b) Provide for such fiscal control and fund accounting procedures as may be required to assure proper disbursement of and accounting for amounts received to the council under the general provisions of this act and public law 93-641 concerning planning and development grants.

(c) Permit state and federal representatives to have access for the purpose of audit and examinations to any books, documents, papers, and records pertinent to the disposition of amounts received under the general provisions of this act and public law 93-641.

Sec. 19. A health systems agency may establish subarea advisory councils representing parts of the agency's health service area to advise the governing body of the agency on the performance of its functions. The composition of a subarea advisory council shall conform to the requirements of ^{Section 12 and} section 13.

Sec. 20. Each health systems agency for the purpose of (a) improving the health of residents of a health service area, (b) increasing the accessibility, including overcoming geographic, architectural and transportation barriers, acceptability, continuity and quality of the health services provided the residents, (c) restraining increases in the cost of providing them health services and, (d) preventing unnecessary duplication of health resources shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion of the development within the area of health service, manpower and facilities which meet identified needs, reduce documented inefficiencies and implement the health plans of the health systems agency.

Sec. 21. (a) In providing health planning and resources development for its health service areas, a health systems agency shall:

(1) Assemble and analyze data concerning the status and its determinants of the health of the residents of its health service area.

(2) Analyze the status of the health care delivery systems in the area and the use of that system by the residents of the area.

(3) Analyze the effect of the area's health care delivery system on the health of the residents of the area.

(4) Analyze the number, type, and location of the area's health resources, including health services, manpower, and facilities.

(5) Analyze the pattern of utilization of the area's health resources.

(6) Analyze the environmental and occupational exposure factors affecting immediate and long-term health conditions.

(b) In carrying out this section, the agency shall use existing data and coordinate its activities with the cooperative system provided for under section 306(e) of the public health services act.

Sec. 22. (a) Health systems agencies shall, after consideration of national health guidelines, develop a health systems plan which shall establish, annually review, and amend as necessary a health systems plan. The health systems plan shall include a description of a healthful environment and a health system directed toward achieving quality health services which are available, accessible, of reasonable cost, responsive to the unique health needs and resources of the area and which assures continuity of care to residents of the area. Health systems plans shall be submitted to the state agency annually.

(b) Before establishing or amending a health systems plan, a health systems agency shall conduct a public hearing on the proposed plan or amendments and shall give interested persons an opportunity to submit their views orally and in writing. Thirty (30) days prior to such hearing the health systems agency shall publish notice of its consideration of the proposed plan or

amendments in at least two (2) newspapers of general circulation in the health service area. The notice shall include the time and place of the hearing, the place at which copies of the proposed plan or amendments are available for review and the period during which written comments may be submitted to the health systems agency.

Sec. 23. Health systems agencies after consideration of goals developed in the health systems plan shall establish objectives and priorities which achieve these goals. The priorities shall be based upon the maximum improvement of the health of the residents in the health service area in relation to the cost involved, the benefits obtained and the special needs of the area. The annual implementation plan shall be forwarded to the council each year.

Sec. 24. Each health systems agency shall submit to the state agency a health systems plan and an annual implementation plan.

Sec. 25. The health systems agency in accordance with the priorities established in the annual implementation plan shall make grants to public and nonprofit private entities and enter into contracts with individuals and public and nonprofit private entities to assist them in planning and developing projects and programs which the agency determines are necessary for the achievement of the health systems described in the health system plan. Such grants and contracts shall be made from the area health services development fund of the agency established with funds provided under grants made under section 1640 of public law 93-641. No grant or contract under this section may be used to pay the cost incurred by an entity or individual in the delivery of health services or for the cost of construction or modernization of medical facilities. No single grant or contract made or entered into under this paragraph shall be available for obligation beyond the one-year period beginning on the date the grant or contract was made or entered into. If an individual or entity receives a grant or contract under this section for a project or

program, such individual or entity may receive only one more grant or contract for such project or program.

