

Approved _____ Date 2-17-83

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin Littlejohn at _____
Chairperson

1:30 ~~A.M.~~/p.m. on February 14, _____, 1983 in room 423-S of the Capitol.

All members were present except:

Committee staff present: Bill Wolff, Research Department
Bruce Hurd, Revisor's Office
Sue Hill, Secretary to Committee

Conferees appearing before the committee:

Ron Schmidt, Ks. Dept. of Health and Environment
Barbara Sabol, Secy. of Dept. of Health and Environment

Visitor's register, see (Attachment No. 1.)

Chairman called meeting to order.

Hand-outs from Kansas Department of Health and Environment given to Committee members. See (Attachments No. 2., and No. 3.).

Chairman introduced Ron Schmidt of the Ks. Dept. of Health & Environment to brief committee on the Kansas Certificate of Need Program.

Mr. Schmidt gave a very comprehensive review on the Certificate of Need, (CON). See attachment No. 2. for further detailed information.

Secretary Barbara Sabol requested a bill, per attachment, (see Attachment No. 4.), to address Nurse-Aide training that would require a minimum of 40 hours training within the first week, or 2 weeks employment and before they are allowed to provide any hands-on care to residents, with the balance of their training to follow.

Representative Branson moved to introduce such a bill, seconded by Rep. Blumenthal, and the motion carried.

Rep. Long requested a bill in include Reye's Snyder's Syndrome as a reportable disease, seconded by Rep. Buehler. During discussion, Dr. Joseph G. Hollowell, (Div. of Health), was asked how these diseases were designated, and Dr. Hollowell informed committee that reportable diseases are done by the Rules and Regulations.

At that point, Rep. Long asked that a concurrent resolution be introduced. He moved to direct the Department of Health and Environment to include Reye's Snyder's Syndrome as a reportable disease. Motion seconded by Rep. Buehler, and motion carried.

Meeting adjourned by Chairman.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Date: 9-14-3

GUEST REGISTER

HOUSE

pg 182

Please Print

PUBLIC HEALTH AND WELFARE

NAME	ORGANIZATION	ADDRESS
Helen Mae Shank	United Methodist Women	Fontana, KS. 66626
Harriet Nehring	KINIH	Lawrence
Marilyn Braedt	KINIH	Lawrence
Petey Coy	KINIH	Lawrence
FRANCIS CHOUER	UMW (KE)	Topeka, KS
Wanda L. Tidd	umw (KE)	Lebo, Ks.
Rose Billette	u.m.w. (KE)	Lebo Ks
Golda Freund	u.m.w.	Lebo, Ks.
Marjorie L. Townley	U.M.W.	3025 S. E. Starlite Dr. Topeka, KS. 66605
Pauline Supple	u.m.w	RR. Box 75 Guernsey, KS
Delores Friesen	U.M.W.	203 E. Market, Overbrook 66524
Pearle J. Braden	U.M.W.	Humboldt Yards, R266748
Golden Lrieback	U.M.W.	316 N. Washington Chanute, Kansas 66720
Lottie W. Stevens	u.m.w.	Chanute Kans-RT 4. 66720
Louise Stephens	UMW	Chanute Ks RT4 66720
Emma Porenvire	ZMW	Gridley Ks 66852
Wilma Moody	u.M.W.	Leonardville 66249
MARY MARTHA DARTON	UMW-Asbury	PRAIRIEVILLE Ks. 5920 W 87 AP. H. 66207
Guillermo Buxedo-Vaca	HSANEK	Topeka, KS
Theodus A. Loekhart	NAAEP	Leawardsville, KS

(attachment
no. 1)

Date: 2-14-83

GUEST REGISTER

Page II of II

HOUSE

PUBLIC HEALTH AND WELFARE

NAME	ORGANIZATION	ADDRESS
Mary Fischman	Div. of Budget	Topoka
CHIL DSSMANN	SELF	LUPEILA
B. J. Sabol	KDH&S	"
Dorothy Wilch	Methodist Women ^{KDH&S}	Kansas City
Cleo Carson	United Methodist Women	Valley Falls, Ks.
Virginia Koons	United Methodist Women	931 Frazier, Valley Falls, Ks.
Grace Dreier	United Meth. Ks. East Conference	200 E. 35, Topoka Ks.
Nadine Wilch	United Meth. Ks. East Conference	Topoka, Kan.
Lai Mitchell	United Methodist Women	Topoka, Ks.
Pauline Krumm	" " "	Ozawkie, Ks.
Mae Means	" " "	Ozawkie Ks. 66070
Ray McKeon	" " "	309 N. Silver, Paola, Ks. 66071
Una Keller	" " "	Leonardville Ks 66449
Ana Zeisset	" " "	" " "
Bea Whitstone	United Meth Women	Lane Ks
Betty Small	" " "	Lebo, Ks.
Marjorie Lewis	" " "	" "
Florence Davie	" " "	" "
Pearl Johnson	" " "	Frankfort, Ks.
Melissa Humberford	Ks Hospital Association	Topoka
Rebecca Kupper	" " "	" "
Rose Wade	Westmoreland, Ks. United Meth.	

THE KANSAS CERTIFICATE OF NEED PROGRAM

A Briefing Report
for the
House Public Health and Welfare Committee

February 14, 1983

Prepared by:

Office of Health Planning
Kansas Department of Health and Environment

(attachment
no. 2.)

KANSAS CERTIFICATE OF NEED PROGRAM

INTRODUCTION

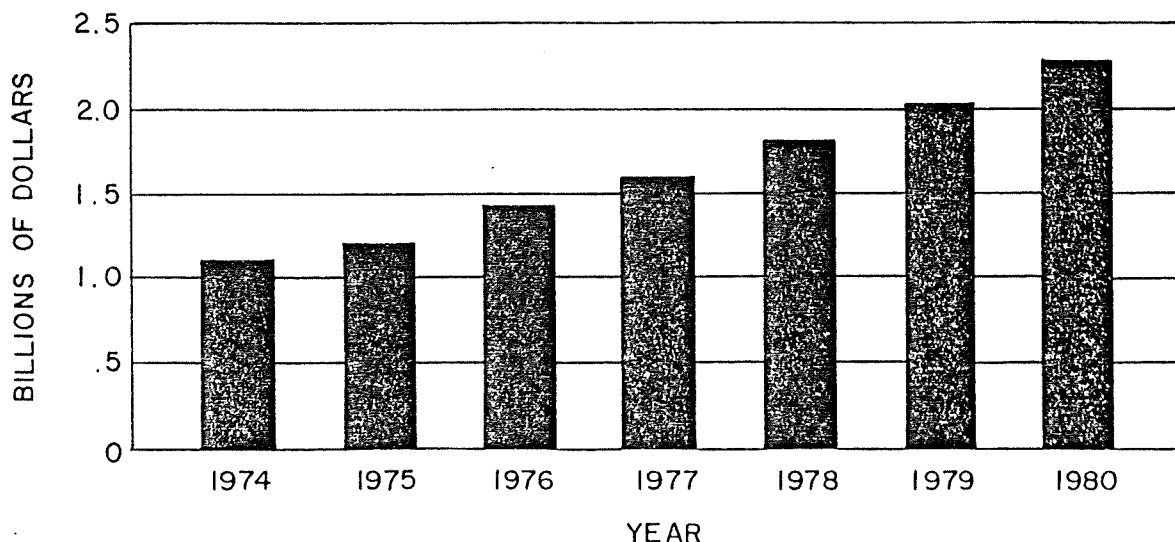
Why would a state decide to restrict entry of new health care institutional services into the marketplace? There are a number of reasons for this choice that have been discussed over the years, but the primary reason is to help restrain unnecessary increases in health care costs and expenditures.

First, let us look at the trends in health care costs and why the increases have occurred. Then, let us look at the Kansas Certificate of Need Program, and examine how it affects expenditures and what its performance has been.

The Department has just completed an update of the Kansas Health Care Expenditures Report. Clearly, we continue to have dramatic increases in health care costs. Kansans spent nearly \$2.6 billion in 1981, up 14 percent from 1980. This amounts to \$1,079 per capita.

The greatest portion of dollars goes to hospital care; 46 percent, or nearly \$1.2 billion. This amounts to \$491 per capita, up more than 15 percent from 1980. Spending for physicians' services came in second; 19 percent, or \$469 million, up nearly 12 percent from 1980. Nursing home care came in third; ten percent, or \$241 million, up nearly 14 percent from 1980. The following two charts graphically display the increases and how the dollars were spent from 1974 to 1980.

TOTAL HEALTH CARE EXPENDITURES KANSAS, 1974 - 1980

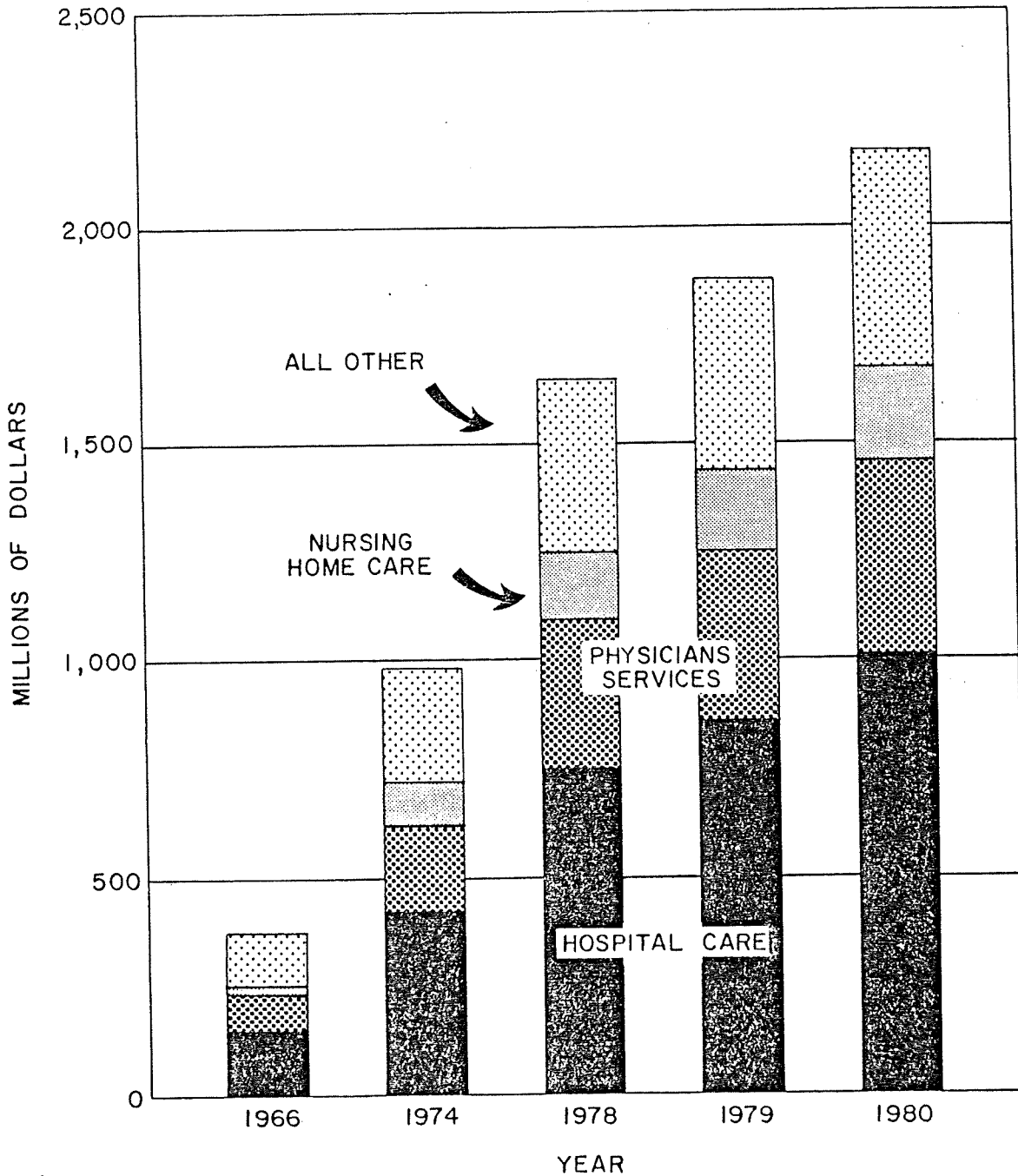


Note: Gross State Product in 1980-\$26 Billion (preliminary figure)

Source: Office of Health Planning

Kansas Department of Health and Environment

PERSONAL HEALTH CARE EXPENDITURES BY TYPE KANSAS, SELECTED YEARS, 1966 - 1980



Source: Office of Health Planning
Kansas Department of Health and Environment

Why Have These Increases Occurred?

