Legislative Research Department   December 5, 1975

M I N U T E S

SPECIAL COMMITTEE ON HEALTH AND HUMAN RESOURCES

November 26, 1975

Committee Members

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

Staff

Sherman Parks, Jr., Revisor of Statutes Office
Emalene Correll, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Myrta Anderson, Legislative Research Department

Other

Ronald E. Schmidt, Department of Health and Environment, Topeka, Kansas
Richard Morrissey, Department of Health and Environment, Topeka, Kansas
Nelson Tilden, Kansas Hospital Association, Topeka, Kansas
Mary Browne, Kansas Association of Osteopathic Medicine, Topeka, Kansas
Gary Robbins, Kansas State Nurses Association, Topeka, Kansas

The meeting was called to order at 9:30 a.m. by the Chairman, Representative Richard B. Walker, who distributed copies of a Policy Statement from the Department of Health and Environment. (Attachment 1)

Committee Report - Proposal No. 22. Staff referred to the draft of the Committee Report which had been distributed at the last Committee meeting. (Attachment 2). Staff noted that

"many" on page 3 had been changed to "several", and that some technical changes had been made. The blanks on page 1 are to be filled in with 10, 10 and 6 respectively.

A motion was made and seconded to adopt the Committee Report on Proposal No. 22. Motion carried.

Advisory Hospital Council (Attachment 3). Earlier the Department of Health and Environment had questioned the advisability of this bill because of the uncertainty of when HSA's would be in operation. There now seems to be consensus among the groups involved, including the Department of Health and Environment, that the Council should be abolished. Other changes are technical.

A motion was made and seconded to approve the bill for introduction and to recommend it be introduced as a Senate Bill. Motion carried. (See subsequent action).

Medical Facilities Survey and Construction Act. (Attachment 4). The recommendation of the Department of Health and Environment to amend the definition of secretary on page 1 (Attachment 1, page 9) was considered. However, since the secretary of HEW is referred to as the federal secretary it was felt there would be no confusion.

Staff noted they had asked the Department if the definition of "federal act" should include Title VI. However, the Department's comments included no reference to this.

The last sentence in Section 2(c) is for clarification.

Section 2(f) defines "medical facility project" so this shorter term can be used throughout the bill.

Section 4(b), which is in the present law, grants the secretary broad authority to solve administrative problems. It was noted the SHCC is to consult and advise the Secretary in the administration of the act so there is some check on this authority.

Section 8. Staff noted the bracketed material had been adopted at the last meeting.

Section 9. Staff noted changes had been made pursuant to Committee direction.

Section 11. It was noted that since federal money is involved, control will be provided by federal regulations. This is covered in the last sentence. A motion was made and seconded to delete the bracketed material page 7, lines 4 through 9, and to insert a "." after "agency" in line 3. Motion carried. This conforms to the recommendation of the Department (Attachment 1, page 10) although for different reasons.

Section 12. The policy decision raised by the Department (Attachment 1, page 10) is whether or not to include language from the federal act relative to review by the HSA. Section 1604(f) of the federal act directs that an application shall be reviewed by the HSA in accordance with section 1513(e) so the recommendation may be covered under the general authority to comply with the federal act and regulations. Consensus was to leave Section 12 as it is with instructions to staff to check between now and the session noting anything in the regulations which may apply to this point.

Section 14. The recommendation of the Department (Attachment 1, page 1) was discussed. It was felt this was already covered or could be covered by rules and regulations. By consensus no changes were made in this section.

A motion was made and seconded to approve the bill as amended for introduction. Motion carried. A motion was made and seconded to recommend the bill be introduced in the House, to reconsider Committee action on the previous bill, and to recommend it also be introduced in the House. This will allow related bills to be introduced in the same house. Motion carried.

Health Planning and Development (Attachment 5)

Section 2(g). The underlined material was inadvertently omitted when the federal definition was included.

Section 2(k). Staff noted "1512" which appeared in the previous draft had been changed to "1515" in this draft since the latter is the designation section. The bracketed material is for clarification since some HSA's may be conditionally designated for a period longer than one year or placed on conditional status at a later time. A motion was made and seconded to include the bracketed material in section 2(k), page 4. Motion carried.

Section 2(1). To avoid confusion, a motion was made and seconded to delete this section and to use the term "federal secretary" wherever the word secretary refers to the secretary of HEW. This will conform to usage in other bills being considered by the Committee. Motion carried.

Section 3. The term "state agency" has been inserted pursuant to Committee action.

Section 4(b). Staff referred to the recommendation of the Departemnt (Attachment 1, page 1) and read the language of the federal act referred to in this recommendation. Staff noted the Department asks for the authority to propose revisions of the Health System' Plans but the federal act gives them authority not just to propose but to make these changes. In answer to a question, staff stated there appears to be no limit on the changes the state agency can make in an HSP but any changes made have to be approved by

the SHCC. It was noted that adding the recommendation of the Department would not cause any problems. A motion was made and seconded to include the specific authority as requested by the Department. Motion carried.

Section 4(d). Staff noted this subsection is bracketed since other bills being considered by this Committee specifically grant this authority. Staff referred to the recommendation of the Department (Attachment 1, page 1). A motion was made and seconded to include the bracketed material in Section 4(d), page 5 through "programs", to insert a "." after "programs" and to delete the rest of the bracketed material. Motion carried.

Section 4(e). It was noted that Section 4(d) is broad enough to include this subsection. A motion was made and seconded to delete subsection 4(e) and to renumber the remaining subsections. Motion carried.

Section 4(g). It was noted this section has caused anxiety but the only sanction that could be taken would be publicity. The recommendation of the Department to cite the state act (Attachment 1, page 2) could be adopted and if the state act does not pass, the cite could be changed. A motion was made and seconded to include subsection 4(g) citing the state act. Motion carried.

Although the state agency has the authority to adopt rules and regulations under general law it was suggested it would be a good idea to tie authority into this bill. A motion was made and seconded to add a subsection to Section 4 giving the state agency the authority to adopt such rules and regulations as may be necessary to carry out this act and the federal act and regulations. This action is pursuant to the recommendation of the Department (Attachment 1, page 3). Motion carried.

The Committee discussed the other recommendations of the Department to add certain subsections to Section 4 (Attachment 1, pages 2-4). Since adopting these would mean writing into this bill what the federal act already says, they are not to be included.

Section 5. Staff noted U.S. Code cites had been added to allow ready reference for anyone reading the bill. By consensus code cites are to be added here and other places in the bill where they appear.

Staff noted that subsection 5(a) had been changed pursuant to Committee action.

It was pointed out that when the Committee took action relative to the size of SHCC, they had assumed the VA representative would be included in the 27 which affects the 40%. Since this was not the case, the number could be changed to 28 as recommended by the Department (Attachment 1, pages 4-5) allowing the governor to appoint an additional member. A motion was made and seconded to reconsider the previous action of the Committee and to change "twenty-seven (27)" page 5, lines 28 and 29 to "twenty-eight". Motion carried on showing of hands of 4 to 2 with one abstention. Representative Littlejohn recorded a no vote.

Section 5(b). After discussion of the recommendation of the Department (Attachment 1, page 5), a motion was made and seconded to amend subsection 5(b) to require each HSA to nominate a minimum of three persons for each of the four positions allocated to it. Motion carried. Staff was instructed to make other changes as needed to comply with this action.

Section 5(c)(2). By consensus "other persons" page 6, line 10 is to be deleted. It is not needed since the Committee deleted the range for the number of members from each HSA.

Section 6. The recommendation of the Department (Attachment 1, page 6) was considered. However, it was noted four years is becoming a standard term in other legislation so no changes are to be made in this section.

Section 7(c). This subsection conforms to previous action of the Committee. It was noted the Department felt this was unduly restrictive and recommended it be deleted (Attachment 1, page 6). A motion was made and seconded to reconsider previous action of the Committee and to delete this subsection. The following points were made in the discussion: as reorganization goes through, boards and councils are being required to meet in Topeka; deleting this subsection would allow SHCC members to become familiar with the areas and to view facilities. The motion carried on a showing of hands by 4 to 2. Senator Pomeroy and Representative Duncan recorded a no vote.

A motion was made and seconded to insert a new subsection (c) stating all meetings of the council shall be held within the State of Kansas. Motion carried.

The meeting was recessed for lunch and was reconvened at 1:20 p.m. by the Chairman.