Sec. 26. Each health systems agency shall coordinate its activities with the following: (a) each professional standards review organization designated under section 1152 of public law 92-603, amendments to the social security act; (b) entities referred to in paragraphs (1) and (2) of section 204(a) of the demonstration cities and metropolitan development act of 1966 and regional and local entities the views of which are required to be considered under regulation prescribed under section 403 of the intergovernmental cooperation act of 1968 to carry out section 401(b) of such act; (c) other appropriate general or special purpose regional planning and administrative agencies; and (d) any other appropriate entity in the health systems agencies' health service area. The agency as may be appropriate, shall secure data from such organizations and entities for use in the agency's planning and development activities, enter into agreements with such organizations and entities which will assure that actions taken by such organizations and entities which alter the area's health systems will be taken in a manner which is consistent with the health system plan and the annual implementation plan in effect for the area, and to the extent practicable, provide technical assistance to such organizations and entities.

Sec. 27. Each health systems agency shall review and approve or disapprove each proposed use within its health service area of federal funds appropriated under the public health service act, as amended by public law 93-641, the community mental health centers act (42 U.S.C. 2681), the comprehensive alcohol abuse and alcoholism prevention, treatment and rehabilitation act of 1970 (42 U.S.C. 4571), for grants, contracts, loans or loan guarantees for the development, expansion or support of health resources.

A health systems agency shall not review and approve or disapprove the proposed use within its health services area of federal funds appropriated for grants or contracts under title

IV, VII, or VIII of the public health services act unless the grants or contracts are to be made, entered into, or used to support the development of health resources intended for use in the health service area or the delivery of health services. In the case of a proposed use within the health systems agency of federal funds described in this section by an Indian tribe or intertribal Indian organization for any program or project which will be located within or will specifically serve a federally reorganized Indian reservation, a health systems agency shall only review and comment on such proposed use.

Each health systems agency shall provide each Indian tribe or intertribal Indian organization which is located within the agency's health service area information respecting the availability of the federal funds described in this section.

Sec. 28. (a) Each health systems agency shall review on a periodic basis, but at least every five (5) years, all health facility services offered in its health service area and shall make recommendations to the state agency with respect to the appropriateness of such services. A health systems agency shall complete its initial review of existing health facility services within three (3) years after the date of the agency's designation by the secretary.

(b) Each health systems agency shall review and make recommendations to the state agency with respect to the need for new health facility services to be offered or developed in the health service area of such health systems agency. Each health systems agency shall submit its findings to the council for purposes of review.

Sec. 29. Each health systems agency shall annually recommend to the state agency:

(a) Projects for the modernization, construction and conversion of medical facilities in the agency's health service area which projects will achieve the health systems plan and annual implementation plan of the health systems agency, and

(b) Priorities among such projects.

Sec. 30. A health systems agency shall submit annually to the council the budget for purposes of review and approval; and all applications for planning and development grants, and area health services development funds, for purpose of review.

Sec. 31. Each health systems agency shall review and make recommendations to the state agency on application for certificate of need submitted for entities within its health service area.

Sec. 32. K. S. A. 65-193 and K. S. A. 1975 Supp. 65-190, 65-191, 65-192, 65-194, 65-195 and 65-196 are hereby repealed.

HOUSE BILL NO. _____

By Special Committee on Health and Human Resources

Re Proposal No. 23

AN ACT establishing a certificate of need program; requiring a certificate of need before certain projects may be undertaken; repealing K. S. A. 65-2a02 to 65-2a06, inclusive, 65-2a08 to 65-2a14, inclusive, and K. S. A. 1975 Supp. 65-2a01 and 65-2a07.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act: (a) "Licensing agency" means the department of health and environment with reference to facilities licensed pursuant to K. S. A. 39-927 and 65-428, the department of social and rehabilitation services with reference to facilities licensed pursuant to K. S. A. 75-3307b, exclusive of facilities for the mentally retarded [and pursuant to K. S. A. 1975 Supp. 65-4012 and K. S. A. 1975 Supp. 65-5375] and the commissioner of insurance with reference to organizations granted certificates of authority pursuant to K. S. A. 1975 Supp. 40-3204.