The factors that cause continued increases in health care expenditures include: 1) changes in the population and disease trends; 2) government financing of health care research, facilities, and direct care; 3) the general financing system for health care, both government and private; 4) overutilization and lack of price competition; and 5) excess supply of services.

1. Population and Disease. Historically, much of the population died young; the major problem was how to survive the first few years of life. In 1900, only four percent of the population was over age 65. Through basic public health research producing vaccines to immunize the population, coupled with improved personal and community hygiene and better nutrition, many more people are living longer lives. Today nearly 13 percent of the population is over age 65. However, while we have essentially conquered infectious diseases, the problems people now face result from life-style, environmental threats, and aging. While the major cripplers and killers (cancer, heart disease, strokes, and accidents) generally occur as our physical machine starts wearing out, they are exacerbated by life-style choices such as smoking, excessive eating and drinking, and a general lack of physical fitness. Further, chronic diseases and accidents can use extensive amounts of medical care resources in efforts to diagnose and treat the problems over a lifetime. Consequently, some increase in expenditures comes from our success in solving one problem and creating another. Clearly, people could control the demand for health care resources through improved health behaviors.
2. Government Involvement. National public policy in health affairs changed dramatically with the passage of Medicare and Medicaid in 1966. Through these programs, the federal and state governments became major third-party purchasers of health care, infusing billions of new dollars into the health care market. Nationally, expenditures for personal health care rose from \$36.0 billion in 1966 to \$132.1 billion in 1976, and to \$217.9 billion in 1980.

This distribution of personal health care expenditures by source of funds changed dramatically after 1966. The federal, state, and local government share of expenditures increased from 21 percent in 1966 to 40 percent in 1980.

In addition to direct payments for personal health care, the government subsidizes medical research, education, and construction of health facilities. Subsidies are also provided through income tax exemptions for health insurance premiums and tax deductions for medical expenses; the federal tax revenue loss for these items is estimated at \$7.8 billion in Fiscal Year 1977. The total annual level of direct government support to the health industry accounts for nearly half of the total health expenditures. The major shift from private to public funding of health care services underscores the importance of rising health care costs as a public policy issue.

Government spending for medical education that began in the early 1970's is now producing the striking increases in medical manpower, both nationally and in Kansas. Nationally, over 16,000 physicians are educated annually. Kansas has increased its supply of physicians by over 20 percent in the last four years. This means there are more providers competing for the dollars that are being spent for medical care. This is one of the reasons why physicians are willing now to invest in major medical equipment and facility services.

Further, research in the field of human biology has dominated our quest for improved health for decades and the results of this emphasis are appearing in the many (expensive) technological changes in medical care. As a nation, we are spending huge sums of money on biomedical research, one effect of which has been to increase the complexity and cost of medical care services.

The lack of balance in the support of research in the area of life-style is striking. The strong emphasis on biomedical research may partially explain the current tendency to rely on medical science to lead us to improved health. This is not to disparage the obvious contributions of biomedical research and medical care to our current health status, but only to point out the increasingly apparent imbalance in our research efforts aimed at improving health.

3. Health Care Financing. Two features distinguish the health care marketplace from other sectors of the economy: a) directed demand for services, and b) payment to the provider by a third party on behalf of the consumer.

First, the demand for services is said to be "directed" since the physician/provider makes the purchase decisions. In the area of hospital care, there are four participants: the physician, hospital, consumer, and third-party payer, but the physician makes the expense-generating decisions for all of them. The physician decides the types and amounts of medical goods and services which will be purchased. A number of studies have demonstrated that providers are relatively ignorant of costs associated with medical care.

Second, to complicate the situation further, the consumer frequently does not directly pay the provider for the goods or services. Instead, a "third party," either private health insurance or government, pays the provider on behalf of the consumer. Both the consumer and the physician are effectively insulated from the costs of the care they consume by the prevailing third-party payment mechanisms.

Third-party payments have become the dominant financing method in the health sector; they now pay for more than two-thirds of all personal health care and more than 90 percent of all hospital care.

The widespread use of "first-dollar" coverage where all expenses for hospital care and surgical fees are covered up to a predetermined ceiling is a major factor affecting consumers' decisions. Under such coverage,

there is literally no relationship between cost and the consumer's decision to seek care, nor the physician's decision to prescribe care.

Another major factor in escalating cost under the third-party payment system is the method of reimbursing providers. Frequently, these payments are made retrospectively, on the basis of actual costs incurred by the provider. This system, combined with first-dollar coverage, limit the provider's incentives to be cost conscious or to practice efficient management.

Finally, the patterns of insurance coverage have been shown to encourage strongly the unnecessary utilization of the most expensive forms of service. The first-dollar coverage for high-cost inpatient services provided by private insurance and government programs promotes their use, while lower cost ambulatory services are either not covered or are subject to high deductibles or shared payments. This extensive coverage for complex and expensive medical services has understandably promoted the availability of complex facilities and services, regardless of the potential for more economical alternatives.

4. Overutilization and Lack of Competition. Increases in the quantity of medical care services have traditionally been assumed to increase the quality of care provided. Research is beginning to question this "more is better" thesis and indicates that some part of the utilization of services is unnecessary or cost-ineffective. The fact that health maintenance organizations experience hospital utilization rates 30 percent to 50 percent lower than traditional fee-for-service arrangements supports the contention that hospital utilization can be safely reduced.

Price competition in the medical care sector is extremely limited. Since the third-party system removes price as a consideration in the decision to seek or prescribe medical care, hospitals have tended to compete by increasing in size, technological sophistication, or prestige. The lack of effective price competition has diminished incentives for management efficiency and increased incentives for additional expenditures. Effective price competition in the medical care sector would introduce significant new incentives for improved management efficiency and market control of available services. Prepaid alternative delivery systems are a feasible method of intervention in this factor.

5. Excess Supply of Institutional Services. There is considerable evidence of an excessive supply of hospital beds and services nationally and in Kansas. The Institute of Medicine, in a major study of the problem in 1976, concluded:

The evidence clearly indicates that significant surpluses of short-term general hospital beds exist or are developing in many areas of the United States and that these are contributing significantly to rising hospital costs...

According to the Kansas health systems plans, approximately 1,700 out of the 13,521 hospital beds will not be needed.

The oversupply of hospitals and beds generates excessive costs in two ways: a) either the productive capacity is underutilized, thereby generating unnecessary fixed operating costs; or b) the productive capacity is overutilized for care that is not medically necessary or cost-effective.

This excess in supply with no disincentive to stop building more medical facilities led Kansas and the nation to the development of the Certificate of Need Regulatory Program: to prevent further unnecessary duplication of expensive medical care facilities and services.

Legislative History in Kansas

In 1967, Kansas enacted a State Health Planning Program (K.S.A. 65-190). In 1972, the first Certificate of Need Program was enacted (K.S.A. 65-2a01, et seq.). This program was administered primarily by voluntary, unstaffed local planning bodies called "comprehensive areawide health planning councils." Kansas had two federally-funded agencies in Kansas City and Wichita which had staff assistance. This Certificate of Need Program provided review of new institutional services where capital expenditures were the lessor of \$350,000 or five percent of the previous year's operating budget.

In 1975, through Public Law 93-641 (National Health Planning and Resources Development Act), Congress created a national network of regional and state planning agencies which were charged with implementing several planning and regulatory programs. One of these programs was Certificate of Need. In order to comply with the requirements of the National Health Planning and Resources Development Act, the 1976 Kansas Legislature passed the Kansas Health Planning and Development Act (K.S.A. 65-4701, et seq.) and the Kansas Certificate of Need Act (K.S.A. 65-4801, et seq.) which parallel Title XV of the federal law. The Kansas Certificate of Need Program is administered according to procedures and criteria authorized by these three laws, and regulations promulgated pursuant to them. Nearly every year since the program was established, the Kansas Legislature has reviewed the Certificate of Need Act and adopted amendments to keep the Kansas program in compliance with federal laws and regulations, or to improve program administration.

The Kansas Certificate of Need Act specifies which health facilities and services will require Certificates of Need and specifies that a determination of need will be based on criteria specified in the State Health Plan. The Kansas Statewide Health Coordinating Council (SHCC) was created by the Kansas Health Planning and Development Act and is responsible for approving the State Health Plan and, therefore, the criteria for determining community need.

PROGRAM PURPOSE

The primary purpose of the Certificate of Need Program is to prevent further unnecessary duplication of expensive health care resources.

This purpose is fulfilled by:

1. Requiring sponsors of new health care services to complete a plan for the development of the service that documents need and feasibility.

2. Providing a public process for sponsors of proposed projects to demonstrate that community need exists for additional new health care services.
3. Requiring that the Kansas Department of Health and Environment's decisions be based on health policy established in the State Health Plan, which is developed in a public forum.

Therefore, this program keeps the expansion of expensive health care resources, that will later be heavily financed through tax dollars, in a public decision-making process.

PROGRAM ADMINISTRATION

The Kansas Certificate of Need Program is administered by the Kansas Department of Health and Environment through the Office of Health Planning. The review of Certificate of Need applications is performed in cooperation with the state's health systems agencies, where they exist. Other consulting agencies include the Department of Social and Rehabilitation Services' Mental Health and Retardation Services, and Alcohol and Drug Abuse Services for review of mental health and alcoholism and drug abuse treatment facility projects; the Commissioner of Insurance for review of health maintenance organizations; and the Department of Health and Environment's Office of Facilities and Services Licensure for review of hospital and nursing home projects.

The Department of Health and Environment's Certificate of Need Program Manual for Applicants details the Certificate of Need review, criteria, standards, and procedures, and is sent to all prospective applicants. The Kansas Certificate of Need review process begins with a Letter of Intent submitted by an applicant wanting to undertake a health-related project. From this letter, the State Agency determines whether the project will require a Certificate of Need before implementation. If a Certificate of Need is required, the applicant then meets with local health systems agency staff (or the state health planning staff if there is no operational health systems agency in the area) for a preapplication conference to discuss the proposed project and the Certificate of Need review process. The sponsor must then complete and submit an application which is reviewed and analyzed by the health systems agency staff, or the state health planning staff, according to the following six review objectives adopted by the Statewide Health Coordinating Council:

- | | |
|---------------------|--------------------|
| - Community Need | - Financing |
| - Quality of Care | - Cost Containment |
| - Community Support | - Accessibility |

In the early years of the Certificate of Need Program, a public hearing on each application was held by the health systems agency, usually in a community near the proposed site. During 1981, changes in the law allowed accelerated reviews with public hearings only upon request of the applicant or other affected parties. The health systems agency's board of directors and staff are allowed 60 days after the official filing of an application to review it and recommend approval, denial, or modification to the State Agency. This

recommendation and the public record of review proceedings are reviewed by the State Agency staff during the remaining 30 days of the 90-day review cycle.