Section 9(e). A motion was made and seconded to delete "Recommend" page 7, line 31 and to insert in lieu thereof "Establish". This would carry out the recommendation of the Department (Attachment 1, pages 6-7). Motion carried.

Section 9(f). This subsection is to be included pursuant to previous Committee action.

Section 11. Staff, referring to the recommendation of the Department (Attachment 1, page 7), noted that after checking this point it was concluded that in Kansas only a nonprofit private corporation could qualify as an HSA. They checked the federal act again at noon and still find no way any other type group could qualify. The recommendation was considered but not accepted.

Section 12. Unnecessary language was deleted pursuant to previous Committee action.

Section 16. This section was changed pursuant to previous Committee action.

Section 17. By consensus "(a)" is to be inserted after "509" page 12, line 12.

Section 19. This section was changed pursuant to previous action of the Committee.

Section 21(b). By consensus the "o" after "242" page 14, line 4 is to be deleted and "K(c)" inserted in lieu thereof. A motion was made and seconded to insert "to the maximum extent practicable" after "shall" page 14, line 2. This is pursuant to the recommendation of the Department (Attachment 1, page 8). In answer to a question, staff noted that in their opinion this would be surplus since the present language is not restrictive. The motion and the second were withdrawn.

Section 22. Staff noted this section had been changed pursuant to previous Committee action. Reference was made to the Department's recommendation (Attachment 1, page 8). The regulation subsections referred to in this recommendation add four additional things to be taken into account and the Department is proposing including only one of these. What is in the bill as drafted includes what is in the federal act. The feeling was expressed that either all four things should be specifically included or none of them should be included. Consensus was not to include them.

Sections 23-24. Changes were made in these sections pursuant to previous Committee action.

Section 25(a) and 25(b). Staff noted the U.S. Code cite was corrected. By consensus the underlined language is to be adopted, since these functions cannot be performed by a conditionally designated HSA unless it is agreed to by the Secretary of HEW. Proper U.S. Code cites are to be inserted where needed.

Language underlined in Section 27(a) and (b) and Section 29 was adopted to conform with the above decision.

Section 29. By consensus "A" is to be changed to "Each" page 17, line 28.

Section 30. This section was added pursuant to previous Committee action. The use of the phrase "failed to use the powers" was questioned since if there were any discretionary powers, not using any one of them could be a basis for a law suit. A motion was made and seconded to delete all after "failed" page 18, line 2 and all through the "." in line 3 and to insert in lieu thereof "perform duties required to be performed under provisions of this act" and to insert "or" before "mis-" in line 1. Motion carried.

Section 31. By consensus the bracketed material is to be included and an "s" added to "application" in line 9, page 18.

A motion was made and seconded to approve the bill as amended for introduction and to recommend it be introduced as a House Bill. Motion carried.

Certificate of Need (Attachment 6)

Section 1. The underlined material in lines 1 and 2, page 1 refers to Section 3 where it is clearly different.

Section 1(d). Staff noted changes were made pursuant to previous Committee action.

Referring to recommendations of the Department (Attachment 1, pages 12-13) it was noted there seems to be a failure to recognize that the federal law requires a state plan for mental health and for drug and alcoholism treatment programs. The Department could refer to the groups responsible for these plans for the expertise they need. The Committee considered the recommendations but saw no reason to change their previsous decision.

Section 1(f). Staff noted the Department had reversed its previous recommendation (Attachment 1, page 13). There being no motion to reconsider the previous action, the previous action of the Committee stands.

Section 3. The first recommendation of the Department (Attachment 1, page 14) has been taken care of by a previous decision of the Committee.

Staff noted in reference to the second recommendation of the Department that this is taken care of in individual licensing statutes for agencies licensed by the Department of Health and Environment and the Department of Social and Rehabilitation Services. An amendatory section will need to be added to include

HMO's. Staff will need to check the alcoholism treatment act to be sure this requirement is included. Presently drug programs and facilities are not licensed.

In answer to questions, staff noted the federal act says the certificate of need applies to new institutional services which is defined as including HMO's. The question is whether or not an area needs an alternate health delivery system. The application to the Insurance Commissioner would include a certificate of need.

A motion was made and seconded to add HMO's and alcoholism treatment facilities and programs to those needing a certificate of need for licensure. Motion carried. It was clarified that this applied to new licenses.

Section 4. Referring to the recommendation of the Department (Attachment I, pages 14-15), staff noted the State Medical Facilities Plan would not apply to all agencies covered by this bill. Apparently, this recommendation was keyed to the Department's recommendation to limit the types of agencies covered by the bill. The section is to be left as drafted.

Section 5. Staff noted this section has been changed pursuant to previous Committee action.

Section 5(a). It was noted that previous Committee decisions preclude adopting the Department's recommendation (Attachment 1, page 15) relative to the section.

Section 5(b). Referring to the recommendation of the Department (Attachment 1, page 15), it was noted the Committee in previous action had adopted a threshold of $150,000.

Section 6. Staff noted this section has been changed pursuant to previous Committee action.

Section 6(b). Referring to the first recommendation of the Department (Attachment 1, page 16) staff noted the fee was deleted at the last Committee meeting.

Referring to the second recommendation of the Department (Attachment 1, page 16), it was noted the Committee had rejected the concept of a pre-application challenge in previous action. The Committee saw no reason to change its previous decision.

Section 6(c). Referring to the recommendation of the Department (Attachment 1, page 17), staff noted they could not find any applicability of the Medical Facilities Plan to this subsection. The proper plan to refer to is the state health plan. The Committee had rejected this recommendation at a previous meeting and saw no reason to change their earlier decision.

Staff was instructed to distinguish between the state health plan and the Medical Facilities Plan in the Committee Report.

Sections 7-14. Staff noted changes had been made in these sections pursuant to Committee action. Staff asked the Committee if they wanted to require the state agency to hold a hearing and give it authority to issue subpoenas and take testimony under oath. This relates to the type of record the Committee wants to have; to whether or not the Committee wants the review agency to consider the record or hold a hearing de novo. If Section 8, which makes review by the state agency optional, is adopted, this could authorize the review agency of 28 members to have a full blown hearing. It was pointed out that requiring the state agency to hold a hearing on every application could become burdensome. Also, the review agency has the option of using a hearing officer.

In answer to a question, staff stated the federal act seems to preclude HSA's requesting a hearing at the state agency level but they could do so at the review agency level.

Section 7. Staff noted requiring the HSA to submit this record as well as their findings and recommendations would help build records and help the state agency in reaching its decision. A motion was made and seconded to amend Section 7 to state the records of the HSA shall be forwarded to the state agency. Motion carried.

Section 8. Staff noted the recommendation of the Department relative to timeframe (Attachment 1, page 17) was handled by previous action of the Committee to lengthen the time to 90 days.

Section 9. The policy decision is whether the review agency is to act de novo or base its facts and conclusions on the record. In answer to a question, it was noted the review agency could hold a de novo hearing on its own motion. A motion was made and seconded that the review agency be authorized to hold its review on the record unless on its own motion it decided to hold a de novo hearing. Motion carried.

Staff was instructed to include subpoena rights and fees for witnesses and other points as necessary to make this similar to the Civil Rights Commission procedure and KCC procedures. Provisions for taking depositions are also to be included.

Staff referred to the bracketed material in the section, noting it was included for Committee consideration. By consensus the bracketed material is to be included. This takes care of the recommendation of the Department (Attachment 1, pages 17-18).

Staff noted the next few sections will have to be rewritten to comply with the Committee's decision relative to the review agency holding a hearing on the record.

Section 10. The bracketed material is to be included pursuant to Committee action relative to Section 9.

Reference was made to the Department's recommendation (Attachment 1, page 18). Staff was asked to check the federal law on this point and if required by the federal act, staff is to leave this language in.

Staff referred to the recommendation of the Department (Attachment 1, page 18) to add a new section covering assessment of hearing costs, noting this is provided in some other instances. By consensus the Department's recommendation was adopted. Whether or not is has to be a new section was left to the staff.

Section 14(b). This section is to be amended to reflect the Committee's previous decisions.

Section 14(d). A motion was made and seconded to clarify that the decision of the state agency shall be deemed to be approved rather than the application. Motion carried.

Section 16. The bracketed material which conforms to action of the Committee on previsous sections is to be included.

Section 17. The Department's recommendation for Section 24 which is now Section 17 (Attachment 1, page 19) was considered. Reference was made to the Committee' earlier discussion and decision. Consensus was to leave the section as drafted.