(b) "Health facility" means medical care facility, psychiatric hospital, health maintenance organization, skilled nursing home, intermediate nursing care home, intermediate personal care home, home health agency, provider of outpatient physical therapy services including speech pathology services, except that such term shall not apply with respect to outpatient physical therapy services performed by a physical therapist in his or her office or in a patient's home, kidney disease treatment center, including centers not located in a medical care facility, health center and family planning clinic.

(c) "State agency" means ^{Sec. of Health + Environment} the state agency designated as the state health planning and development agency under section 1521 of public law 93-641.

(d) "Health systems agency" means an agency designated under section 1512 of public law 93-641.

(e) "Health service area" means the area for which a health systems agency is responsible.

(f) "Review agency" means the agency of the state designated by the governor to review appeals from decisions of the state agency relating to the granting or refusing to grant certificates of need.

(g) "Application" means an application for a certificate of need made to the state agency and shall be in such form and shall contain such information as the state agency may prescribe.

(h) "Health facility services" means the health services provided through health facilities and includes the entities through which such services are provided.

(i) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

Sec. 2. Upon the effective date of this act, no person shall undertake a project described in section 5 unless a certificate of need has been obtained under the provisions of this act.

Sec. 3. An application to the licensing agency for a new license and not the renewal of a valid license, or an application to the licensing agency from an existing health facility for licensure of facilities or services of a project requiring a certificate of need as set forth in section 5 shall include a certificate of need from the state agency or review agency, if appealed. The certificate of need forms shall be developed by the state agency.

Sec. 4. A certificate of need may be granted only after an opportunity has been given to the appropriate health systems agency to review the project proposal, in accordance with procedures established in section 7, and the state agency has determined that, on the basis of evidence presented at the hearing with respect to community need as reflected in the state health plan, ~~the proposed project is required for the public convenience~~

there is a reasonable need apparent for the use of the service for clarification of public utility.

~~and necessity.~~

Sec. 5. (a) Projects requiring a certificate of need before they are undertaken include, and shall be limited to, the following:

(1) The construction of a new health facility, the construction of additional bed capacity in a health facility[, the conversion of an existing bed category to a different bed category, an increase in a bed category] or modernization of an existing health facility requiring a capital expenditure.

(2) The creation, expansion, addition or deletion of health facility services.

(b) As used in this section, "capital expenditures" means:

(1)

(a) An expenditure, including an expenditure for a construction project undertaken by the facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which exceeds the lesser of five percent (5%) of the health facility's operating expense in the most recent fiscal year or one hundred fifty thousand dollars (\$150,000). [The total individual project cost shall be limited to all depreciable assets to be owned or used by the health facility as a result of the project and which would normally be capitalized under generally accepted accounting procedures.]

Possible Elements for Committee Consideration in Defining Capital Expenditure.

(2) The cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is to be made shall be included in determining whether such cost exceeds the lesser of five percent (5%) of the health facility's operating expense in the most recent fiscal year or one hundred fifty thousand dollars (\$150,000).

(3) Where the estimated cost of a proposed project, including cost escalation factors appropriate to the area in which the

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proposed project as certified by a registered architect or licensed engineer on preliminary plans approved by the state agency or equipment projects including the total costs of proposed equipment.]

Sec. 6. (a) Applicants who, in accordance with section 5, are required to apply for a certificate of need shall submit such application on forms provided by the state agency and in accordance with procedures established in rules and regulations duly adopted by the state agency.

(b) Except as specifically exempted by law or regulation, every person desiring a certificate of need under this act shall file a completed application and the required application fee with the state agency. Such application and any modifications shall be on forms prescribed and furnished by the state agency. Simultaneous with submission of the application to the state agency, a copy shall be submitted to the appropriate health systems agency.