At the end of 90 days, the Secretary of the Department of Health and Environment must render a decision to approve, deny, or modify the application. The applicant, or any affected party, may choose to request a reconsideration hearing from the Secretary or appeal the Secretary's decision to the appropriate district court.*

CERTIFICATE OF NEED PROGRAM RESULTS

The following table overviews the program activities between the date of program commencement, February 16, 1977, and December 31, 1982. The Kansas Department of Health and Environment has reviewed 229 Certificate of Need applications, totaling \$351,485,006 in proposed capital expenditures. Of the 229 applications reviewed, 119 were submitted by hospitals, 83 by nursing homes, four were for ambulatory surgical centers, two for health maintenance organizations, eight for alcohol treatment facilities, four for mental health treatment facilities, three for a psychiatric hospital, and six for kidney treatment facilities or programs.

FINANCIAL IMPACT

The Certificate of Need Program approved 197 projects; approved nine projects with modification, one of which is currently pending; and denied 23 projects, of which six decisions were reversed and five are still pending. Therefore, a total of 211 projects were eventually approved, resulting in the addition of \$287,222,833 in new capital investment for health care resources.

The Certificate of Need Program reduces the amount of capital investment in health care resources in a number of ways. First, by requiring sponsors to plan projects which must, in the end, document community need as established in the State Health Plan. After sponsors complete this plan, many times applications are not filed, or they are later withdrawn. Over the years of program operations, 64 official withdrawals have taken place, resulting in \$41,841,013 in projects that were not undertaken.

Further, the Department of Health and Environment has authority to approve a modified project. The Department has exercised this authority nine times, and has deleted \$11,547,426 for portions of projects that were oversized.

Finally, the Department can deny a project. The Department has denied 23 projects; subsequently, 15 denials were appealed and six denials reversed, four were upheld, and five are pending. Therefore, 12 projects were finally denied, resulting in \$13,062,407 of projects determined not to be needed.

*Originally, Certificate of Need Program appeals were first heard by the Statewide Health Coordinating Council. Later, the review agency changed to the Kansas Corporation Commission. Effective July, 1982, all appeals go directly to district courts.

A total of \$66,450,846 in proposed new capital expenditures for health care resources have been saved through either modifications, denials, or withdrawals.

CERTIFICATE OF NEED PROGRAM SUMMARY
1977 THROUGH 1982

PROJECT CLASS	TOTAL #	APPROVALS		MODIFICATIONS			DENIALS	
		#	Capital Expenditure	#	Capital Expenditure	\$ Deleted	#	Capital Expenditure
Hospitals	119	105	157,787,207	7	51,579,858	10,542,552	7	14,640,300
Adult Care Homes	83	73	53,145,892	1	3,066,126	683,874	9	7,751,823
Psychiatric Hospitals	3	1	35,310,825	-	--	--	2	12,584,000
Kidney Disease Treatment Facilities	6	3	223,365	1	321,000	321,000	2	503,210
Ambulatory Surgery Centers	4	1	--	-	--	--	3	925,374
Alcohol & Drug Abuse Programs	8	8	654,100	-	--	--	-	--
Mental Health Programs	4	4	1,444,500	-	--	--	-	--
Health Maintenance Organizations	2	2	--	-	--	--	-	--
TOTAL	229	197	248,565,889	9	54,966,984	11,547,426	23	36,404,707

APPEALS OF DEPARTMENT OF HEALTH AND ENVIRONMENT
 CERTIFICATE OF NEED DECISIONS
 1977 THROUGH 1982

PROJECT CLASS	DENIALS						APPROVALS					
	#	\$ Upheld	#	\$ Reversed	#	\$ Pending	#	\$ Upheld	#	\$ Reversed	#	\$ Pending
Hospitals	1	7,600,000	4	3,288,300	2	3,752,000	4	13,572,008	-	--	1	22,927,340
Adult Care Homes	2	1,416,000	1	2,729,000	-	--	1	6,590	-	--	-	--
Psychiatric Hospitals	-	--	-	--	2	12,584,000	-	--	-	--	-	--
Kidney Disease Treatment Facilities	1	114,210	-	--	1	389,000	-	--	-	--	-	--
Ambulatory Surgery Centers	-	--	1	600,000	-	--	-	--	-	--	-	--
TOTAL	4	9,130,210	6	6,617,300	5	16,725,000	5	13,578,598	-	--	1	22,927,340

Throughout the Certificate of Need Program's history, 21 of the Department's decisions were appealed: 15 were decisions to deny, and six were decisions to approve. Four of the decisions to deny were upheld, six were reversed, and five are pending. Five of the decisions to approve were upheld, and one is still pending.

The Department also received 64 letters of intent which were later withdrawn. These potential projects totaled \$41,841,013.

Clearly, the Certificate of Need Program has played a role in restraining unnecessary increases in health care costs. Particularly, when one considers that capital investments saved will mean an even greater savings in personal health care expenditures to operate the facilities if they had been built.

PROGRAM IMPACT ON ACCESSIBILITY AND DUPLICATION OF SERVICES

The State Health Plan and federal guidelines for health planning emphasize accessibility for rural and low income individuals, as well as preventing duplication of services. Thus, special concerns in conducting reviews often occur due to the geography of Kansas. Only four counties in the state have populations over 150,000 and are considered urban areas. Another 16 counties have populations between 25,000 and 70,000. The remaining 85 counties all have populations under 25,000 and thus, can be considered rural counties.

Examination of the Certificate of Need record for adult care homes indicates that six of the nine denials and the one modification occurred in urban counties or intermediate sized counties where, in addition to an excess of adult care home beds established in the State Health Plan, a number of long-term care continuum programs exist which reduce the need for institutional services. The remaining three denials, although occurring in rural counties, were to be located in areas where the available adult care home bed-to-population ratio established in the State Health Plan exceeds the standard of 90.0 beds per 1,000 persons age 65 and older.

Approvals for adult care home Certificates of Need show that 75 percent (1,996) of additional beds approved were in counties that either had not previously had nursing home care available or were far below the standard of 90.0 beds per 1,000 age 65 and older. Further, many of the bed additions resulted in skilled nursing home services for areas previously underserved, or established intermediate care facilities for the mentally retarded.* The remaining 25 percent largely represent relatively minor bed additions (ten beds or less) to existing nursing homes. In these cases, the bed additions brought the applicant's total number of nursing home beds to 60, which represents the maximum per nursing unit allowed by licensure regulations. The remaining additions generally represented skilled facility services, services for the mentally retarded, or facilities operated in conjunction with retirement communities.

The Certificate of Need record for hospitals and all other projects indicates that there were 136 approved applications and four denials. Two denials duplicated services in the urban Kansas City area, while the others duplicated services in counties with a medium-sized population. The location of the denials indicates that care for rural and low-income Kansas residents clearly has not been decreased by the program.

*The need for skilled adult care home beds and intermediate care facilities for the mentally retarded is discussed in the State Health Plan.

Access to sophisticated new medical technology in every Kansas county is neither expected nor financially feasible. Generally, primary care services are provided in rural areas; both primary and secondary services are provided in medium sized counties, and urban facilities provide tertiary care services for all state residents, as well as primary and secondary care services. Based on this distribution, it appears that applicants within each population category have requested and been granted Certificates of Need which appropriately increase accessibility to new medical technology.

Requests for equipment generally reflect health care's expanding technology. Therefore, it is not surprising that the largest number of approvals for equipment, approximately 70 percent, were granted to urban hospitals.

Conversely, rural hospitals requested the fewest number of Certificates of Need for equipment. However, they showed the greatest need for construction, as 44 percent of the expansion, renovation, and new construction projects were approved for these hospitals. Examination of these approved projects, on an individual basis, indicates that with few exceptions, the approvals involved construction of facilities to house primary care services or renovation and expansion of existing facilities for primary care services.

With regard to the new services, the largest number of all Certificates of Need for new services, 41 percent, were granted to regional health care centers found in counties in the intermediate population range. These approvals have frequently enabled Kansas residents to receive needed services on a regional, rather than tertiary level. Further, these approvals document the increasing availability of specialized physician manpower.

EFFECTIVENESS OF THE PROGRAM

The Certificate of Need Program has generally achieved its purpose. Rampant expansion of health care services has been curtailed, and accessibility of necessary services for rural and low income residents has been maintained. Duplication of services, in most cases, has been avoided, and costs have been restrained to some degree. The program should be retained.

While the program continues to become more effective at preventing duplication, other factors continue to be at work to increase health care expenditures:

- The increase in government expenditures for health care and health care resources since 1966 has been a primary source of inflationary pressure in the health system.
- The increased percentage of elderly who require medical care.
- The changes in disease trends from infections to chronic disease.
- The health implications of individual life-styles are dramatic. Compared to other possible interventions, changes in health-related behavior patterns offer the greatest potential for reducing chronic

disease and improving health, as well as hopefully reducing the demand for costly medical care services.

- Heavy financial support of biomedical research and related increases in supply of physician specialties have led to an emphasis on super high technological medicine. We must seek a new balance of research resources devoted to all the determinants of health (life-style, environment, heredity, and medical care).
- The system of third-party reimbursement has created a health care market where neither providers nor consumers bear sufficient responsibility for the prices of the services they provide or consume. The financing system replaces management incentives for efficiency with incentives to increase the costs and supply of services beyond defined need.
- The supply of hospital and nursing home beds and in the not too distant future, physicians, exceeds the need. This excess supply contributes to unnecessary utilization and rising costs.
- Hospital and nursing home services are overutilized in preference to other, lower cost alternatives. New efforts to determine the appropriateness of utilization must be implemented. Alternatives to costly institutional care must be encouraged.
- Normal price competition in the health care market is extremely limited. Prepayment financing alternatives should be developed to improve the climate of price competition.
- A "loop-hole" in the current Certificate of Need Act exists that contributes to increases in health care expenditures. Major medical equipment purchases are only covered if a health facility is the sponsor or if the equipment will serve inpatients.

2
State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, Secretary

~~Joseph F. Harkins, Secretary~~

Forbes Field
Topeka, Kansas 66620
913-862-9360



February 11, 1983

M E M O R A N D U M

TO: Representative Marvin Littlejohn, Chairman
House Public Health and Welfare Committee

FROM: Barbara J. Sabol, Secretary

RE: Certificate of Need Program Briefing Materials

Attached please find the Department's Certificate of Need Program Manual for Applicants. Since there has been considerable discussion about the Certificate of Need process and its costs, I believe that prior to our briefing, committee members can obtain a good foundation of knowledge by:

- Step 1: Reviewing the current statute (included in the manual)
- Step 2: Reviewing the process the Department has implemented to enforce the law

On Monday, our briefing will overview the problem of health care costs, highlight major trends affecting the increases, identify how Certificate of Need is one part of a cost-containment program, and provide a report on Certificate of Need outcomes from the beginning of the current program through December, 1982.

BJS/ckb

Attachment

cc: House Public Health and Welfare Committee Members

(attachment
no. 3.)

CERTIFICATE of NEED PROGRAM

MANUAL FOR APPLICANTS



STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT
OFFICE OF HEALTH PLANNING

CERTIFICATE OF NEED PROGRAM
MANUAL FOR APPLICANTS

STATE OF KANSAS

Department of Health and Environment
Office of Health Planning
6700 Topeka Avenue - Building 321
Topeka, Kansas 66620
(913) 862-9360, ext. 474

TABLE OF CONTENTS

SECTION ONE	Introduction.	1
SECTION TWO	Projects Requiring Certificate of Need Approval	2
SECTION THREE	Program Procedures for Areas with a Designated. Health Systems Agency	5
	- Preapplication Process.	5
	- Application Process	6
	- Review Process.	8
SECTION FOUR	Program Procedures for Areas without. a Designated Health Systems Agency	10
SECTION FIVE	Reconsideration Process and Appeal Process.	12
SECTION SIX	Certificate of Need Exemption Procedures.	13
SECTION SEVEN	Certificate of Need Review Objectives and Criteria. - Statewide Health Coordinating Council's Policy. Statement Concerning Certificate of Need Review of Projects for Inpatient Acute Care	15 19
SECTION EIGHT	Amendments or Modifications of Applications under Review	20
SECTION NINE	Extensions of Certificate of Need Authority	21
SECTION TEN	Revocation of Certificate of Need Authority	22
SECTION ELEVEN	Progress Reports and Substantial Compliance with Certificate of Need Authority	23
SECTION TWELVE	Certificate of Need Program Sample Forms. - Letter of Intent. - Exemption Request for Health Maintenance. Organizations - Exemption Request for Additional Bed Capacity - Certificate of Need Application Cover Page.	24 25 27 29 31
SECTION THIRTEEN	Certificate of Need Application Narrative Information Requirements	33
APPENDIX A	Kansas Certificate of Need Act, K.S.A. 65-4801, <u>et seq.</u> , and 1982 Amendments	
APPENDIX B	Kansas Certificate of Need Program Regulations	
APPENDIX C	Addresses of State Agency and Advisory Agencies and Map of Health Service Areas	

SECTION ONE
INTRODUCTION

This Manual for Applicants was designed to assure that the people of Kansas have access to a uniform and fair process for the review of health projects. This manual is available to the public and will be the basis for all Certificate of Need review activities of the health planning organizations in Kansas.