Section 18. Referring to the Department's recommendations for Section 27 which is now Section 18 (Attachment 1, page 20), staff noted the Committee had made a decision at the last meeting to exempt state and federal facilities from this act. By consensus the previous decision is to stand.

Section 20. Staff referred to the Department's recommendations for Sections 27 and 28 which are now Section 20 (Attachment 1, page 20) noting it apparently does not take into account the fact that not all facilities and services included in this act are licensed. Consensus was to leave this section as drafted pursuant to Committee action at the last meeting.

A motion was made and seconded to approve the bill as amended for introduction and to recommend that it be introduced as a House Bill. Motion carried.

Minutes

A motion was made and seconded to approve the minutes of the November 12, 1975 meeting. Motion carried.

Committee Report on Proposal No. 23

A motion was made and seconded to authorize the staff to draft a Committee Report on Proposal No. 23 covering the approved bills and to send the report to Committee members for their consideration. Motion carried. The Chairman asked Committee members to send any criticism, suggestions or recommendations for changes to the staff as soon after receiving the report as possible. Staff was instructed to send copies of the four amended bills approved at this meeting with the Committee report.

The Chairman thanked the Committee members for their work and the Committee expressed its appreciation to the staff.

The meeting was adjourned at 3:30 p.m.

Prepared by Emalene Correll

Approved by Committee on:

12/17/75
Date

Attachment 1

DRAFT

November 25, 1975

Kansas Department of Health and Environment

Policy Statement

This document is a statement of the policy of the Kansas Department of Health and Environment concerning the legislative implementation in Kansas of P.L. 93-641, the National Health Planning and Resources Development Act of 1974. The specific comments and recommendations stated herein are keyed to the second drafts of three pieces of legislation proposed by the Kansas Legislature's Special Committee on Health and Human Resources. Those are: 1) an act relating to health planning and development; 2) an act concerning the Kansas Medical Facilities and Survey Construction Act; and 3) an act establishing a certificate of need program.

The Department views the health planning and development legislation as establishing the basic administrative and planning structure for all health planning and development in Kansas; the Medical Facilities Survey and Construction Act and the Certificate of Need Act establish, respectively, specific planning and regulatory processes under authority embodied in the Health Planning and Development Act. The Health Planning and Development Act and the Medical Facilities Survey and Construction Act function largely to translate the administrative and planning structure specified in P.L. 93-641 into the Kansas statutes; this transfer of content of P.L. 93-641 into Kansas statute is appropriate and will allow the development of a health planning program oriented to the needs and wishes of the people of Kansas. The certificate of need program, on the other hand, gets very little direction from the content of P.L. 93-641; because of the potential strong regulatory impact of the certificate of need concept, development of certificate of need legislation for the state of Kansas should be undertaken with deliberate

consideration of the many basic policy issues involved. The following comments are offered as a beginning point for an open dialogue among all concerned with the certificate of need concept.

It must be stressed that certificate of need is a regulatory program which can only operate when supported by an effective planning process. The certificate of need concept, in and of itself, is not a planning function. In determining the scope of a certificate of need program for Kansas, there are two basic factors which must be considered: 1) what types of facilities do we have the capacity to plan for, and 2) what facilities do we have the capacity to plan for that we also wish to regulate? The fact that we have the capacity to plan for a certain type of facility does not inherently mean that we should regulate that type of facility.

The basic purpose of a certificate of need program, as a form of government regulation, is to attempt to control the rising cost of health care. As a result of the national experience with rising health care costs and the attempts to utilize government regulation to control those rising costs, we can now document the need for some type of cost control measures oriented toward inpatient facilities such as hospitals and nursing homes. However, there is very little documentation that would indicate a similar need for other types of health facilities or services. This is not to say that such needs may not exist, but simply that the "state of the art" of health planning does not at this time provide the documentation necessary to extend the "police power" of the state to other types of health care facilities or services.

As the National Health Planning and Resource Development Act of 1974 is implemented in Kansas and across the country, we fully expect that the capacity for effective health planning will steadily increase. Kansas

will realize two benefits from this increased capacity: 1) we will develop the ability to plan for other types of facilities in addition to those providing inpatient care, and 2) the health planning process will provide the data necessary for decisions concerning what other types of health facilities should be regulated, if any.

The Department has information that the forthcoming federal regulations concerning certificate of need will strive to significantly expand the scope and regulatory control of the states' programs. For example, it is anticipated that the regulations will include private physician clinics with annual billings exceeding $1 million within the scope of state certificate of need programs. Notwithstanding the previous discussion of our capacity and need to regulate such facilities, we strongly question the statutory authority for such federal requirements. We are aware of no basis in federal law for such an expansion of the certificate of need concept except the general references contained in P.L. 93-641, and the specific program of Section 1122 of the Social Security Act, which provides no authority for the federal government to control the content of state certificate of need programs. While we realize the speculative nature of these comments on the forthcoming federal regulations, we also realize that it is imperative for the State of Kansas to develop a policy framework for the certificate of need program in this state.

In light of the preceeding discussion, the Kansas Department of Health and Environment recommends that certificate of need legislation, oriented to the needs and capabilities of Kansas, be enacted with all deliberate care and speed.

The following specific comments and recommendations concerning the proposed statutes are offered within the above stated conceptual framework.

DRAFT
November 25, 1975

Proposed Health Planning and Development Act

Comments and Recommendations
Department of Health and Environment

Section 4 (b)

Subject: Preliminary state health plan

Comment: Subsection (b) adopts part of the language of Section 1523 (a)(2) of P.L. 93-641 which charges the state agency with developing a preliminary state health plan. However, subsection (b) excludes the language from P.L. 93-641 which authorizes the state agency to make proposed revisions of the health systems plan (HSP) to achieve appropriate coordination or to deal more effectively with statewide health needs.

Recommendation: The Department recommends that subsection (b) be changed to include specific authority for the state agency to propose revisions of HSPs as authorized in Section 1523 (a)(2) of P.L. 93-641.

Section 4 (d)

Subject: Certificate of need

Comment: This section of the law need only specify that the state agency serve as the designated planning agency for administering state certificate of need programs. In keeping with the Department's view of the purpose of the health planning and development legislation, the language in this section specifying the purpose of the certificate of need is inappropriate.

Recommendation: The Department recommends that subsection (d) be revised as follows: "to serve as the designated planning agency of the state for administering state certificate of need programs pursuant to the Kansas Certificate of Need Act."

Section 4 (g)

Subject: State agency functions

Comment: This section appropriately charges the state agency to administer and prepare the provisions of the State Medical Facilities Plan, but leaves the definition of that process to Section 1603 of P.L. 93-641. It may be more consistent to refer to the state law concerning the Medical Facilities Survey and Construction Act for the definition indicated, rather than the federal law. This is consistent with the recommendation we made regarding the reference to the state certificate of need statute in subsection (d).

Recommendation: The Department recommends the subsection (g) should be revised to read, "to prepare and administer the provisions of the State Medical Facilities Plan as defined in the Kansas Medical Facilities Survey and Construction Act." (K.S.A. 65-410 et seq.)

Section 4

Subject: State agency coordination of planning formats, policies and procedures

Comment: Public Law 93-641 fails to designate a specific process by which uniform planning formats and policies and procedures related to planning and development will be coordinated between the health systems agency (HSA), the state agency, and the State Health Coordinating Council (SHCC). Public Law 93-641 does require that the SHCC have final authority for modification, as appropriate, of health systems plans and the state health plan. With this final approval and disapproval authority for the SHCC, it would seem

appropriate to empower the state agency to recommend uniform planning formats, and further, to review the proposed policies and procedures of the health systems agency to achieve the needed coordination. The SHCC could then be empowered to resolve disagreements between HSAs and the state agency regarding such plan formats and related policies and procedures.

Recommendation: The Department recommends that a section be added to Section 4 authorizing the state agency to recommend planning formats and to review the proposed policies and procedures of the HSAs related to planning and development. This would assure coordination among policies and procedures of the HSAs, the state agency and the SHCC.

Section 4

Subject: Authority for state rules and regulations

Comment: Although it is apparent that the state agency will need to promulgate rules and regulations to implement this act, specific authority for the state agency to take this action is not included.

Recommendation: The Department recommends that Section 4 be amended to provide the state agency with the authority to promulgate such rules and regulations as may be necessary to implement this act.