(c) Each application shall include at least the following information:

(1) The geographical area and the population to be served by the project, as well as projections of population growth.

(2) The anticipated demand for the health care service or services to be provided.

(3) A description of the service or services to be provided.

(4) The use, adequacy and availability of existing facilities and services within the area to be served offering the same or similar health care services.

(5) The anticipated demand for the health service or services to be provided.

(6) Projected cost estimates of capital expenditures and operating expenses.

(7) Projected staffing of the service.

(8) Schematic plan if construction is included in the application.

(9) The benefit to the community which would result from the development of the project, as well as the anticipated impact on other health providers offering the same or similar health care services in the geographical area to be served by the applicant.

(d) An application shall be deemed filed when it contains all required information and when the filing fee, in an amount established by the state agency by duly adopted rules and regulations of not more than _____ dollars (\$), is received by the state agency. A filed application shall be a public document and shall be available for inspection at the offices of the health systems agency and the state agency. A copy thereof shall be furnished to any person upon request and payment of a reasonable fee, to be established by duly adopted rules and regulations of the state agency in an amount sufficient to defray the costs thereof. A completed application may be amended or withdrawn by the applicant at any time without prejudice, but any amendment to an application, except as the state agency and the applicant may otherwise agree, shall cause the amended application to be treated as a new application for purposes of the time limits of this act.

(e) If the state agency determines that the application is incomplete, it shall notify the applicant and the appropriate health systems agency within fifteen (15) days of the receipt of the application advising the applicant that additional information is required. After such notice the application shall not be deemed filed until a complete application is received by the state agency. If the notice that the application is incomplete is not given within fifteen (15) days, the application will be deemed complete and the state agency shall thereupon proceed with its review. When the application is filed the state agency shall promptly publish notice of its filing in a newspaper of general circulation in the geographical area to be served by the project.

Sec. 7. At the same time the application is submitted to the state agency, a copy shall be submitted to the appropriate

health systems agency. The health systems agency shall review, in accordance with procedures established pursuant to section 1532 of public law 93-641, and comment upon the application and submit its findings and recommendations to the state agency within forty-five (45) days of the receipt of the complete application.

Sec. 8. (a) The state agency shall review, in accordance with procedures established pursuant to section 1532 of public law 93-641, and either approve, approve subject to modification or deny an application within sixty (60) days of submission of the completed application.

(b) If the state agency's decision differs from the health systems agency, the state agency shall submit to the appropriate health systems agency a statement of its reasons for making such decision.

(c) Notice of the substance of the decision shall be published in a newspaper of general circulation within the area to be served within ten (10) days following its issuance.

Sec. 9. Any decision issued pursuant to section 8 shall take effect thirty (30) days following its issuance unless within such time an applicant requests a hearing with the review agency or a written protest is filed by the appropriate health systems agency with the review agency. The applicant's request for a hearing or the filing of a written protest shall operate to suspend and stay the state agency's certificate of need decision pending the hearing and entry of a final decision. If the state agency does not issue its decision within sixty (60) days of the receipt of a complete application, it shall be deemed that the state agency has decided that a certificate of need be issued covering the entire application except as the applicant may otherwise agree.

Sec. 10. As soon as a request for hearing on a certificate of need decision is received from the applicant or the appropriate health systems agency, the review agency shall set a hearing date to occur within thirty (30) days of the date the protest or request for hearing was received. If the review agency orders a

hearing, it shall be held within thirty (30) days of the date of the order. The place of hearing shall be within the region and reasonably convenient to the site of the project. The review agency shall cause to be published, at least fifteen (15) days prior to the hearing, a notice summarizing the application and the state agency's recommendation, with such particulars as the review agency may deem necessary, including but not limited to the name and address of the applicant, the type of project, and the date, time and place of the hearing, in a newspaper of general circulation in the geographical area to be served by the project. In addition, the review agency shall send copies of such notice to the applicant, the state agency, the health systems agency, all other health facilities in the geographical area to be served and any persons requesting such notice.