This manual has been developed by the Department of Health and Environment in cooperation with the Kansas health systems agencies to assist health facility administrators and planners to understand and plan within the requirements of the Kansas Certificate of Need Program. The principal purpose of this manual is to describe the procedures of the Certificate of Need Program. Applicants are cautioned not to expect that once having followed all of the "steps" in the review process, approval will be automatically forthcoming. The final action on a project is based on its conformance to established review objectives and criteria. Final decisions on projects are made by the Department of Health and Environment, as the agency responsible for administering this program.

Applicants are encouraged to communicate with the health systems agencies and the Department of Health and Environment regarding the content and organization of the review process. The format of this document allows for changes and updates expected to result from this continuing dialogue around the basic issues and problems associated with the review process. From time to time, additions or revisions to the manual will be distributed to interested parties.

SECTION TWO
PROJECTS REQUIRING CERTIFICATE OF NEED APPROVAL

I. Facilities and Persons Subject to Certificate of Need Review Before Undertaking Activities Specified in Subsection II.

A. Health Facilities

1. Medical Care Facilities

a. Hospitals

- General
- Special
- Psychiatric

b. Ambulatory Surgical Centers

c. Recuperation Centers

2. Adult Care Homes

a. Skilled Nursing Homes

b. Intermediate Nursing Care Homes

c. Intermediate Personal Care Homes

d. Intermediate Care Facilities for the Mentally Retarded

3. Kidney Disease Treatment Centers (including centers not located in a medical care facility)

B. Other Facilities Subject to Review Only for Activities Specified in II.B.(4)

1. Alcoholism Treatment Facilities

2. Drug Abuse Treatment Facilities

3. Community Mental Health Centers

C. Other Persons Subject to Review Only for Activities Specified in II.B.(7)

II. Activities Requiring a Certificate of Need

A. A Certificate of Need is required prior to licensing or certification under the following statutes.

1. Medical Care Facilities
K.S.A. 65-428
Licensing Agency: Department of Health and Environment
 2. Adult Care Homes
K.S.A. 39-927
Licensing Agency: Department of Health and Environment
- B. A Certificate of Need is required before any person undertakes any of the following projects except as provided in II.B.(10).
1. The construction, development, or other establishment of a new health facility.
 2. The construction, development, or other establishment of additional bed capacity in a health facility, except that the State Agency may exempt some such projects from Certificate of Need review (see Section Five).
 3. The offering of a health facility service which was not offered on a regular basis within the 12-month period prior to the time such service is proposed to be offered if the annual operating budget of the proposed service exceeds \$250,000.
 4. Any capital expenditure in excess of \$600,000, made by or on behalf of a health facility; community mental health center required to be licensed pursuant to K.S.A. 75-3307b; treatment facility for drug abusers required to be licensed pursuant to K.S.A. 65-4601, et seq.; or a treatment facility for alcoholics required to be licensed pursuant to K.S.A. 65-4012, et seq.; except for expenditures made solely for site acquisitions or for the termination or reduction of beds or services which previously had been provided in the facility.
 5. Any capital expenditure by or on behalf of a health facility in excess of \$400,000 for the purchase of major medical equipment.
 6. An acquisition made by or on behalf of a health facility under lease or comparable arrangement, or through donation, which would have required a Certificate of Need if the acquisition had been by purchase.
 7. The acquisition of major medical equipment by any person, if such equipment will be used to provide health facility services to persons admitted to a health facility.
 8. Any expenditure in excess of \$600,000 made by or on behalf of a health facility in preparation for the offering or development of a project requiring a Certificate of Need.

9. The permanent redistribution of bed capacity among different licensure categories in a health facility, except for any distribution resulting from a decision of the State Agency which is responsible for Medicaid certification.
10. Certain projects involving health maintenance organizations are exempt from Certificate of Need review after an exemption is granted by the State Agency pursuant to K.A.R. 28-42-10(a). Projects which are not exempt are reviewed in accordance with criteria outlined in K.A.R. 28-42-10(c).

SECTION THREE
PROGRAM PROCEDURES FOR AREAS WITH A DESIGNATED HEALTH SYSTEMS AGENCY

I. Preapplication Process

The preapplication process includes project planning, submission of a Letter of Intent, and conference(s) with the health systems agency (see Appendix C for areas with a designated health systems agency).

A. Letter of Intent

1. The Letter of Intent is used to determine whether a Certificate of Need is required for the project and to provide information for the preapplication conference.
2. All Letters of Intent must be completed in accordance with the format and content requirements as specified in Section Twelve.
3. The sponsor shall submit a Letter of Intent to the State Agency and the appropriate health systems agency as early as possible in the sponsor's planning process, but at least 30 days prior to the submission of an application.
4. Within ten days after the Letter of Intent is received, the State Agency will determine, after consulting with the appropriate health systems agency, if the project requires a Certificate of Need and will notify the sponsor and the health systems agency. The State Agency may also identify issues that should be considered during the preapplication conference.
5. Any Letter of Intent not followed by an application within six months may be considered withdrawn by the State Agency. When the State Agency fails to receive an application within six months of the date on which a Letter of Intent is received, it will contact the sponsor in writing to determine the status of the project. A Letter of Intent will not be withdrawn provided that the information contained in the document is still accurate and the sponsor intends to submit an application in a timely manner.

B. Preapplication Conference

1. After the State Agency has determined that a Certificate of Need is required for a project, the sponsor shall schedule a preapplication conference with the health systems agency.
2. The health systems agency may invite other participants, e.g., other affected health care facilities or programs and other

agencies involved in the review process, including the State Agency.

3. The health systems agency shall promptly inform the State Agency by letter of the issues discussed and results of the conference.
4. The agenda shall include, but not be limited to, the following.
 - a. Explanation of Certificate of Need procedures.
 - b. Discussion of review objectives and criteria and applicable plans, including:
 - (1) relationship to the State Health Plan, health systems plan, and the sponsor's long-range plan;
 - (2) practical alternatives to the project in terms of cost, efficiency, and appropriateness;
 - (3) if new construction is proposed, alternatives such as modernization or sharing arrangements considered and implemented by the sponsor;
 - (4) problems that patients will experience in terms of cost, availability, or accessibility in obtaining the type of health care service being proposed in the absence of the proposed new service; and,
 - (5) if the project involves an existing facility, the facility's conformance or nonconformance to current licensure or certification standards.
5. Any assistance in developing an application by the health systems agency or State Agency in no way implies approval or disapproval of the application.

II. Application Process

There is one application form required for all sponsors. The State Agency will supply the form and instructions for projects which require a Certificate of Need. There are 12 application cycles each year, each beginning on the second Monday of each month.

A. Submission of Application

1. All applications must be completed in accordance with the format and content requirements as specified in Sections Twelve and Thirteen of this manual.

2. The State Agency must receive three copies of the application by the beginning of the application cycle in which the sponsor wishes the application reviewed (i.e., the second Monday of the month). Additional copies (up to a maximum of 20) must be submitted to the appropriate health systems agency, as requested.

B. Review for Completeness and Filing of Applications

When the State Agency and the health systems agency receive a Certificate of Need application, the first step is to review the submitted materials for completeness. The purpose is to determine whether the application contains the information necessary to reach findings concerning the review objectives and criteria set forth in Section Seven.

1. Before an application is filed for review, the State Agency shall determine whether it is complete. The State Agency shall consult with the appropriate health systems agency prior to making this determination.
2. Applications determined to be complete as submitted shall be filed on the 15th day of the applicable application cycle, i.e., on the fourth Monday of the month.
3. If an application is determined to be incomplete as submitted:
 - a. the State Agency shall request the specific information required to complete the application;
 - b. the sponsor shall submit requested information simultaneously to the health systems agency and State Agency;
 - c. if the additional information satisfies the request made by the State Agency, the application shall be filed in the first application cycle beginning after the date on which the additional information was received;
 - d. if the additional information does not satisfy the request made by the State Agency, the procedure described in this subsection for applications determined incomplete shall be repeated until the application is deemed complete and filed by the State Agency; and,
 - e. if, after three months, a sponsor has not responded to a request for additional information, the State Agency may notify the sponsor that the application is considered withdrawn. When the State Agency fails to receive additional information within three months of the date on

which the request was made, it will contact the sponsor in writing to determine the status of the project. An application will not be withdrawn provided that the sponsor intends to submit the additional information in a timely manner.

III. Review Process

There are two parts to the review process: the health systems agency conducts a review and submits recommendations, and the State Agency conducts a review and makes a decision.

- A. The filing of an application by the State Agency on the fourth Monday of the month shall begin the 90-day review period.
 1. The State Agency shall notify the sponsor and appropriate health systems agency that the application has been filed. A copy of the filed application will be included with a notice to the health systems agency conducting the review.
 2. The State Agency shall promptly publish notice of each application filed. Such notices shall be published in newspapers of general circulation in the geographical areas to be served by the projects, and in the Kansas Register.
 3. The health systems agency conducting the review shall notify all directly affected persons that the application has been filed.
- B. All completed applications reviewed in the same cycle which pertain to similar types of services, facilities, or equipment affecting the same health service area as determined by the State Agency shall be considered in relation to each other. Those services which shall be considered in relation to each other shall include at least the following: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, and intermediate care.
- C. The health systems agency shall review applications in accordance with its procedures established pursuant to K.S.A. 65-4807 and shall submit its record of the review proceedings, findings, and recommendations to the State Agency in accordance with K.A.R. 28-42-7(a) within 60 days of the filing date of the application.
- D. The State Agency shall review the application and the review record submitted by the health systems agency, in accordance with K.S.A. 65-4808 and K.A.R. 28-42-7.
 1. A public hearing may be conducted by the State Agency for good cause shown as specified in K.A.R. 28-42-7(d).

2. Within 90 days of the filing date of the application, the State Agency shall issue an order to approve, approve subject to modification, or deny the application.
 3. If the State Agency does not issue its decision within 90 days of the filing date of the application, the sponsor may bring an action in the appropriate State Court to require the State Agency to approve, modify, or disapprove the application.
 4. If the State Agency's decision differs from the recommendation 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.
- E. Any Certificate of Need decision issued within the 90-day review cycle shall not become effective until 30 days after the decision is issued. During the 30-day period, requests for reconsideration of the decision, or appeals of the decision, may delay the effective date of the Certificate of Need decision. (see Section Five of this manual).

SECTION FOUR
PROGRAM PROCEDURES FOR AREAS WITHOUT
A DESIGNATED HEALTH SYSTEMS AGENCY

I. Preapplication Process

The preapplication process includes project planning, submission of a Letter of Intent to the State Agency, and conference(s) with the State Agency if a Certificate of Need is required. All preapplication activities shall be identical to those specified in Section Three (I.), except that representatives from the State Agency will assume all responsibilities formerly carried out by the health systems agency. (See Appendix C for health service areas without a designated health systems agency.)