Section 4

Subject: Data Coordination

Comment: Paragraphs (a) through (g) of this section have omitted the requirement of P.L. 93-641 Section 1522 (b)(7)(A) and (B) which is to:

> "provide for the coordination (in accordance with regulations of the Secretary) with the cooperative system provided for under Section 306 (e) of the activities of the state agency for the collection, retrieval, analysis, reporting, and publication of statistical and other information related to health and health care, and (B) require providers of health care doing business in the state to make statistical and other reports of such information to the state agency;".

The Department feels it is essential that the state agency be responsible for the development of a statewide health data system that is responsive to the needs of health provider groups, educational institutions, and health planners. A statewide data system should result in the collection of only those data deemed relevant and necessary for effective health planning in Kansas. The Department of Health and Environment has begun the development of a health data system in the Bureau of Registration and Health Statistics. The Bureau is presently responsible for collection and reporting of Vital Statistics and has begun the development of a cooperative health manpower data system. The Department has the willingness and the technical capacity to expand its currently operating health data system.

Recommendation: The Department recommends that Section 4 include an additional paragraph incorporating the concepts of P.L. 93-641 Section 1522 (b)(7)(A) and (B) as stated above.

Section 5 (a)

Subject: Specific detail for development of the SHCC

Comment: This section of the law deals with the size and composition of the SHCC. It does not, however, include sufficient detail to provide

clear-cut direction for development of the SHCC in Kansas. Our interpretation of the above cited section of the federal law is that 17 is the minimum number a SHCC may have in Kansas and still be in compliance. This minimum would include four representatives from each HSA plus the Veterans' Administration representative. However, this does not give the Governor any flexibility to appoint persons he believes should be included. Twenty-eight would be reasonable, would provide the Governor some flexibility, and yet would avoid the creation of a body too large to be functional.

Recommendation: The Department recommends that Section 5 (a) be modified to include the specific language that appears in P.L. 93-641, Section 1524 (b)(1), and further, that the size of the Kansas SHCC be established as 28 members.

Section 5 (b)

Subject: Nominations by HSAs to SHCC

Comment: If the preceeding recommendation is accepted (four members of the SHCC representing each HSA), this provision would require only five names to be submitted to the Governor for appointment for four positions. This would be unduly restrictive.

Recommendation: The Department recommends that the Kansas law be modified requiring the HSAs to nominate a minimum to three persons for each of the four positions allocated to the HSA on the SHCC.

Section 6

Subject: Length of terms of SHCC members

Comment: If the preceeding recommendations concerning Section 5 are accepted, this section will need to be revised to conform to the revised Section 5. Also, it is possible that the forthcoming federal regulations may specify length of terms of SHCC members different from those adopted here.

Recommendation: The Department recommends that if the preceeding recommendations concerning Section 5 are accepted, Section 6 should be revised to conform to those recommendations. Appropriate and reasonable lengths of term should be specified.

Section 7 (c)

Subject: Location of SHCC meetings

Comment: The statutory requirement that all meetings of the SHCC be held in Topeka seems to place an unreasonable restriction on SHCC fulfilling its functions and carrying out its necessary business. It may be necessary and advisable that the SHCC hold some meetings in other parts of the state.

Recommendation: The Department recommends this subsection be deleted.

Section 9 (e)

Subject: Coordination of the planning and review activities by the SHCC

Comment: As stated in the comments and recommendations concerning Section 4, the Department believes that the state agency should be charged with recommending a uniform format for the development of health systems

plans and for reviewing the policies and procedures of the HSAs. Public Law 93-641 fails to designate a final authority for resolution of disagreement between HSAs and/or the state agency regarding planning formats; however, it does require that the SHCC have the final authority for modification, as appropriate, of health systems plans and the state health plan. With this final approval and disapproval authority, it would seem appropriate to empower the SHCC to resolve any disagreements on format or policies and procedures prior to the preparation of plans rather than after the fact.

Recommendation: The Department recommends this section be modified to authorize the SHCC to be the final authority for resolving disputes concerning planning formats and policies and procedures to be adopted by the state agency and health systems agencies.

Section 11

Subject: Health systems agency legal structure

Comment: This section is inconsistent with P.L. 93-641 in that it excludes the language in Section 1512 (b)(1) which authorizes a health systems agency to be either a public regional planning body or a single unit of government. There is no assurance that either a public regional planning body or a single unit of government may not, at some time, apply for designation as a health systems agency.

Recommendation: The Department recommends this section be revised to include all of the language of Section 1512 (b)(1) of P.L. 93-641.

Section 21 (b)

Subject: Data collection by health systems agencies

Comment: The language of this section excludes the HSA from collecting any new data and does not reflect the language in Section 1513 (b) of P.L. 93-641.

Recommendation: The Department recommends the language of subsection (b) be changed to include the phrase "the agency shall, to the maximum extent practicable, use existing data..."

Section 22 (a)

Subject: Health systems plans

Comment: Subsection 122.107 (c)(2) of the health systems agencies' notice of proposed rule making (42 CFR part 122) refers to "state agency recommendations concerning measures to meet statewide health needs" as one of the guidelines to be used along with the national health priorities in developing health systems plans. It appears that it would be appropriate for this section of the Kansas law to conform with the federal requirements as stated in the proposed regulations.

Recommendation: The Department recommends that the words "and state agency recommendations" be inserted in Section 2 after the word "guidelines" and before the word "shall."

DRAFT
November 25, 1975

Proposed Medical Facilities Survey and Construction Act

Comments and Recommendations
Department of Health and Environment

General Comment

It would appear that the effort to amend existing Kansas legislation regarding medical facilities survey and construction requires a great deal of change to achieve conformance with P.L. 93-641. Preparation of a new draft may be more efficient than such extensive modifications to existing legislation. The following comments and recommendations, however, address the proposed amended act.

Section 2 (a)

Subject: Uniform definitions

Comment: The word "Secretary," as used in the certificate of need and health planning legislation, refers to the Secretary of the Department of Health, Education and Welfare (HEW) of the U.S. In the proposed Medical Facilities Survey and Construction Act, the word "Secretary" refers to the Secretary of the Kansas Department of Health and Environment. Confusion could result from this inconsistent use of definitions.

Recommendation: The Department recommends: 1) that the defined word "Secretary" in Section 2 (a) be changed to the words "state agency," thus referring to the Kansas Department of Health and Environment in a manner consistent with the other legislation; 2) that the definition for "Secretary" refers to the Secretary of HEW; and 3) that these changes be reflected in the text of the legislation.

Section 11

Subject: Reference to application for a diagnostic and treatment center

Comment: The material relating to diagnostic or treatment centers is not in conformance with existing Hill-Burton regulations and is inappropriate for this section of the legislation. This material starting with the words "No application for ...," etc. and ending with the words "nonprofit hospital" is inappropriate since the language in the Hill-Burton regulations has been redefined from "diagnostic or treatment centers" to "outpatient facilities."

Recommendation: The Department recommends deletion of the sentence "No application fee ...a nonprofit hospital."

Section 12

Subject: Application approval process

Comment: This section implies that the state agency unilaterally approves or disapproves projects and forwards them to the Secretary of HEW. Input from the appropriate HSA as per P.L. 93-641 Section 1513 (e) and Section 1604 (f) is necessary before the state agency can act.

Recommendation: The Department recommends that the review role of the HSA in the state agency's review process be appropriately defined.

Section 14

Subject: Transmittal of federal funds

Comment: The intent of Title XVI in P.L. 93-641 is to assure no projects receive federal funding through the state that have not first been deemed needed by the state agency. This can be achieved by indicating in this act that no funds under Title XVI of P.L. 93-641 may be allocated until the applicant has been awarded a certificate of need, provided such a certificate is required under certificate of need legislation.

Recommendation: The Department recommends that Section 14 be amended to include the following sentence: "The Secretary may not transmit any funds related to projects requiring a certificate of need until and unless a certificate of need is granted by the state agency."

DRAFT
November 25, 1975

Proposed Certificate of Need Act

Comments and Recommendations
Department of Health and Environment

Section 1 (a)

Subject: Definition of licensing agency

Comment: This section specifies the licensing agency(s). This decision is subject to the determination of what specific types of facilities will be included under the certificate of need program.

Recommendation: The Department recommends that this section of the law be reviewed and revised as necessary to be compatable with the types of facilities which are included under Section 1 (b).