Sec. 11. Parties to the proceedings shall be the applicant, the state agency, and the health systems agency from the area in which the protest was filed. Any other person shall have the right to appear and be heard at the hearing, but shall not be a party to the proceedings.

Sec. 12. The hearing may be held by the review agency or a hearing officer, as ordered by the review agency. Every hearing shall be held in the geographical area referred to in the application and shall be presided over by a hearing officer assigned by the review agency. The hearing officer shall rule on the admission and exclusion of evidence and the review agency on matters of law. The review agency shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of such powers to the hearing officer.

Sec. 13. In any hearing conducted pursuant to this act, the hearing officer shall have authority to administer oaths or affirmations.

Sec. 14. (a) Prior to commencement of the hearing, the assigned hearing officer shall issue subpoenas at the request of any party for attendance of any witness or production of documents at the hearing. After the hearing has commenced, the hear-

ing officer may issue subpoenas at the request of a party.

(b) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall be entitled to the same witness and mileage fees as are allowed witnesses in proceedings in a district court. Witness and mileage fees shall be paid by the party at whose request the witness is subpoenaed.

(c) Any person summoned to attend as witness at a proceeding pursuant to this act who refuses or neglects, without lawful excuse, to attend pursuant to such summons, and any person who, being present at a proceeding pursuant to this act, willfully refuses to be sworn, to answer any material and proper question or to produce, upon reasonable notice, any material and proper books, papers, or documents in his or her possession or under his or her control shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500).

(d) On the verified petition of any party, the assigned hearing officer may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding, the name and address of the witness whose testimony is desired, a showing of the materiality of his or her testimony, a showing that the witness will be unable or cannot be compelled to attend and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

Sec. 15. At every hearing conducted pursuant to section 12:

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him or her to tes-

tify, and to rebut the evidence against him or her.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the proceeding, and irrelevant and unduly repetitious evidence shall be excluded.

(d) In reaching a proposed decision, decision, or decision upon reconsideration, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the review agency's special field, and of any fact which may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the review agency.

Sec. 16. At every hearing conducted pursuant to section 12:

(a) A transcript of a hearing shall be available to anyone making a request therefor who has deposited with the review agency an amount of money which the review agency has determined to be necessary to cover the costs of preparation of the transcript.

(b) All parties shall have the right to be represented by counsel.

Sec. 17. Within fifteen (15) days after the close of the hearing, the hearing officer shall prepare and submit to the review agency a proposed decision in such form that it may be adopted by the review agency as its decision on the application. If the hearing is held by the review agency, those members who heard the matter shall advise the hearing officer of their recommendations concerning the proposed decision.

The proposed decision shall be based on the evidence and exhibits admitted at the hearing and on the considerations set forth in sections 4 and 5. The proposed decision shall be in writing and shall contain proposed findings of fact, determination of the issues presented and a recommended action on the application.

The hearing officer shall forward to the review agency the transcript of all testimony and oral argument, all exhibits and any written argument, as soon as it is reasonably practicable.

Sec. 18. Upon receipt, a copy of the proposed decision shall be filed by the review agency as a public record, and within five (5) days thereafter copies shall be served by the review agency on the applicant and the other parties and participants in the hearing, and copies shall be mailed to all other persons so requesting. Accompanying each such copy shall be a notice of the date, time and place of the review agency's meeting to consider the proposed decision, which meeting shall be not less than fifteen (15) days nor more than thirty (30) days following the date of such notice.

Sec. 19. Prior to the meeting of the review agency, the members shall have read the proposed decision, the transcript of the testimony and oral argument, the exhibits and written argument.