II. Application Process

All application procedures shall be identical to those as specified in Section Three (II.), except that no representatives of the health systems agency will participate in this process. In addition, the State Agency may request as many as 20 copies of an application.

III. Review Process

- A. The filing of an application by the State Agency on the fourth Monday of the month shall begin the 90-day review period.
1. The State Agency shall notify the sponsor and all directly affected persons that the application has been filed.
 2. The State Agency shall promptly publish notice of each application filed. Such notices shall be published in newspapers of general circulation in the geographical areas served by the projects, and in the Kansas Register.
 3. All other review procedures shall be as those specified in Section Three III.A. and B.; the following shall apply in lieu of items III.C. and D.
- B. The State Agency may conduct a public hearing during the review period either on its own motion or upon the request of any directly affected person. If a hearing is to be conducted, the following procedures shall apply.
1. The State Agency shall provide notice of the public hearing to directly affected persons. Notification shall be received by all parties at least 15 days in advance of the hearing date. Public notices of the hearing shall be placed in the Kansas Register and those newspapers in which notification was placed at the initiation of the review period.

2. Prior to the notification date of the public hearing, a staff report shall be prepared by the State Agency. The report shall include a written analysis of the proposal as it relates to the review objectives and criteria adopted by the Statewide Health Coordinating Council. A copy of the staff report shall be sent to the sponsor, as well as to any other party upon request.
3. A designated staff member of the State Agency shall conduct the public hearing, which will allow participation by all directly affected persons.
4. The hearing shall be recorded by a certified shorthand reporter in accordance with K.A.R. 28-42-6.
5. Following the public hearing, the State Agency shall review the application, the staff report and recommendations, and any oral and/or written testimony received at the public hearing. The State Agency shall then either approve, approve subject to modification, or deny the application within 90 days of the filing of the application.

SECTION FIVE
RECONSIDERATION PROCESS AND APPEAL PROCESS

I. Reconsideration Process

Any person may request the State Agency to reconsider its decision to approve, modify, or deny a Certificate of Need. Requests for reconsideration shall be received by the State Agency no later than 15 days after the date of the State Agency's decision and shall be granted only if good cause is demonstrated pursuant to K.A.R. 28-42-9.

If the State Agency finds that good cause has been shown for conducting a public hearing to reconsider its decision, it shall conduct the hearing within 30 days of the request and render its decision upon reconsideration within 45 days of the hearing (K.A.R. 28-42-9).

II. Appeal Process

In accordance with K.S.A. 65-4809, any Certificate of Need decision issued by the State Agency shall take effect 30 days following its issuance unless appealed to the appropriate State Court by: 1) a sponsor, 2) the appropriate health systems agency, or 3) a health facility which believes its interests are adversely affected by the decision. Such appeals shall operate to suspend and stay the State Agency's Certificate of Need decision pending the disposition of the appeal.

A. Parties to the Appeal

Parties to any appeal proceedings shall be limited to the applicant, the State Agency, the health systems agency, and the potentially affected health facility.

B. Filing of the Appeal

All appeals of State Agency decisions shall be filed with the Clerk of the District Court in the county in which the project is to be located. The notice of the appeal shall also be served upon all parties to the appeal within ten days of filing with the District Court.

SECTION SIX
CERTIFICATE OF NEED EXEMPTION PROCEDURES

Projects involving health maintenance organizations, and proposals increasing bed capacity at a health facility may be exempt from Certificate of Need requirements under the following specific conditions.

I. Health Maintenance Organizations

- A. Requests for exemptions for health maintenance organizations (HMO's), under the provisions of K.A.R. 28-42-10, must be submitted at least six months prior to the planned implementation date of the proposed project, in order to allow time for a Certificate of Need review to be conducted in the event that the project is not found to qualify for an exemption. All requests must be made on the Exemption Request Form in Section Twelve and submitted to the State Agency and, if appropriate, the health systems agency.
- B. Within 30 days after the Exemption Request is received, the State Agency (after consultation with the health systems agency) will determine if the project requires a Certificate of Need and will notify the sponsor (and the health systems agency) of its decision.
- C. In the event that a Certificate of Need is required, the Exemption Request shall be considered a Letter of Intent.
- D. Projects involving HMO's which are not exempt from review shall be reviewed in accordance with procedures outlined in Section Three or Four. The decision of the State Agency shall be based on the factors outlined in K.A.R. 28-42-10(c).

II. Additional Bed Capacity to Health Facilities

- A. Requests for additions to bed capacity, under K.S.A. 65-4805(a)(2), must be filed with the State Agency (and the appropriate health systems agency). The Exemption Request Form is found in Section Twelve.
- B. Exemptions for additional beds may be granted under the following conditions.
 - 1. The request would add no more than ten beds, or ten percent of the facility's licensed bed capacity in any two-year period.
 - 2. The facility currently meets all applicable licensure standards.
 - 3. The additional beds and rooms would meet all applicable licensure standards.

4. The proposed project would not meet any of the other Certificate of Need thresholds as specified in K.S.A. 65-4801, et seq.
- C. When the State Agency receives an exemption request for additional bed capacity, it shall notify the Office of Health Facilities to determine whether: 1) the health facility meets all appropriate licensure requirements of the State of Kansas; and 2) the proposed addition will be designed to meet all appropriate licensure requirements of the State of Kansas. The State Agency will issue its decision within 30 days after receipt of the exemption request.

SECTION SEVEN
CERTIFICATE OF NEED REVIEW OBJECTIVES AND CRITERIA

The following general review objectives and criteria are to be used by the Department of Health and Environment and the health systems agencies for the review of all Certificate of Need applications. Each review objective is a statement regarding the determinations which must be made in approving an application for a Certificate of Need. Criteria related to each review objective specify measurable factors to be evaluated.

The Community Need review objective is a primary concern and its criteria must be satisfied if a Certificate of Need application is to be approved, regardless of the findings on the remaining objectives and criteria. This does not imply that a Certificate of Need must be issued if the Community Need criteria are satisfied.

- I. COMMUNITY NEED: To determine that the project is needed to correct or alleviate a specific problem of a defined population. This does not mean the needs of a particular health facility unless the needs of the health facility represent needs of the service area population.

A. Service Area

The service area of the project is appropriately defined in terms of relevant demographic, geographic, socioeconomic, and epidemiologic factors.

B. Problem

An assessment of the service area population demonstrates that needed health services are unavailable or that problems exist in the current delivery of needed health services.

C. Health Care System

An analysis of existing health care facilities and services demonstrates that the defined problem can be most effectively corrected by implementation of the project.

D. State and Local Health Plans

The project is consistent with the State Health Plan and appropriate health systems agency plans.

E. Sponsor's Long-Range Plan

The project is consistent with the long-range development plan of the sponsor.

F. Special Projects

1. Those entities which provide a substantial portion of their services and/or resources to individuals not residing within the health service area shall be given special consideration.
2. Projects which present new and innovative approaches to solving or alleviating specific problems shall be given special consideration.
3. Biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages shall be given special consideration.
4. In the case of projects proposed by osteopathic facilities, consideration shall be given to the need for and availability of osteopathic services in the proposed service area.
5. In the case of projects affecting health professional training programs, the extent to which the project meets the needs of these programs shall be considered.

II. QUALITY OF CARE: To determine that the sponsor will provide and effectively manage appropriate resources required to assure high-quality patient care.

A. Facilities

The physical plant (existing and proposed) is designed and constructed to comply with existing building and life safety codes and meets all appropriate licensure and certification standards required for the project.

B. Equipment

The proposed equipment is appropriate for the project and meets all applicable licensure and certification standards required for operation.

C. Patient Care and Support Personnel

Adequate numbers of qualified patient care and support personnel are available to staff the project, in accordance with appropriate licensure and certification standards, without prejudicing the manpower needs of other health care providers.

D. Continuity of Care

Tangible links to all appropriate levels of care (preventive, maintenance, acute, and rehabilitative) are sufficient to assure the opportunity for complete continuity of care.

III. COMMUNITY SUPPORT: To determine that the involvement of appropriate providers, consumers, and local units of government is adequate to support full implementation of the project.

A. Consumers

Individual consumers and representative consumer groups are effectively involved in planning the project.

B. Providers

Individual providers and representative provider groups are effectively involved in planning the project.

C. Local Units of Government

Representatives of local units of government are effectively involved in planning the project.

IV. FINANCING: To determine the financial feasibility of the project.

A. Capital Resources

The sponsor holds reasonable commitments for all sources of capital financing necessary to complete the project.

B. Financial Feasibility

Projected appropriate utilization and revenue are sufficient to sustain the project and meet the financial obligations of the sponsor.

V. COST CONTAINMENT: To determine that patient charges and costs of health care services in general are not unnecessarily increased by the project.

A. Cost-Effective Alternatives

Less costly and/or more efficient alternatives for correcting or alleviating the defined problem do not exist or are not practicable. The proposed project utilizes the most cost-effective financial resources available for capital and operating needs. In the case of new construction projects, alternatives to new construction (e.g.,

modernization, sharing arrangements, mergers, and consolidations) have been considered and implemented to the maximum extent practicable.

B. Energy Conservation

In the case of projects entailing new construction, renovation, and remodeling, appropriate energy conservation measures have been considered and implemented to the maximum extent practicable.

C. Patient Charges

The planned impact of the project on patient charges is reasonable, cost effective, and will not have an unnecessary inflationary effect on patient charges in the health care industry.

D. Competition

If services included in the proposed project are those for which competition can appropriately allocate supply, implementation of the project will strengthen the effect of competition in the local health system.

VI. ACCESSIBILITY: To determine that the project is accessible to all residents of the service area.

A. Underserved Persons

In comparison to their percentage of the service area population, a substantial portion of medically underserved persons (e.g., low income, racial and ethnic minorities, women, handicapped, and elderly), Medicare, Medicaid, and medically indigent patients currently utilize the sponsor's services.

B. Federal Obligations

The sponsor substantially satisfies its obligation under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons.

C. Range of Access

If practicable, the sponsor offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, and admission by personal physician).

Statewide Health Coordinating Council's
Policy Statement Concerning
Certificate of Need Review of Projects
for Inpatient Acute Care

1. Sponsors of inpatient acute care projects shall take into consideration the National Health Priorities (P.L. 96-79, Section 1502) and the National Health Planning Guidelines published pursuant to Section 1501 of P. L. 96-79 in planning projects and preparing applications for Certificate of Need. Sponsors should include in their applications an explanation of the project's relevance to the National Health Priorities and should provide a rationale where a project is not consistent with an applicable National Health Planning Guideline.
2. Sponsors of inpatient acute care projects shall coordinate the project with other providers of the same or similar services in the project's defined service area. This coordination should occur in the planning of the project and should be documented in the application. Coordination efforts should be aimed at achieving the most cost-effective provision of needed services to the service area population. Sponsors should determine the specific methods to be used in coordinating a project, however, pro forma letters of awareness or support should not by themselves be considered as evidence of effective coordination. Health systems agencies should provide assistance to sponsors in planning and coordinating their projects within the limits of available resources.

The intent of these policy statements is that the health systems agencies and the State Agency may consider them in the review of projects, but should not apply them as standards.

SECTION EIGHT
AMENDMENTS OR MODIFICATIONS OF
APPLICATIONS UNDER REVIEW

When the sponsor wishes to amend a project (and thus the application) during the review process, the State Agency, after consultation with the advisory agencies, will decide whether or not the amendment constitutes a new application.

Procedures

If a sponsor proposes to change a project during the review process, a request shall be submitted simultaneously to the State Agency and the appropriate health systems agency detailing the proposed modifications. The State Agency will consider the proposed modifications, consult with the health systems agency, and notify the sponsor as to whether a new application review will be necessary.