Section 1 (b)

Subject: Health facilities subject to the provisions of this act

Comment: This section of the law defines in very broad terms health facilities and services which would be affected by the certificate of need program. The "state of the art" of the health planning process in Kansas is not sufficient to determine with reasonable accuracy the need for a wide range of services and/or types of facilities that must be developed in accordance with unique requirements in many communities of the state. It is necessary to limit regulation of health facilities development to very specific areas where experience with methodologies make effective certificate of need programs possible. The certificate of need program should be initiated by concentrating on three specific type institutions: a) licensed hospitals, b) licensed skilled nursing facilities, and c) licensed intermediate care nursing facilities. Expansion of the certificate of need program beyond this set of institutions should be attempted

only when adequate planning methodologies are developed and tested.

Recommendation: We recommend that the Kansas certificate of need law specify precisely what institutions are affected and that only licensed hospitals, skilled nursing facilities, and intermediate care facilities be so affected at the present time.

Section 1 (f)

Subject: Designation of review agency

Comment: In the Department's previous comments dated November 11, 1975, the Department recommended the use of the Statewide Health Coordinating Council (SHCC) as a review agency. If the SHCC is, indeed, considered a state agency, then it is definitely connected with the Department of Health and Environment and subject to resulting conflict of interest considerations; if, on the other hand, it is not defined as a state agency, it is clearly not eligible to be the review agency according to P.L. 93-641.

Recommendation: The Department recommends that the original draft language for this section be reinstated to allow the Governor to designate a state agency as the review agency. This course of action will allow time for appropriate research to determine the status of the SHCC in this regard. The Governor can then designate the SHCC or another agency, as appropriate.

Section 3

Subject: Certificate of need issuing agency

Comment: This section implies that the state agency or the review agency may award a certificate of need.

Recommendation: The Department recommends that this section be modified to indicate that the state agency shall issue all certificates of need regardless of the approving authority.

Section 3

Subject: This section indicates that an applicant for licensure must include a certificate of need along with the application, but does not specifically say that a certificate of need is required prior to the granting of a license. This distinction is most important because the licensing process is the method of enforcement for certificate of need decisions.

Recommendation: The Department recommends that this section be modified to state specifically that a certificate of need is required for licensure of those facilities subject to this act.

Section 4

Subject: Determining need for projects

Comment: This section provides that a project must be in conformance with needs expressed in the state health plan to be eligible for a certificate of need. This is somewhat vague in that the specific plan that will detail needs will be the State Medical Facilities Plan. The State Medical Facilities Plan must be in conformance with the state health plan.

Recommendation: The Department recommends that this section be revised to refer to the State Medical Facilities Plan rather than the state health plan.

Section 5 (a)

Subject: Projects requiring certificate of need

Comment: The effect of this section is to require that both facilities and services be subject to certificate of need. Consistent with our previous recommendations, we question the references to health services. Also it appears that the substance of this section can be simplified.

Recommendation: The Department recommends that this section be revised to include two basic criteria for projects requiring certificate of need: 1) any change in licensed bed capacity, or 2) any project meeting or exceeding the threshold limits as established in Section 5 (b).

Section 5 (b)

Subject: Capital expenditures threshold

Comment: The content of this section is basic to the effective functioning of the certificate of need concept. Options:

1) A flat dollar amount ($100,000?)
2) A dollar amount and a percent of the facility's previous year's operating budget (5%)
3) Differing dollar amounts for individual types of facilities. (i.e., hospitals - $100,000; nursing homes - $50,0000)
4) Differing dollar amounts by bed capacity. (i.e., up to 100 beds - $100,000; 100 beds or over - $150,000)

Recommendation: The Department recommends Option 1 as an adequate threshold which can be equitably administered.

Section 6 (b)

Subject: Application fee

Comment: The necessity for an application fee is questionable and the fee itself is a potential obstacle for some applicants. It appears that it would be an inequity to require applicants attempting to develop needed health services to pay a fee related to a program that does not yet exist.

Recommendation: The Department recommends the deletion of any reference to an application fee in this act.

Section 6 (b)

Subject: Pre-application challenge

Comment: In some instances applications may be filed which are not consistent with the State Medical Facilities Plan. As a consequence, the applicant will be required to go to considerable expense to prepare an application in the face of a major published criteria for the review of his project. It would be appropriate to allow applicants to challenge the state plan in advance of going to the expense of preparing a final application.

Recommendation: The Department recommends this section of the law be modified to provide the applicant with the option of filing a challenge to the state plan prior to the submission of a formal application. This option should contain a provision for assignment of priority to the applicant's subsequent application, provided the challenge to the state plan is successful. The state agency should be charged to develop appropriate rules and regulations for implementing this concept.

Section 6 (c)

Subject: Application content

Comment: The information required by this section to be included in a completed application is apparently oriented to the current certificate of need process. It is likely it will be necessary to generate data relative to the specific State Medical Facilities Plan under the new certificate of need plan process.

Recommendation: The Department recommends that the state agency be authorized to determine the specific information to be provided in an application in appropriate rules and regulations,rather than specfying application content in the statute.

Section 8 (a)

Subject: Time frame for state review

Comment: This section requires final action by the state agency within 60 days of the submission of an application. This places an extraordinary time constraint on the state agency when consideration is given to the complex and detailed nature of the required review process.

Recommendation: The Department recommends that the time frame for final action by the state agency by established at 90 days.

Section 9

Subject: Appeal procedures

Comment: This section restricts the opportunity for appeal to the applicant and the health systems agency. It may be more equitable for the appeal procedure to be open to other aggrieved parties.

Reocmmendation: The Department recommends that this section of the law be modified to allow aggrieved parties other than the applicant and the health systems agency to appeal, as defined in rules and regulations to be promulgated by the state agency.

Section 10

Subject: Notification of appeal

Comment: The requirement in the last sentence of this section that the review agency notify "all other health facilities in the geographical area to be served and any persons requesting such notice" places an unnecessary administrative and financial burden on the review agency. The public notice requirement in this section is sufficient.

Recommendation: The Department recommends deletion of this excessive requirement for individual notices of appeal.

Section - (To be added)

Subject: Assessment of appeals hearing costs

Comment: The financial support of the appeals process places a heavy cost burden on the taxpayers of the state of Kansas. It seems appropriate that this process follow the precedent set by the Kansas courts in assessing the costs of the action to the losing party.

Recommendation: The Department recommends that costs of the appeal notices and hearing be assessed against a losing appellant, subject to specific rules and regulations promulgated by the Department.

Section 24 (now 27 13)

Subject: Exemption for catastrophes and natural disaster

Comment: The essence of the certificate of need concept is to regulate the expenditure of capital resources for facilities according to a predetermined need. Therefore, facilities which are completely destroyed or made totally inoperable as the result of a catastrophe or a natural disaster should still be subject to the certificate of need process. For example, a two hundred bed hospital which is completely destroyed may be located in an area that is currently overbedded by 100 beds. Should that facility be allowed to rebuild to its previous overbedded capacity, or should it be allowed to build only to fill the determined need for beds? Any provision for including such projects under the certificate of need process must be equitable; facilities which are only temporarily or slightly made inoperable by natural disaster or catastrophe should not be subjected to the certificate of need process. On the other hand, facilities which are destroyed or made inoperable to a significant degree should be included in the scope of the certificate of need program.

Recommendation: The Department recommends that the language be added to this section to the effect that: "Except where the amount of depreciable assets destroyed or made inoperable exceeds 75% of the total depreciable assets of the health facility."

Section 26 (now Sec. 8)

Subject: Exemption of state agencies

Comment: The Department has recommended that all licensed hospitals be subject to the Certificate of Need Act and that licensure for the facilities be contingent upon possession of a valid certificate of need. Therefore, since the state's health facilities are subject to licensure, they should also be subject to the Certificate of Need Act. U.S. government facilities are not subject to Kansas licensure requirements.

Recommendation: The Department recommends that this section be deleted.

Section 27 (now Sec. 20)

Subject: Civil action

Comment: The major penalty related to failure to conform to the certificate of need program is tied to the licensure process. It seems redundant to add another, more minor, penalty such as is proposed in this section.

Recommendation: The Department recommends the deletion of Section 27.

Section 28

Subject: Misdemeanor

Comment: Same as above for civil actions.

Recommendations: The Department recommends the deletion of Section 28.

Draft
Attachment

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Committee on Health and Human Resources

SUBJECT: Proposal No. 22 - Delivery of Health and Environmental Services

Proposal No. 22 directed a study of the roles of the city, county, state and federal governments in the funding and delivery of public health and environmental services, including an evaluation of the quality and adequacy of such services. The study was also to include consideration of regionalization for the delivery of such services and a review of state statutes relating to local boards of health, local health officers and local health departments.