At the meeting scheduled by the review agency to consider the proposed decision, the review agency shall receive oral and written argument from any party. If the proposed decision is not so adopted, the review agency may decide the case upon the entire record, including the transcript, and oral and written argument,

with or without taking additional evidence, and modify or reverse the proposed decision if the review agency finds that the proposed decision is not in accordance with the provisions of sections 4 and 5.

Sec. 20. (a) The decision of the review agency shall set forth the findings of fact and a determination of the issue presented. Any decision granting a certificate of need may be subject to lawful conditions prescribed by the state agency which are made applicable by rules and regulations of the state agency to all certificates of need.

(b) The decision of the review agency on the application shall be rendered within ten (10) days after the meeting is held to consider a proposed decision pursuant to section 19. Copies of the decision shall be served on each party and his or her attorney, and shall be mailed to all other persons to whom the proposed decision was mailed pursuant to section 18.

(c) The decision shall be effective thirty (30) days after the date of issuance, unless otherwise provided in the decision or unless stayed by a court on appeal.

Sec. 21. If the review agency does not adopt a decision within sixty (60) days of the close of the hearing provided for by this act, the application shall be deemed approved.

Sec. 22. (a) An approval, approval subject to modification or disapproval of an application shall become final when all rights to appeal have been exhausted. When a decision provided for in this act which approves or approves subject to modification an application has become final, the state agency shall issue a certificate of need to the applicant.

(b) Approval shall terminate twelve (12) months after the date of such approval unless the applicant has commenced construction or conversion to a different license category and is diligently pursuing the same to completion as determined by the state agency; or unless the approval is extended by the state agency for an additional period of up to twelve (12) months upon the showing of good cause for the extension.

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class _____ misdemeanor.]

Sec. 29. K. S. A. 65-2a02 to 65-2a06, inclusive, 65-2a08 to 65-2a14, inclusive, and K. S. A. 1975 Supp. 65-2a01 and 65-2a07 are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the statute book.

_____ BILL NO. _____

By Special Committee on Health and Human Resources

Re Proposal No. 22

AN ACT concerning the Kansas medical facilities survey and construction act; amending K. S. A. 65-410, 65-416, 65-419 and K. S. A. 1975 Supp. 65-411, 65-412, 65-413, 65-414, 65-415, 65-417, 65-418, 65-420, 65-421, 65-422 and 65-423 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. K. S. A. 65-410 is hereby amended to read as follows: 65-410. This act may be cited as the Kansas ~~hospital-and~~ medical facilities survey and construction act.

Sec. 2. K. S. A. 1975 Supp. 65-411 is hereby amended to read as follows: 65-411. As used in this act:

(a) "Secretary" means the secretary of health and environment.

~~(b) "Advisory hospital council" means the advisory hospital council created by K. S. A. 65-434 and any amendments thereto.~~

(c) (b) "The federal act" means titles VI and XVI of the United States public health service act (42 U.S.C. 291 et seq.) and any amendments thereto.

~~(d) "The surgeon general" means the surgeon general of the public health service of the United States.~~

~~(e)~~ (c) "Hospital" "Medical facility" includes public health centers and general, special, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, (extended care facilities, facilities related to programs for home health service, self-care units, outpatient medical facilities, rehabilitation facilities, facilities for long-term care and central service facilities operated in connection with hospitals and also includes educa-

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tional or training facilities for health professional personnel operated as an integral part of a hospital, and other facilities as may be designated by the secretary of health, education and welfare, for the provision of health care to ambulatory patients and other medical facilities for which federal aid may be authorized under the federal act but does shall not include any hospital furnishing primarily domiciliary care. Terms used in this subsection shall have the same meaning as may be ascribed to such terms in the federal act.