SECTION NINE
EXTENSIONS OF CERTIFICATE OF NEED AUTHORITY

Certificate of Need approval shall expire 12 months after its effective date unless construction has commenced pursuant to K.A.R. 28-42-12 or a request for an extension is filed by the sponsor and approved by the State Agency. In the case of a project not involving construction, approval shall expire 12 months after its effective date unless implementation of the project has commenced and is being diligently pursued, or an extension request has been submitted and approved.

Certificate of Need approval may be extended beyond the initial expiration date if the sponsor demonstrates that substantial and continuing progress toward commencement of construction or implementation of the project has been made. K.S.A. 65-4815(b) permits one extension with a maximum 12-month time limit.

Procedures

The sponsor must submit to the State Agency and, if appropriate, to the health systems agency, an extension request at least 60 days prior to the expiration date. The extension request shall contain the following information.

1. An explanation why construction or implementation has not commenced and why an extension is necessary.
2. Documentation of progress toward commencement of construction or implementation, including the present status of construction or implementation plans, the intentions on securing necessary financing, and whether other approvals such as building permits have been received.
3. A schedule for the proposed construction or implementation, including obtaining the necessary approvals, securing financing, and commencing construction or implementation.

After receiving an extension request, the State Agency will request the health systems agency and/or other advisory agencies to review and comment on the requested extension. The State Agency will decide whether or not to grant an extension after receiving these comments and recommendations.

SECTION TEN
REVOCATION OF CERTIFICATE OF NEED AUTHORITY

In accordance with K.S.A. 65-4815 and K.A.R. 28-42-16, the State Agency may revoke a Certificate of Need at any time if, after a hearing, the Secretary determines that its approval was based upon evidence later found to be false, misleading, or misrepresented.

The hearing shall be scheduled by the State Agency either upon its own motion, or in response to a complaint filed by any person, if reasonable grounds exist to believe that the Certificate of Need may have been approved on the basis of such evidence.

Hearing Procedures

Notice of the hearing shall be served upon the sponsor by certified mail, setting a hearing date at least 20 calendar days following the date upon which the notice was mailed to the sponsor. The notice shall also outline the reasons why the State Agency believes that the Certificate of Need may have been based upon false, misleading, or misrepresented evidence.

A hearing officer shall be appointed to preside at the hearing and shall make a recommendation to the Secretary that the State Agency either uphold or revoke the Certificate of Need in question. The Secretary shall render a final decision which shall take effect 20 calendar days following the date on which it was mailed to the project's sponsor.

SECTION ELEVEN
PROGRESS REPORTS AND SUBSTANTIAL COMPLIANCE WITH CERTIFICATE OF NEED AUTHORITY

I. Progress Reports

- A. Sponsors of approved projects shall submit periodic reports of progress toward completing the project until the project is operational.
- B. Procedures
 - 1. Progress reports shall be submitted at least once a year, through the completion date of the project. One of these progress reports must be submitted at the design development phase of the project, prior to construction bid letting. A progress report shall also be submitted 60 days prior to each anniversary of the certificate's effective date.
 - 2. Reports shall be submitted to the State Agency and, if appropriate, the health systems agency.
 - 3. The reports shall include the following.
 - a. An overview of the implementation status of the project.
 - b. Adherence to original construction plans and time schedule, and an explanation of any changes or delays.
 - c. Any changes in services to be offered.
 - d. Any changes in project costs with explanations.

II. Substantial Compliance

- A. The State Agency shall utilize the progress reports in determining whether or not a project is in substantial compliance with Certificate of Need authority. A project is in substantial compliance with Certificate of Need authority when:
 - 1. the final project cost does not exceed the estimated project cost by more than 20 percent, exclusive of inflationary increases which can be documented by the sponsor; and,
 - 2. there is no change in the scope of the project which, in itself, meets or exceeds one or more of the thresholds for Certificate of Need review, as set forth in K.S.A. 1980 Supp. 65-4805(a)(1), (2), (3), (5), (6), (7), and (8).
- B. When a project is not in substantial compliance with Certificate of Need authority, the State Agency will take appropriate action.

SECTION TWELVE
CERTIFICATE OF NEED PROGRAM SAMPLE FORMS

- Letter of Intent
- Exemption Request for Health Maintenance Organizations
- Exemption Request for Additional Bed Capacity
- Certificate of Need Application Cover Page



LETTER OF INTENT

This Letter of Intent is made in accordance with provisions of K.S.A. 65-4801, et seq., and procedures adopted by the Kansas Department of Health and Environment. I hereby certify that the statements made in this letter are correct to the best of my knowledge and belief.

Signature and Title of Responsible Officer Telephone Date

1. Name of Facility, Service, or Project		9. Estimated Cost of Project: \$ _____ Number of New Beds (net): _____	
2. Address (Location) of Project County: _____		10. Type of Facility: (check all that apply) <input type="checkbox"/> Hospital <input type="checkbox"/> Ambulatory Surgical Facility <input type="checkbox"/> Kidney Disease Treatment Center <input type="checkbox"/> Drug Abuse Treatment Facility <input type="checkbox"/> Alcoholism Treatment Facility <input type="checkbox"/> Intermediate Care Facility <input type="checkbox"/> Intermediate Care Facility for the Mentally Retarded <input type="checkbox"/> Skilled Nursing Facility <input type="checkbox"/> Health Maintenance Organization <input type="checkbox"/> Community Mental Health Center <input type="checkbox"/> Intermediate Personal Care Facility <input type="checkbox"/> Other, specify: _____	
3. Legal Name of Sponsor		11. Medicare Provider # _____	
4. Address of Sponsor		12. Medicaid Provider # _____	
5. This is a: <input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Other, specify: _____		13. Type of Project: (check all that apply) <input type="checkbox"/> New Facility <input type="checkbox"/> New Equipment <input type="checkbox"/> New Service(s) <input type="checkbox"/> Renovation <input type="checkbox"/> Enlarge Facility <input type="checkbox"/> Replace Equipment <input type="checkbox"/> Replace Facility <input type="checkbox"/> Other, specify: _____	
6. If incorporated, in which state: _____ Date: _____		14. Approximate Date for Commencing Project	
7. List names and titles of principal corporation officers. If not incorporated, list names of partners or controlling organization.		15. Approximate Date for Project Completion	
8. Facility will be operated by: <input type="checkbox"/> Sponsor <input type="checkbox"/> Employed Administrator <input type="checkbox"/> Lessee <input type="checkbox"/> Purchaser <input type="checkbox"/> Other, specify: _____		16. Attach a brief (no more than five pages) narrative description of the project including the information specified on the reverse side of this form.	

SAMPLE

REQUIRED INFORMATION FOR NARRATIVE DESCRIPTION

- A. Type and description of proposed construction.
- B. Type and description of proposed major equipment.
- C. Identify each health service or program to be added or affected. If the proposal is a new health facility service, provide an estimate of the annual operating expenditures of the proposed new service and include a verification by a certified public accountant.
- D. Identify the major elements in the project and estimate the cost of each element. Specify the proposed method of financing, as well as the individual or organization incurring the financial obligation for the project. List the fair market value of any acquisitions to be leased or donated.
- E. Type of license(s) and/or certification(s) required before the proposed project can become operational. Specify the licensing agency(ies).
- F. Identify the proposed service area for the project. If the project consists of major medical equipment which will not be located in a health facility, describe in detail the patient population to be served by the equipment.
- G. Summarize the problems or needs that this proposed project seeks to alleviate.
- H. Summarize the reasons why these problems or needs cannot be met with existing resources of the sponsoring organization or by other organizations in the community.
- I. If the proposed project requires new construction or new inpatient services, describe the alternatives considered, e.g., modernization, shared service arrangements, mergers, and consolidations.

* * * * *

All completed Letter of Intent forms should be returned to the State Agency at the following address.

Kansas Department of Health and Environment
Office of Health Planning
6700 South Topeka Avenue, Building 321
Topeka, Kansas 66620

Sponsors whose proposals originate in either Health Service Area II or III should also submit a copy of the completed form to the appropriate health systems agency (see Appendix C for Kansas health service area designations).



CERTIFICATE OF NEED EXEMPTION REQUEST FOR HEALTH MAINTENANCE ORGANIZATIONS

This Certificate of Need Exemption Request is made in accordance with the provisions of K.S.A. 65-4805(d) and K.A.R. 28-42-10. I hereby certify that the statements made in this Certificate of Need Exemption Request are correct to the best of my knowledge and belief.

Signature and Title of Responsible Officer

Telephone

Date

1. Name of Facility, Service or Project	8. If facility is not a Health Maintenance Organization, is it controlled by or leased to a Health Maintenance Organization? _____
2. Address (Location) of Project	If leased to a Health Maintenance Organization, specify the number of years remaining on the lease: _____
County: _____	Name and Address of Health Maintenance Organization
3. Legal Name of Sponsor	
4. Address of Sponsor	10. Medicare Provider # _____
Phone: _____	11. Medicaid Provider # _____
5. If incorporated, in which state: _____ Date: _____	12. Type of Project: (check all that apply) <input type="checkbox"/> New Facility <input type="checkbox"/> New Equipment <input type="checkbox"/> New Service(s) <input type="checkbox"/> Renovation <input type="checkbox"/> Enlarge Facility <input type="checkbox"/> Replace Equipment <input type="checkbox"/> Replace Facility <input type="checkbox"/> Other, specify: _____
6. List names and titles of principal corporation officers. If not incorporated, list names of partners or controlling organization.	13. Approximate Date for Commencing Project
7. Type of Facility: (check all that apply) <input type="checkbox"/> Hospital <input type="checkbox"/> Ambulatory Surgical Facility <input type="checkbox"/> Kidney Disease Treatment Center <input type="checkbox"/> Drug Abuse Treatment Facility <input type="checkbox"/> Alcoholism Treatment Facility <input type="checkbox"/> Intermediate Care Facility <input type="checkbox"/> Intermediate Care Facility for the Mentally Retarded <input type="checkbox"/> Skilled Nursing Facility <input type="checkbox"/> Health Maintenance Organization <input type="checkbox"/> Community Mental Health Center <input type="checkbox"/> Intermediate Personal Care Facility <input type="checkbox"/> Other, specify: _____	14. Approximate Date for Project Completion
	15. Estimated Cost of Project: \$ _____ Number of New Beds (net): _____
	16. Attach a brief narrative description of the project including the information specified on the reverse side of this form.

SAMPLE

REQUIRED INFORMATION FOR NARRATIVE DESCRIPTION

- A. Type and description of proposed construction.
- B. Type and description of proposed major equipment.
- C. Identify each health service or program to be added or affected.
- D. Identify the major elements in the project and estimate the cost of each element. Specify proposed method of financing, as well as the individual or organization incurring the financial obligation for the project. List the fair market value of any acquisitions to be leased or donated.
- E. Type of license(s) and/or certification(s) required before the proposed project can become operational. Specify the licensing agency(ies).
- F. Identify the proposed service area for the project.
- G. If applicant facility is controlled by a health maintenance organization, specify the nature of the relationship.
- H. Document the current number of enrollees in the health maintenance organization(s) and specify the number expected when the project becomes operational.
- I. Document that at least 75 percent of those who shall receive the services proposed in this project shall be enrollees of the health maintenance organization(s).
- J. Document that the enrollees will have access to the proposed services with respect to travel time, architecture, and transportation.
- K. Summarize the problems or needs that this proposed project seeks to alleviate.
- L. Summarize the reasons why these problems or needs cannot be met with existing resources of the sponsoring organization or by other organizations in the community.
- M. If the proposed project requires new construction or new inpatient services, describe the alternatives considered, e.g., modernization, shared service arrangements, mergers, and consolidations.

* * * * *

All completed Exemption Request for Health Maintenance Organizations forms should be returned to the State Agency at the following address.

Kansas Department of Health and Environment
Office of Health Planning
6700 South Topeka Avenue, Building 321
Topeka, Kansas 66620

Sponsors whose proposals originate in either Health Service Area II or III should also submit a copy of the completed form to the appropriate health systems agency (see Appendix C for Kansas health service area designations).