Public Health and Environmental Services

In order to obtain information about the quantity and quality of personal and environmental health services being provided at the local level, the Committee invited each county health officer and each board of county commissioners or joint board of health in the state to meet with the Committee. Approximately 10 health officers or their representatives made personal presentations. Written responses were received from 10 others. In addition 6 representatives of county or joint boards of health appeared before the Committee or sent written comments to the Committee. The conferees outlined the health-related services now provided by local health agencies, expressed their views on the type of services which should be provided, and commented on the governmental

structure which is or could be utilized for the delivery of public health services.

The Committee also invited representatives of providers of personal health care and groups concerned with environmental services to give their views on those health-related functions which local public health agencies can or should carry out in order to support or supplement the services of private providers. These groups were also asked to comment on minimum personal and environmental health services, on the funding of locally administered public health programs, and on the organizational structure best suited to the delivery of such services.

Those conferees who represented local health agencies or counties in which such agencies exist indicated consensus on certain services that are or should be provided on the local level. These include communicable disease prevention and control such as immunization, case finding, and follow-up through VD, TB and other communicable disease clinics; family planning services; home health services; screening for early detection of disease; chronic disease clinics and educational services; maternal and child health clinics; and health education. Several organized departments also are carrying on alcohol and drug abuse programs, dental health programs, a wide range of environmental services and other programs unique to the particular department. Most organized local health departments are also carrying out inspection and licensing functions for the state, particularly the inspection of child care and adult care home facilities.

While it was recognized that there are areas in the state in which locally delivered public health services are not available, many of the conferees expressed opposition to mandating a minimum level of service to be provided by local health departments without further study and input from local officials. Concern was expressed that mandated services would not be tailored to the needs of the area to be served. ~~Many~~ Several conferees did, however, indicate that environmental health services are not adequate at the local level.

Under Kansas statutes, each of the 105 counties in Kansas must have a health officer or, in those counties of less than 100,000 population, a local health program administrator with a doctor or dentist designated as a consultant. An exception to this requirement is the situation in which two or more counties have joined to form a multicounty health department. In each of the counties of the state the board of county commissioners serves as the county board of health except in those instances in which counties or a county and city have joined together to create joint boards of health.

At the present, 83 counties in Kansas have some form of organized health department. Eight of these have combined city-county departments and ten have joined with other counties to form multicounty units. According to the tax levies published by the individual counties, 31 counties made no specific tax levy for health services for the current tax year.

The majority of the organized health departments are staffed by a part-time health officer, one or more community health nurses and a clerk. Twenty-two also have one or more sanitarians. Wyandotte, Sedgwick and Shawnee Counties have large city-county health departments directed by full-time medical directors and employ a variety of specialized health personnel.

Regionalization of Public Health Services

Recognizing that all areas of the state are not served by public health departments and that the population and needs of some counties are not sufficient to support a range of such services, various citizen committees and a 1971 special legislative committee have recommended that the delivery of such services be carried out by public health regions.

Recommendations for the creation of public health regions have been based on the premise that all Kansas citizens should have access to public health services regardless of where they live, the belief that a minimum population and tax base is necessary for the most economic and efficient delivery of such services, and recognition of the need to make the most efficient use of health personnel. All recommendations have included state financial assistance for regional public health agencies.

While many conferees who met with the Committee recognized the advantages of the concept of regional organization for the delivery of public health and environmental services, there was no agreement on whether regions should be mandated by statute nor on the details of creating a governing body, funding, etc. There was almost unanimous agreement that additional study should be carried out prior to any mandatory reorganization. It was noted that when the first citizens' study committee recommended regionalization in 1965 there were 87 counties in Kansas with no organized health departments. In the decade since, there have been locally initiated efforts to develop organized health departments and a trend toward a multicounty public health delivery structure.

Statutory Revision

Under the directive of Proposal No. 22, the Committee reviewed those statutes which relate to local boards and departments of health. It was found that the terminology used in such statutes is far from uniform and leads to confusion in that the statutory references do not always clearly indicate that such references are to the county boards of health and health officers mandated by law.

In the course of its study, the Committee also considered recommendations of the Department of Health and Environment for updating certain statutes to reflect current practice or terminology. In some instances, the Committee concluded that a change in the policy reflected in the statutes is desirable.

The recommendations for statutory change arising from Committee study are embodied in three bills which the Committee has prepared. The major provisions of the bills are summarized below.

Recommended Legislation

As a result of study pursuant to Proposal No. 22, the Committee has prepared three bills for consideration by the 1976 Legislature.

_____ Bill (1615) would revise a number of statutes in which there is a reference to health officers, departments of health, boards of health or similar terms. The Committee found that the terminology in these statutes is not uniform since they were enacted over a period of years. Therefore, the majority of the proposed amendments in _____ Bill (1615) are for the purpose of making

the terminology uniform. For clarity, statutory references to health officer are changed to local health officer, references to health departments are changed to county, city-county or multicounty health departments, and references to boards of health are changed to county or joint boards of health. As a result of the proposed amendments it would be clear that all references are to county agencies or officials unless otherwise specified. Other technical amendments are included in the bill.

_____ Bill (1615) also includes policy changes.

Amendments to K.S.A. 23-310 (Section 7) would leave the method of destruction of premarital examination certificates to the discretion of the probate court and shorten the period of time they must be retained by the court from five to two years.

Changes in K.S.A. 1975 Supp. 23-501 (Section 8) would delete any reference to age in the statute which authorizes the provision of family planning information and services.

Proposed amendments to K.S.A. 1975 Supp. 39-930 contained in Section 12 of _____ Bill (1615) would raise the amount of the adult care home license fee forwarded to county, city-county or multicounty health departments from 40 to 80 percent when the local agency makes the licensing evaluation and inspection for the state.

Section 22 and new Section 23 would result in separating the provisions of K.S.A. 1975 Supp. 65-159 which gives authority to the Secretary of Health and Environment and boards of health to order the removal of sources of filth or sickness and health nuisances. The policy change reflected in two sections relates to the penalty for failure to abate a health nuisance after an order has been issued.

Additions to K.S.A. 1975 Supp. 65-202 as they appear in Section 29 would require local health officers to send copies of school inspection reports to the Secretary of Health and Environment and the governing body of the school. This amendment supplements the provisions of _____ Bill (1648) also being recommended by the Committee.

Section 31 of _____ Bill (1615) would amend K.S.A. 1975 Supp. 65-220 to change the definition of community nursing services.

_____ Bill (1648), as prepared by the Committee, would authorize the Secretary of Health and Environment to establish and enforce standards for the inspection of schools for health purposes. A procedure under which the Secretary could order that any condition in violation of the health standards be corrected is set forth in the bill.

_____ Bill (1646) would amend several statutes which relate to infections or contagious diseases. The amendatory language specifies those persons required to report such disease, adds child care facilities to the list of institutions required to exclude persons having an infectious or contagious disease, and clarifies the definition of such diseases to be those defined by rules and regulations adopted by the Secretary of Health and Environment. Other changes are primarily technical in nature.

Conclusions and Recommendations

The Special Committee on Health and Human Resources considered the establishment of mandatory minimum locally delivered public health services either by statute or pursuant to minimum standards to be adopted by the Secretary of Health and Environment.

In reaching their conclusion, the members considered the right of all Kansans to have public health and environmental services available to the local level rather than having to travel to those areas where such services are provided. It was also noted that in those areas not presently served by organized health departments, people may not be fully aware of the type of services such a department could provide or know how to go about making their needs known. Required minimum services could be so phased that the counties could plan funding and secure personnel over a period of time.

The Committee members also determined that there is sufficient statutory authority for counties to provide public health services through the organization of a single or multicounty health department when the need for services is recognized. The State Department of Health and Environment can exert leadership in working with underserved local areas to develop public health services.

Moreover, the planning and study which will be carried out by designated health systems agencies pursuant to PL 93-641 (see report on Proposal No. 23) should lead to more awareness of the type of services which health departments provide and allow consumers and providers to determine the needs of their health service areas and to plan for delivery of such services by public agencies and private providers.

The Committee has concluded that no minimum public health and environmental services should be mandated at the local level at the present time.

After discussion of previous studies and testimony relating to state mandated regions for the delivery of public health and environmental services, the members of the Special Committee on

of legislation which would implement the concept of regionalization. Realizing the potential impact of new federal legislation relating to health planning and resource development studied by the Committee under another proposal, the Committee also concluded that bills relating to regionalization held over from the 1975 Legislature should not be reported favorably by the standing committees to which they are assigned.