~~(f)~~ (d) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

~~(g)~~ (e) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

~~(h) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act, and such other medical facilities for which federal aid may be authorized under the federal act.~~

Sec. 3. K. S. A. 1975 Supp. 65-412 is hereby amended to read as follows: 65-412. The secretary, ~~through the division of health,~~ shall constitute the sole agency of the state for the purpose of:

~~(1)~~ (a) ^{making} ~~Make~~ an inventory of existing hospitals and medical facilities, ~~surveying~~ survey the need for construction of hospitals and medical facilities, and ~~developing~~ develop a program of construction as provided in K. S. A. 65-415 to 65-417, inclusive, and any amendments thereto; and

~~(2)~~ (b) ~~developing and administering~~ ^{ing} develop and administering a state medical facilities plan ~~for the construction of public and other nonprofit hospitals and medical facilities~~ as provided

in K. S. A. 65-418 to 65-423, inclusive, and any amendments thereto.

Sec. 4. K. S. A. 1975 Supp. 65-413 is hereby amended to read as follows: 65-413. In carrying out the purposes of the act, the secretary is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(b) to provide ~~such~~ methods of administration, ~~and appoint a director and other personnel of the division~~ and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(c) to procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) ~~to the extent that he considers desirable to effectuate the purposes of this act,~~ to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private to the extent that the secretary considers desirable to effectuate the purposes of this act;

(e) to accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act, and to expend the same for such purpose;

(f) to make an annual report to the governor and to the legislature on activities and expenditures pursuant to this act, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state.

Sec. 5. K. S. A. 1975 Supp. 65-414 is hereby amended to read as follows: 65-414. The ~~advisory hospital council~~ state-wide health coordinating council shall advise and consult with

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the secretary with respect to the administration of this act. ~~Members of the advisory hospital council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K. S. A. 1975 Supp. 75-3223. The advisory council shall meet as frequently as the secretary deems necessary but not less than once each year. Upon request by three (3) or more members of the hospital advisory council, the secretary shall call a meeting of the council.~~ The statewide health coordinating council shall consider the state medical facilities plan and determine whether or not such plan is consistent with the state health plan.

Sec. 6. K. S. A. 1975 Supp. 65-415 is hereby amended to read as follows: 65-415. The secretary is authorized and directed to make an inventory of existing ~~hospitals and~~ medical facilities, ~~including public, nonprofit and proprietary hospitals and medical facilities,~~ to survey the need for modernization or construction of hospitals and medical facilities, or for the conversion of existing medical facilities in order to provide new health services; and, on the basis of such inventory and survey, to develop a program for the construction, modernization or conversion of such ~~public and other nonprofit hospitals and~~ medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate ~~hospital and~~ medical facility services to all the people of the state.

Sec. 7. K. S. A. 65-416 is hereby amended to read as follows: 65-416. The construction state medical facilities plan program shall provide, in accordance with ~~regulations prescribed under the federal act and federal regulations adopted pursuant thereto,~~ for adequate ~~hospital and~~ medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of ~~hospital and~~ medical facility services reasonably accessible to all persons in the state.

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[Sec. 8. K. S. A. 1975 Supp. 65-417 is hereby amended to read as follows: 65-417. The secretary is authorized to make application to the ~~surgeon-general~~ federal secretary of health, education and welfare for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited in the state treasury and shall be available to the secretary for expenditure for carrying out the purposes of K. S. A. 65-415 to 65-417, inclusive, and any amendments thereto. Any such funds received and not expended for such purposes shall be repaid to the treasury of the United States.]

Sec. 9. K. S. A. 1975 Supp. 65-418 is hereby amended to read as follows: 65-418. The secretary shall prepare a state medical facilities plan and, upon approval of same the plan by the ~~advisory-hospital-council~~ statewide health coordinating council, shall submit the plan to the ~~surgeon-general--a-state plan-which-should-include-the-hospital-and-medical-facilities-construction-program-developed-under-K.-S.-A.-65-415-to-65-417,~~ inclusive, ~~and-any-amendments-thereto,~~ and which shall provide for the establishment, administration, and operation of hospital and medical facilities construction activities in accordance with the requirements of the federal act and regulations thereunder federal secretary of health, education and welfare. The secretary shall, prior to the submission of such plan to the ~~surgeon general~~ federal secretary of health, education and welfare, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views.