CERTIFICATE OF NEED EXEMPTION REQUEST
FOR ADDITIONAL BED CAPACITY

This Certificate of Need Exemption Request is made in accordance with the provisions of K.S.A. 65-4805(a)(2). I hereby certify that the statements made in this Certificate of Need Exemption Request are correct to the best of my knowledge and belief.

Signature and Title of Responsible Officer

Telephone

Date

1. Name of Facility, Service, or Project		9. Year Facility was Licensed: _____	
2. Address (Location) of Project		Number of Beds Currently Licensed: _____	
County: _____		Number of New Beds (net): _____	
3. Legal Name of Sponsor		Type of Beds Requested: _____	
4. Address of Sponsor		Estimated Cost of Project: \$ _____	
Phone: _____		10. Type of Facility: (check all that apply)	
5. This is a: () Corporation		() General Hospital	
() Individual		() Psychiatric Hospital	
() Partnership		() Intermediate Care Facility	
() Other, specify: _____		() Intermediate Care Facility for the Mentally Retarded	
6. If Incorporated, in which state: _____ Date: _____		() Skilled Nursing Facility	
7. List names and titles of principal corporation officers. If not incorporated, list names of partners or controlling organization.		() Personal Care Home	
8. Facility will be operated by:		() Health Maintenance Organization	
() Sponsor		() Other, specify: _____	
() Lessee		11. Medicare Provider # _____	
() Employed Administrator		12. Medicaid Provider # _____	
() Purchase		13. Approximate Date of Commencing Project	
() Other, specify: _____		14. Approximate Date of Completion	
		15. Attach a brief narrative description of the project including the information specified on the reverse side of this form.	

SAMPLE

REQUIRED INFORMATION FOR NARRATIVE DESCRIPTION

- A. Identify the major elements in the project and the cost of each element. Include the type and description of any proposed construction, as well as any acquisitions to be purchased, leased, or donated.
- B. Document that the facility currently meets all applicable licensure and certification standards.
- C. Summarize the problems or needs that this project seeks to alleviate.
- D. Provide line drawings of any space to be used as patient care rooms, and indicate their square footage. Provide line drawings of any other building modifications to result from the project.

* * * * *

All completed Exemption Request for Additional Bed Capacity forms should be returned to the State Agency at the following address.

Kansas Department of Health and Environment
Office of Health Planning
6700 South Topeka Avenue, Building 321
Topeka, Kansas 66620

Sponsors whose proposals originate in either Health Service Area II or III should also submit a copy of the completed form to the appropriate health systems agency (see Appendix C for Kansas health service area designations).



APPLICATION FOR A CERTIFICATE OF NEED

This form is to be completed by applicants for a Kansas Certificate of Need, and included as the cover page of all Certificate of Need applications. The Narrative Section of the Certificate of Need application is to be completed in accordance with the information requirements specified in Section Thirteen of the Kansas Certificate of Need Program Manual for Applicants.

This application for a Certificate of Need is made in accordance with provisions of K.S.A. 65-4801 et seq., and procedures adopted by the Kansas Department of Health and Environment. I hereby certify that the statements made in this application are correct to the best of my knowledge and belief.

Signature and Title of Responsible Officer _____ Telephone _____ Date _____

1. Name of Facility, Service, or Project	8. Facility will be operated by: <input type="checkbox"/> Sponsor <input type="checkbox"/> Employed Administrator <input type="checkbox"/> Lessee <input type="checkbox"/> Purchaser <input type="checkbox"/> Other, specify: _____
2. Address (Location) of Project County: _____	9. Estimated Cost of Project: \$ _____ Number of New Beds (net): _____
3. Legal Name of Sponsor	10. Type of Facility: (check all that apply) <input type="checkbox"/> Hospital <input type="checkbox"/> Ambulatory Surgical Facility <input type="checkbox"/> Kidney Disease Treatment Center <input type="checkbox"/> Drug Abuse Treatment Facility <input type="checkbox"/> Alcoholism Treatment Facility <input type="checkbox"/> Intermediate Care Facility <input type="checkbox"/> Intermediate Care Facility for the Mentally Retarded <input type="checkbox"/> Skilled Nursing Facility <input type="checkbox"/> Health Maintenance Organization <input type="checkbox"/> Community Mental Health Center <input type="checkbox"/> Intermediate Personal Care Facility <input type="checkbox"/> Other, specify: _____
4. Address of Sponsor Phone: _____	11. Type of Project: (check all that apply) <input type="checkbox"/> New Facility <input type="checkbox"/> New Equipment <input type="checkbox"/> New Service(s) <input type="checkbox"/> Renovation <input type="checkbox"/> Enlarge Facility <input type="checkbox"/> Replace Equipment <input type="checkbox"/> Replace Facility <input type="checkbox"/> Other, specify: _____
5. This is a: <input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Other, specify: _____ Append copies of pertinent documents showing proof as to type of legal entity.	12. Approximate Date for Commencing Project
6. List names and titles of principal corporation officers. If not incorporated, list names of partners or controlling organization. Append a complete list of the Board of Directors and their affiliations, as well as a list of the members of any consumer or community oriented advisory groups which have been constituted to assist in the planning and/or operation of the proposed facility or service.	13. Approximate Date for Project Completion
7. If incorporated, in which state: _____ Date: _____	14. Medicare Provider # _____
	15. Medicaid Provider # _____

SAMPLE

Send three copies of the completed application to the State Agency at the following address.

Kansas Department of Health and Environment
Office of Health Planning
6700 South Topeka Avenue, Building 321
Topeka, Kansas 66620

Sponsors whose proposals originate in either Health Service Area II or III should also submit to the appropriate health systems agency the number of completed applications requested by that agency (up to 20 copies may be requested). See Appendix C for Kansas health service area designations.

SECTION THIRTEEN
CERTIFICATE OF NEED APPLICATION
NARRATIVE INFORMATION REQUIREMENTS

I. General Guidelines for Completing the Certificate of Need Application

- A. The information requirements for the Narrative Section must be completed in the format in which they are presented. The questions on the following pages should be summarized in order, with the sponsor's response to each item following the summary of the question. Pages should be numbered consecutively.
- B. It is the applicant's responsibility to provide all information necessary to determine whether the review objectives and criteria are met by the project. However, efforts should be made to keep the application concise.
- C. Information supplied should be factual in nature and subject to independent verification. Data sources must be cited and opinions and value judgments should be identified as such.
- D. Only summary data which is necessary for the discussion need appear in the narrative. Extensive supporting data which would tend to interrupt the narrative should be placed in an appendix.
- E. The copy should be continuous (without blank pages) and the material should be readily reproducible.
- F. Applications for Certificates of Need are to include a clear statement with appropriate supporting documentation and evidence regarding each item. If an item is not applicable to the application being prepared, please so state and explain why it does not apply.

II. Project Summary

A. Description of Project

- 1. Describe the service or services to be provided, including at least the following.
 - a. The extent of each proposed service identified by:
 - (1) the space allocated to the service (in square feet);
 - (2) a list of specialized equipment; and/or,
 - (3) the number of units of service (i.e., tests, examinations, procedures, and operations).

- b. A comparison of proposed services with existing services, discussing additions, deletions, or modifications.

B. Description of Sponsor

1. Describe the existing and proposed bed configuration of the facility, including at least the following.
 - a. The current licensed bed capacity.
 - b. The current number of beds which are staffed and ready for use.
 - c. The allocation of licensed and staffed beds by service.
 - d. The proposed changes in:
 - (1) the total bed capacity of the facility; and,
 - (2) the allocation of beds by service.
 - e. Any other proposed modifications of bed use.
2. Provide a brief description of any proposed new construction or remodeling. (Please note that line drawings, as well as a more detailed description, are requested in II.(A).)
3. Describe briefly any components of the proposed project not included in the above categories.

III. Community Need

A. Service Area

Identify the area and the population to be served by this project.

1. A geographical service area must be described and the rationale for its boundaries documented.
2. State and federal population data must be used to describe population trends, age/sex breakdowns, and other characteristics pertinent to the rationale for need.
3. The population to be served should, as appropriate, be defined according to the special needs of:
 - a. patients requiring specialized care (e.g., heart, cancer, kidney, and alcoholism);

- b. subscribers and/or enrollees of a health care plan;
- c. users of a recognized school or theory of medical care; or,
- d. persons belonging to particular religious and/or ethnic groups.

B. Problem

Identify the problem(s) in the community which the services to be provided or affected by the project seek to alleviate or correct. Specify how the project will alleviate the problem(s).

C. Health Care System

1. Identify (by name and mailing address) any existing comparable services within the service area and/or generally utilized by the defined population. Describe any special factors affecting utilization, including accessibility and acceptability. Describe the probable effect of the proposed project on other community resources, and explain how each proposed service will or will not complement existing similar services.
2. Describe the anticipated utilization of the services on which the project is based and the method by which this projection was derived. This should include: evidence of the numbers of persons from the service area population who are now using the services and who will continue to use the services; or evidence of the number of persons who will begin to use services which are not now available, accessible, or acceptable to the service area population. Utilization trends for the past three years should be reported for an existing facility. If a change in utilization is projected, list and explain the factors which will cause the change.
3. State the relevance of the project to changing trends in service delivery and community health service needs for the next ten years.

D. State and Local Health Plans

State the relationship of the project to the State Health Plan, health systems plan, and other local planning efforts.

E. Sponsor's Long-Range Plan

State the relationship of the project to the sponsor's long-range development plan(s). Include a copy of the plan(s) with this application.

F. Special Projects

If the sponsor desires this project to receive consideration as a special project (as described in Criterion I.(F)), describe in detail those aspects of the proposed project which would qualify it for consideration under this category. Special projects listed under Criterion I.(F) are as follows.

1. Those entities which provide a substantial portion of their services and/or resources to individuals not residing within the health service area.
2. Projects which present new and innovative approaches to solving or alleviating specific problems.
3. Biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.
4. Projects proposed by osteopathic facilities.
5. Projects affecting health professional training programs.

G. Other Information

State any other information which may be pertinent to establishing community need for the project.

IV. Quality of Care

A. Facilities

1. Provide a detailed description of both the real property and the tangible assets to be purchased, leased, or constructed.
 - a. Describe the construction site.
 - (1) Include a site plan showing the exact location and relationship to other structures (single line drawing on 8 1/2" x 11" paper).
 - (2) Provide documentation of site ownership or option to lease or purchase site. Show that supportive services such as utilities and sewers are available for use by the facility and are both appropriate and accessible to the site.

- (3) Provide documentation that zoning requirements are, or can be met. State the zoning conditions which currently exist for the proposed site.
 - b. Provide a floor plan of the existing facility and any proposed new construction (single line drawing on 8 1/2" x 11" paper) showing its functional relationship to other services and equipment. Drawings shall also depict current and proposed uses of existing space (if changes are anticipated).
 - c. Provide a detailed timetable for construction and indicate the estimated opening date.
 2. Describe all licensure/certification requirements and document that they are or will be met.
 - a. Identify the license(s) or certification(s) required before the project can become operational. This includes all federal, state, and local licenses or certifications. provide evidence that all such requirements will or can be met.
 - b. For existing facilities, provide evidence that all appropriate licensure and certification standards are being satisfied or that existing deficiencies will be corrected by the project or other planned corrective actions. Attach copies of the following, as applicable.
 - (1) The most recent licensure and Medicare/Medicaid survey report forms.
 - (2) The most recent Joint Commission on Accreditation of Hospitals Accreditation Survey Report.
 - (3) Copies of any plans developed to correct deficiencies identified by these surveys.

B. Equipment

1. List items of equipment costing over \$50,000 or resulting in the provision of a new service. Identify each item by cost, manufacturer(s) and expected delivery time(s).
2. Identify any applicable licensure or certification requirements pertaining to equipment in the proposed project and document that these requirements will be met.