The Committee does recommend that the three bills introduced by the Committee be enacted by the 1976 Legislature.

Respectfully submitted,

____________________, 1975

Representative Richard Walker, Chairman
Special Committee on Health and Human Resources

______ BILL NO._____

By Special Committee on Health and Human Resources

AN ACT abolishing the advisory hospital council; amending K. S. A. 65-430 and K. S. A. 1975 Supp. 65-431 and 65-438 and repealing the existing sections and also repealing K. S. A. 65-435 and K. S. A. 1975 Supp. 65-434.

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

Section 1. K. S. A. 65-430 is hereby amended to read as follows: 65-430. The licensing agency after notice and opportunity for hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. Such notice shall be effected by registered mail~~,~~ or by personal service ~~setting-forth~~ and shall state the particular reasons for the proposed action and ~~fixing~~ fix a date not less than thirty (30) days from the date of such mailing or personal service~~,~~ at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing~~,~~ or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law.

A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is ~~so~~ mailed or served, unless the applicant or licensee~~,--within-such-thirty-day period,--appeals-the-decision-to-the-advisory--council-provided--in section--10--of--this-act-which-shall-convene-within-fifteen-days after-such-appeal-and-may-affirm,--modify-or-reverse-such-decision or-grant-the-licensee-a-period-of-time-not-exceeding-one-year--in~~

~~which--the--licensee--shall-make-such-changes-as-are-necessary-to comply-with-the-requirements-established-under-this-act,--or--may grant--a--conditional--license--to--an-applicant-for-a-period-not exceeding-one-year-which-conditional-license-shall--automatically terminate--on--the--date-fixed-unless-the-applicant-shall,-before such-date,-comply-with-the-requirements--established--under--this act.---Any--decision--of--the-advisory-hospital-council-revoking, suspending,-or-denying-the-license-or--application--shall--become final-thirty-days-after-it-is-mailed-or-served,-unless-the-applicant--or--licensee~~ appeals as provided in ~~section-14-of-this-act~~ K. S. A. 1975 Supp. 65-438 and any amendments thereto.

The procedure governing hearings authorized by this section shall be in accordance with rules and regulations promulgated by the licensing agency ~~with-the-approval-of-the--advisory--hospital council~~. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to ~~section 14-hereof~~ K. S. A. 1975 Supp. 65-438 and any amendments thereto. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

Sec. 2. K. S. A. 1975 Supp. 65-431 is hereby amended to read as follows: 65-431. The licensing agency ~~subject--to--the approval--of--the--advisory-hospital-council,~~ shall adopt, amend, promulgate and enforce such ~~rules,--regulations~~ rules and regulations and standards with respect to the different types of medical care facilities to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in medical care facilities in the interest of public health, safety and welfare~~:--Provided,-That-no~~. No rule or regulation shall be made by the licensing agency which would discriminate against any practitioner of the healing arts who is licensed to practice medicine and surgery in this state~~:--Provided--further,--That boards~~. Boards of trustees or directors of facilities licensed

pursuant to the provisions of this act shall have the right to select the professional staff members of such facilities and to select and employ interns, nurses and other personnel. and no ~~rules,--regulations~~ rules and regulations or standards of the licensing agency shall be valid which, if enforced, would interfere in such selection or employment~~:--And-provided-further,-That in.~~ In formulating rules and regulations, the agency shall give due consideration to the size of the medical care facility, the type of service it is intended to render, the scope of such service and the financial resources in and the needs of the community which such facility serves.

Sec. 3. K. S. A. 1975 Supp. 65-438 is hereby amended to read as follows: 65-438. Any applicant or licensee aggrieved by the decision of the ~~advisory-hospital-council~~ licensing agency may appeal, within thirty (30) days after the mailing or serving of notice of the decision as provided in K. S. A. 65-430~~,-or~~ and any amendments thereto~~,-appeal~~ to the district court of the county in which the medical care facility is located or is to be located. The district court shall ~~try-the--appeal--de--novo--and shall~~ have the jurisdiction to affirm, modify, vacate or reverse the decision ~~complained-of~~ appealed. Notice of said appeal shall be filed in the office of the clerk of the district court. and a copy ~~thereof~~ served upon the licensing agency within five (5) days thereafter. Upon the filing of ~~said~~ the appeal, the licensing agency shall file, within twenty (20) days, ~~file~~ with the clerk of the district court all records of the licensing agency ~~and-advisory-hospital-council~~ in the case, including the evidence taken at the proceedings. Either the applicant, licensee, licensing agent~~,~~ or the state may apply for such further review as is provided by law in civil cases for appeals to the supreme court. Pending a final disposition of the matter, the status quo of the applicant or licensee shall be preserved except as the court otherwise orders ~~in-the-public-interest~~.

Sec. 4. K. S. A. 65-430 and 65-435 and K. S. A. 1975 Supp. 65-431, 65-434 and 65-438 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE 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 ~~title~~ 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 services, self-care units, diagnostic or diagnostic and treatment centers, outpatient medical facilities, rehabilitation facilities, facilities for long-term care and central service facilities operated

in connection with hospitals and also includes educational 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 which are defined in the federal act shall have the meaning 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.~~

(f) "Medical facility project" means a project for the modernization of a medical facility, the construction of a new outpatient or inpatient medical facility or the conversion of an existing medical facility for the provision of new health services.

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 an inventory of existing ~~hospitals-and~~ medical facilities, surveying the need for construction of ~~hospitals~~

~~and~~ medical facilities~~,~~ and developing 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 a state medical facilities plan ~~for-the-construction-of--public--and--other--non-profit--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 or she deems necessary;

(b) to provide ~~such~~ methods of administration~~,--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~~ federal regulations ~~thereunder~~ adopted pursuant thereto;

(c) to procure in his or her 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~~ <u>statewide health coordinating council</u> shall advise and consult with 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.~~ <u>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.</u>

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 <u>modernization or</u> construction of ~~hospitals--and~~ medical facilities~~,~~ <u>or for the conversion of existing medical facilities in order to provide new health services;</u> and, on the basis of such inventory and survey, to develop a program for the construction<u>, modernization or conversion</u> 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-program~~ <u>state medical facilities plan</u> 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.

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 shall 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 and shall charge a reasonable fee for any copy of such plan distributed to interested persons or organizations. The secretary shall ~~from time--to--time~~ review periodically the ~~construction-program~~ 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 of the state medical facilities plan 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~~ medical facility projects included in ~~the--construction--program~~ such plan determined in accordance with ~~regulations-prescribed-pursuant--to~~ the federal act and federal regulations adopted pursuant thereto, and provide for the ~~construction~~ medical facility projects, 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~~ federal funds or loans for a medical facility 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~~ federal funds or loans for a medical facility 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.

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~~ medical facility 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 for federal funds or loans for 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~~ project fund. Money received from the federal government for a ~~construction~~ medical facility 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~~ project 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.

_______ 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 or 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)(B)(I), (a)(B)(II) or (a)(B)(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 convalescent or chronic disease patients who require skilled nursing or 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 connection 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 secretary of health and environment.

(j) "Council" means the statewide health coordinating council created by section 5.

(k) "Health systems agency" means an agency designated under section 1515 of public law 93-641 (42 U.S.C. 3001-4) [and shall include health systems agencies conditionally designated under such section].

(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 state agency shall submit an application to the secretary containing assurances of authority and resources to administer a state administrative program. The state agency 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 (42 U.S.C. 300m-3), there is hereby created a statewide health coordinating council.

(a) The council shall be composed of no more than twenty-seven (27) members. The majority of the members of this council shall be consumers 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 ~~not less than~~ four (4) ~~nor more than six (6)~~ voting members from each health systems agency within the state from a list of at least seven (7) nominees from

each health systems agency who shall be residents of the state of Kansas. At least two (2) of the appointees from each health systems agency shall be consumers of health care. [The governor shall appoint an equal number of members to the council from each health systems agency.]

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

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

(2) [Other persons,] unless the number of members on the council equals the maximum number of members established by subsection (a), 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, except members appointed pursuant to paragraph (1) of subsection (c) of section 5 shall conform, as near as possible, to the following requirements: 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 terms of four (4) years, except an appointment to fill a vacancy shall be for the balance of the unexpired term. Members appointed pursuant to paragraph (1) of subsection (c) of section 5 shall serve during the period of time such member serves as chairperson of a committee referred to in such paragraph.