[After approval of the plan by the ~~surgeon-general~~ federal secretary of health, education and welfare, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in each county in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations.] The secretary shall from time to time review the ~~construction-program~~

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state medical facilities plan and submit to the ~~surgeon-general~~ federal secretary of health, education and welfare any modifications thereof of such plan which ~~it~~ the secretary may find necessary and may submit to the ~~surgeon-general~~ federal secretary of health, education and welfare such modifications of the state medical facilities plan, not inconsistent with the requirements of the federal act, as ~~he~~ the secretary may deem advisable. ~~Provided,--That--no.~~ No such modifications shall be submitted to the ~~surgeon-general~~ federal secretary of health, education and welfare until the same have been approved by the ~~advisory hospital-council~~ statewide health coordinating council.

Sec. 10. K. S. A. 65-419 is hereby amended to read as follows: 65-419. The state medical facilities plan shall set forth the relative need for the several projects included in the construction program determined in accordance with ~~regulations--pre-~~ scribed--pursuant--to the federal act and federal regulations adopted pursuant thereto, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need.

Sec. 11. K. S. A. 1975 Supp. 65-420 is hereby amended to read as follows: 65-420. Applications for ~~hospital-and-medical facilities-construction-projects--for--which--federal--funds--are requested~~ federal funds or loans for medical facility projects, except special project grants under section 1625 of public law 93-641 which shall be submitted directly to the federal secretary of health, education and welfare, shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or other nonprofit agency authorized to construct and operate a ~~hospital-or-a~~ medical facility, ~~provided--that--no.~~ No application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements.

Sec. 12. K. S. A. 1975 Supp. 65-421 is hereby amended to read as follows: 65-421. The secretary shall afford to every applicant for a construction project under K. S. A. 1975 Supp. 65-420, and any amendments thereto, an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of K. S. A. 1975 Supp. 65-420 and any amendments thereto, and is otherwise in conformity with the state plan ~~it,~~ the secretary shall approve such application and shall recommend and forward it to the surgeon-general application to the federal secretary of health, education and welfare along with such recommendation.

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Sec. 13. K. S. A. 1975 Supp. 65-422 is hereby amended to read as follows: 65-422. ~~From time to time--the~~ The secretary shall inspect each construction project approved by the ~~surgeon general,~~ federal secretary of health, education and welfare; and, if the inspection so warrants, the secretary shall certify to the ~~surgeon-general~~ federal secretary of health, education and welfare that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

Sec. 14. K. S. A. 1975 Supp. 65-423 is hereby amended to read as follows: 65-423. The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, ~~such applicants~~ medical facility projects approved by the federal secretary of health, education and welfare. There is hereby established, in the state treasury, ~~separate and apart from all public moneys and funds of this state,~~ a hospital and medical facilities construction fund. Money received from the federal government for a construction project approved by the ~~surgeon general~~ federal secretary of health, education and welfare shall be deposited to the credit of this fund and shall be used solely for payments due ~~applicants~~ for work performed, or purchases

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separate and apart from all public moneys and funds of this state
hospital and medical facilities construction fund
Money received from the federal government for a construction project approved by the surgeon general federal secretary of health, education and welfare shall be deposited to the credit of this fund and shall be used solely for payments due applicants for work performed, or purchases*

made in carrying out approved projects. Warrants for all payments from the ~~hospital and~~ medical facilities construction fund shall bear the signature of the secretary or ~~his~~ the secretary's duly authorized agent for such purpose.

Sec. 15. K. S. A. 65-410, 65-416, 65-419 and K. S. A. 1975 Supp. 65-411, 65-412, 65-413, 65-414, 65-415, 65-417, 65-418, 65-420, 65-421, 65-422 and 65-423 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.