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

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

(c) All meetings of the council shall be held in Topeka.

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~~ Establish 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 (42 U.S.C. 3001-5 and 42 U.S.C. 300t) and report its comments to the secretary.

(h) Advise the state agency on the performance of its functions and in the establishing 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 in accordance with the requirements of section 1515 of public law 93-641 (42 U.S.C. 3001-4).

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

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

Sec. 12. A health systems agency 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 a health systems 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 facilities, 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 health systems 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 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 section.

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 26 and 27; (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 meetings, 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 in a

civil action 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 the internal revenue code of 1954 (26 U.S.C. 509(a)) and is not directly engaged in the provision of health care in the health service area of the agency. For the purpose of this section, 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 sections 12 and 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 performing the function authorized by 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 (42 U.S.C. 242d).

Sec. 22. (a) Health systems agencies, after consideration of national health guidelines, 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, annually review and amend as necessary an annual implementation plan which describes objectives and priorities to 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 state agency and the council each year.

Sec. 24. In accordance with the priorities established in

the annual implementation plan, a health systems agency 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, if the health systems agency has entered into a full designation agreement with the secretary. 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 (42 U.S.C. 300t). 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 section 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. 25. 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 (42 U.S.C. 1320c-1), 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 (42 U.S.C. 3334) 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 (42 U.S.C. 4233) to carry out section 401(b) of such act (42 U.S.C. 4231); (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 health systems

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. 26. (a) 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, if the health systems agency has been authorized by the secretary to perform such a function.

(b) A health systems agency authorized by the secretary to perform the function stated in subsection (a) 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 (42 U.S.C. 281 et seq., 42 U.S.C. 292 et seq. and 42 U.S.C. 296 et seq.), 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.

(c). 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. 27. (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 health systems agency has been authorized by the secretary to conduct such review.

(b) Each health systems agency authorized by the secretary to conduct a review under subsection (a) 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. 28. Each health systems agency authorized by the secretary to make the recommendations contemplated by this section 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. 29. ~~A~~ Each 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. 30. The district court shall have jurisdiction to enjoin a health systems agency from transacting the business of or performing any functions of a health systems agency in this state, if such health systems agency has failed to comply with

any provision of this act, applicable to it or has abused, misused or failed to use the powers, privileges and functions granted to such health systems agency under this act. The attorney general upon the relation of the state agency or the council shall proceed for this purpose by an action commenced in the district court of any county which is part of the health service area of the health systems agency.

[Sec. 31. Each health systems agency shall review and make recommendations to the state agency on applications 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.

Sec. 33. 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. 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, unless the context clearly requires otherwise: (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. 75-5375 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 the secretary of health and environment.

(d) "Health systems agency" means an agency designated under section 1515 of public law 93-641 (42 U.S.C. 3001-4) and shall include health systems agencies conditionally designated under such section.

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

(f) "Review agency" means the statewide health coordinating council.

(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. 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 which is 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 issued by the state agency. 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, there is a sufficient need for the proposed project.

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.

(2) The construction of additional bed capacity in a health facility.

(3) Modernization of an existing health facility requiring a capital expenditure.

(b) As used in this section, "capital expenditure" includes:

(1) 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 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.

(2) An expenditure associated with substantial changes in the services of a health facility which results in the addition of a clinically related diagnostic, curative or rehabilitative service not previously provided in the facility or the termination of such a service which had previously been provided in the facility.

(3) The acquisition of a health facility or part thereof or equipment for a health facility obtained under lease or comparable arrangement or through donation, the expenditure for which would have been considered a capital expenditure if the person had acquired the facility or equipment by purchase and the fair market value of which exceeds the minimum amount specified in paragraph (1) of subsection (b) of this section.

(c) Where the estimated cost of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is certified, within sixty (60) days of the date on which the obligation for such expenditure is incurred, by

a registered architect or licensed professional engineer to be one hundred fifty thousand dollars ($150,000) or less, such expenditure shall be deemed not to exceed one hundred fifty thousand dollars ($150,000) regardless of the actual cost of such project. Where the actual cost of the project exceeds one hundred fifty thousand dollars ($150,000), the health facility on whose behalf such expenditure is made shall provide written notification of such cost to the state agency not more than thirty (30) days after the date on which such expenditure is incurred. Such notification shall include a copy of the certified estimate.

Sec. 6. (a) Applicants who are required to apply for a certificate of need under section 5 shall submit such application to the state agency and to the appropriate health systems agency 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.

(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.

(10) Other information which may be required by the state agency.

(d) An application shall be deemed filed when it contains all required information and 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 established by the state agency or the health systems 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 completed application is received by the state agency. If the notice that the application is incomplete is not given within fifteen (15) days, the application shall 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 (42 U.S.C. 300n-1), 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 completed application.

Sec. 8. (a) The state agency shall review, in accordance with procedures established pursuant to section 1532 of public law 93-641 (42 U.S.C. 300n-1), and either approve, approve subject to modification or deny an application within ninety (90) days of receipt of the completed application.

(b) If the state agency does not issue its decision within ninety (90) days after the receipt of a completed application, it shall be deemed that the state agency has approved the application for a certificate of need.

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

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 in writing a hearing by the review agency, [or] a written protest is filed by the appropriate health systems agency with the review agency requesting a hearing [or a health facility which believes its interests are adversely affected by the decision requests in writing a hearing by the review agency]. The applicant's [or health facility's] written 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.

Sec. 10. As soon as a written request for a hearing on a certificate of need decision is received from the applicant[, the adversely affected health facility] or the appropriate health

systems agency, the review agency shall set a hearing date within thirty (30) days of the date the request for hearing or protest was received. 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 parties to the review proceedings under section 11, all health facilities in the geographical area to be served and persons requesting such notice.

Sec. 11. Parties to the review proceedings shall be the applicant, the state agency, [and] the health systems agency filing a written protest [and the adversely affected health facility filing a written request for a hearing]. 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 the review agency or by a hearing officer assigned by the review agency. The hearing officer shall have the power and authority to conduct such a hearing in the name of the review agency. In any hearing conducted pursuant to this section, the review agency or the hearing officer shall have authority to administer oaths or affirmations.

Sec. 13. (a)At every hearing conducted pursuant to section 12:

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

(2) Each party shall have the right to be represented by

counsel.

(3) Each party may present oral and written evidence and confront and cross-examine opposing witnesses.

(b) A transcript of the 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 reimburse such agency for the costs of preparation of the transcript.

Sec. 14. (a) The decision of the review agency shall set forth the findings of fact and a determination of the issue presented and may approve, approve subject to modification or disapprove the decision of the state agency. Any decision of the review agency granting a certificate of need shall 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) Copies of the decision shall be served on each party to the hearing conducted under section 12.

(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.

(d) If the review agency does not adopt a decision within sixty (60) days of the close of the hearing, the application shall be deemed approved.

Sec. 15. (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.

Sec. 16. [The applicant] [Any party to the hearing under section 12] may appeal the decision of the review agency to the district court of the county in which the health facility is located or is to be located or, if such health facility is located or is to be located in more than one county, to the district court in any such county. The district court shall have the jurisdiction to affirm, modify, vacate or reverse the approval or disapproval being appealed. Notice of said appeal shall be filed in the office of the clerk of the district court, and a copy thereof served upon the parties to the hearing under section 12 within ten (10) days thereafter. The review agency shall, within twenty (20) days after being served, file with the clerk of the district court all records of the health systems agency, state agency and review agency in the case, including the evidence taken at previous proceedings.

Sec. 17. Depreciable assets that are destroyed or made inoperable by a catastrophe, or a disaster due to an act of nature or forces thereof, may be replaced, repaired or refurbished without obtaining a certificate of need.

Sec. 18. This act shall not apply to any health facility project proposal granted a certificate of need prior to the effective date of this act, except that the provisions of subsection (b) of section 15 shall apply to any health facility project proposal granted a certificate of need less than twelve (12) months prior to the effective date of this act or having the approval of a certificate of need extended under the provisions of K. S. A. 65-2a08 for a period of time terminating subsequent to the effective date of this act.

Sec. 19. This act shall not apply to any health facility that is owned or operated by the state of Kansas or United States government.

Sec. 20. The state agency may file a civil action to enjoin any person from undertaking a project described in section 5 as

requiring a certificate of need unless a certificate of need has been granted under this act.

Sec. 21. 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. 22. This act shall take effect and be in force from and after its publication in the statute book.