C. Patient Care and Support Personnel

1. Provide a projected inventory of personnel needs including projected salaries. List type and number of professional, technical, and supportive personnel needed both in numbers and in full-time equivalents. Describe method of determining manpower requirements.
2. Provide manpower/patient ratios for medically related programs or services.
3. Identify all sources of manpower and provide evidence that there is sufficient qualified manpower in the area to fulfill the applicant's needs adequately without prejudicing the manpower needs of other existing health care providers in the service area.
4. Describe any manpower training programs (including continuing education) that are either presently active or proposed in the area that will be utilized by the project personnel and, if applicable, the facilities to be used for such training. If specialized staff are required for specialized services, indicate, arrangements made for their training.
5. List the specialties of physicians on the medical staff. For each specialty, indicate: the number of physicians on the staff, their status (e.g., active, courtesy, etc.), and, for physicians who do not base their practice where the project is to be located, the location of their practice and the amount of time they spend in the vicinity of the project.
6. Identify any licensure or certification requirements applicable to numbers and qualifications of patient care and support personnel for the proposed project and document that these requirements will be met.

D. Continuity of Care

Identify existing working relationships with hospitals, nursing homes, and other resources serving the service area population. The discussion should include cooperative planning activities, sharing of services, and transfer agreements. Copies of relevant agreements must be attached.

E. Other Information

State any other information which may be pertinent to establishing the quality of care provided by the project and describe any factors which would result in improved quality of care.

V. Community Support

A. Consumers

Provide evidence that consumer organizations are aware of and support the proposed project. Describe any participation by consumer organizations in the development and design of the project.

B. Providers

Provide evidence that other components of the health industry (including existing health care facilities providing similar services) are aware of and support the proposed project. Describe any participation by provider organizations in the development and design of the project.

C. Local Units of Government

Provide evidence that local units of government are aware of and support the proposed project. Describe any participation by local units of government in the development and design of the project.

D. Other Information

State any other information which may be pertinent to establishing community support for the project.

VI. Financing

A. Capital Resources

1. Project's Estimated Capital Expenditure Budget: State the basis upon which the estimation of the proposed capital expenditure was made and describe inflation factors used in calculating the projected costs.

- a. General Construction . \$ _____
- b. Site Work. \$ _____
- c. Off-Site Work. \$ _____
- d. Total Construction Cost. \$ _____
- e. Architectural and Engineering Costs. . \$ _____
- f. Equipment Costs:
 - (1) Movable. \$ _____

- (2) Fixed \$ _____
- g. Purchase of Land. \$ _____
- h. Other (specify) \$ _____
- i. Total Development Costs
(Lines d. - h.) \$ _____
- j. Interest During Construction Based
on _____ Months at _____% on a
\$ _____ Loan \$ _____
- k. Total Estimated Project Cost. \$ _____
- l. Total Financed. \$ _____
- m. Total Cash Needed \$ _____
- n. Approximate Total Square Feet _____
- o. Costs per Square Foot and per Bed:
 - (1) Total Construction Cost per
Square Foot (Lines d./n.) \$ _____
 - (2) Total Development Cost per
Square Foot (Lines i./n.) \$ _____
 - (3) Total Project Cost per
Square Foot (Lines k./n.) \$ _____
 - (4) Total Project Cost per Bed
(Line k./# beds) \$ _____

- 2. Allocate Total Project Cost (Line k., above) by major department/service or component of the project.
- 3. Attach documentation of preliminary commitments from all sources of capital (loan, bond issue, grant, gifts, etc.) necessary to complete the project. If the project is to be funded with cash on hand, indicate the source of the funds.
- 4. Provide a debt amortization schedule.

B. Financial Feasibility

Evidence that the project is financially feasible shall follow generally accepted accounting principles. The following shall be

submitted for the entire facility and for the proposed project if it involves a revenue-producing service. If the proposed project does not involve a revenue-producing service, submit the following for the entire facility and indicate the effect of the proposed project on Items IV.(B)(1)(b) and (c).

1. A detailed operating budget, capital budget, and cash-flow budget for the three fiscal years following completion of the project. Describe any inflation factors used in calculating the projected budgets.
 - a. Indicate the anticipated period of deficit operation before the facility is utilized at a break-even point.
 - b. Indicate per diem charges and/or charge per unit of service.
 - c. Indicate per diem charge and/or charge per unit of service for debt service and depreciation.
 - d. Indicate projected utilization rates.
2. A detailed operating budget, capital budget, and cash-flow budget for the preceding three fiscal years.
 - a. Indicate per diem charges and/or charge per unit of service.
 - b. Indicate the per diem charge and/or charge per unit of service for debt service and depreciation.
 - c. Indicate actual utilization rates.

C. Other Information

State any other information which may be pertinent to establishing the financial feasibility of the project.

VII. Cost Containment

A. Cost-Effective Alternatives

1. Describe, in depth, the alternatives to the project and evaluate the relative merits of each. Demonstrate that the project, as proposed, is the most effective use of community health care resources among the available alternatives.
2. Describe, in depth, the alternative financial resources available for funding the project and evaluate the relative merits

of each. Demonstrate that the financial resource chosen is the most cost effective among the available alternatives.

3. Describe any design or construction economies which would be utilized in this project and/or any factors which would result in increased efficiency or productivity as a result of the project.
4. Explain any increased use of cost-effective services such as ambulatory care, preventive health care services, and home health care resulting from the project.
5. Describe any cooperative planning achievements that would result from the project.

B. Energy Conservation

Describe all energy conservation measures and considerations utilized in the design of the proposed project.

C. Patient Charges

1. If the project is to be funded with cash on hand, explain the anticipated effect of replenishing these funds on patient charges.
2. Explain the anticipated effect of the project on patient charges of other health care facilities or services in the service area. (Please note that historical and projected patient charges of the sponsor have already been requested under Item IV.(B).)

D. Competition

Describe the anticipated effect of any proposed modification in services on the competition between other health care facilities in the service area.

E. Other Information

State any other information which may be pertinent to establishing the objective of cost containment.

VIII. Accessibility

A. Underserved Persons

1. Identify the patient mix for the preceding three fiscal years and the anticipated patient mix for the three fiscal years

following completion of the project. Specify the percentage of total discharges and patient days by the following reimbursement categories.

- a. Medicare
 - b. Medicaid
 - c. Other Government (specify)
 - d. Commercial Insurance
 - e. Blue Cross/Blue Shield
 - f. Private Pay
 - g. Other (specify)
2. Provide the number and percentage of medically underserved persons (e.g., low income, racial and ethnic minorities, women, handicapped, and elderly) and medically indigent patients served by the sponsor during the past three fiscal years.
 3. Provide the number and percentage of medically underserved persons (e.g., low income, racial and ethnic minorities, women, handicapped, and elderly), Medicare, Medicaid, and medically indigent patients residing in the service area of the project.
 4. Describe the effect of the proposed project on the ability of medically underserved persons (e.g., low income, racial and ethnic minorities, women, handicapped, and elderly), Medicare, Medicaid, and medically indigent patients to obtain the sponsor's services, including:
 - a. appropriate architectural provisions for the handicapped and aged; and,
 - b. special transportation provisions for the handicapped and aged, and/or proximity to public transportation.

B. Federal Obligations

Describe any obligations imposed upon the facility for providing uncompensated care, community service activities, or assuring accessibility of services for minorities and handicapped persons. Document that the facility has and will continue to meet applicable obligations.

C. Range of Access

Describe all mechanisms (e.g., outpatient services, admission by house staff, and admission by personal physician) by which a person can obtain access to the sponsor's services.

D. Other Information

State any other information which may be pertinent to establishing the accessibility of the project.

APPENDICES

KDH&E 9-1-82

APPENDIX A
CERTIFICATE OF NEED LAW

Article 48.—HEALTH FACILITIES

Cross References to Related Sections:

- Adult care homes, licensing, see 39-923 et seq.
Alcoholism treatment facilities, licensing, see 65-4001 et seq.
Drug abuse treatment facilities, licensing, see 65-4601 et seq.
Family planning centers, see 23-501 and 23-502.
Health maintenance organizations, see 40-3201 et seq.
Medical care facilities, licensing, see 65-425 et seq.
Mental health facilities and facilities for the mentally retarded, licensing, see 75-3307b.

65-4301. Definitions. 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. 1980 Supp. 39-927 and K.S.A. 65-428, the department of social and rehabilitation services with reference to facilities licensed pursuant to K.S.A. 1980 Supp. 75-3307b, exclusive of facilities for the mentally retarded, community mental health centers and facilities serving other handicapped persons, and the commissioner of insurance with reference to organizations granted certificates of authority pursuant to K.S.A. 1980 Supp. 40-3204.

(b) "Health facility" means medical care facility as defined in K.S.A. 65-425; psychiatric hospital; health maintenance organization as defined in K.S.A. 1980 Supp. 40-3202; adult care home, which term shall be limited to skilled nursing home, intermediate nursing care home and intermediate personal care home as said terms are defined in K.S.A. 1980 Supp. 39-923; and kidney disease treatment center, including centers not located in a medical care facility.

(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 amendments thereto, 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 state-wide health coordinating council or other agency designated by the governor.

(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 service" means a clinically related service, including, but not limited to, a diagnostic, curative or rehabilitative service, provided in or through a health facility and the entities in or through which such services are provided.

(i) "Person" means the state of Kansas or any political subdivision or instrumentality thereof, any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(j) "To offer" when used in connection with health facility services means that the health facility holds itself out as capable of providing, or as having the means for the provision of, specified health facility services.

(k) "Major medical equipment" means medical equipment which costs in excess of one hundred fifty thousand dollars (\$150,000), except such term shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of an office of a person licensed to practice a branch of the healing arts, is independent of a health facility, and has been determined under title XVIII of the federal social security act to meet the requirements of paragraphs (10) and (11) of subsection (s) of section 1861 of said act (42 U.S.C. 1395x). In determining whether medical equipment has a value in excess of one hundred fifty thousand dollars (\$150,000), the value of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included.

(l) "Health maintenance organization" shall be defined for purposes of this act in the same manner as said term is defined in K.S.A. 1980 Supp. 40-3202.

History: L. 1976, ch. 280, § 1; L. 1977, ch. 224, § 1; L. 1978, ch. 260, § 1; L. 1978, ch. 261, § 1; L. 1979, ch. 191, § 1; L. 1980, ch. 197, § 1; July 1.

CASE ANNOTATIONS

1. Statewide health coordinating council is review agency for issuance of certificates of need, unless governor designates another pursuant to subsection (f) of 65-4801; state corporation commission so designated by Executive Order 78-35. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 332, 597 P.2d 654.

2. Statewide health coordinating council reviewing certificate of need for health facilities is performing quasi-judicial function; fairness requirements specified. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 321, 322, 332, 597 P.2d 654.

3. Certificate of need under this article necessary to meet requirements of 19-18,128; certificate from regional planning agency insufficient. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 340, 341, 342, 597 P.2d 664.

65-4802. Certificate of need required to undertake project. No person shall undertake a project described in K.S.A. 65-4805, or make any arrangement or commitment for financing the offering or development of a project described in K.S.A. 65-4805, unless a certificate of need has been obtained under the provisions of this act.

History: L. 1976, ch. 280, § 2; L. 1978, ch. 260, § 2; L. 1979, ch. 191, § 2; L. 1980, ch. 198, § 1; April 23.

CASE ANNOTATIONS

1. General obligation bonds may not be issued under 19-18,128 prior to proper licensing as required by this section. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 337, 340, 343, 344, 597 P.2d 664.

2. Mentioned in affirming trial court's determination that no certificate of need required for cardiac surgery unit. *State ex rel. Metzler v. St. Francis Hosp. & Medical Center*, 227 K. 53, 55, 605 P.2d 100.

65-4803. Applications for certain new licenses to include certificate of need; forms. (a) Except as otherwise provided in subsection (d) of K.S.A. 65-4805 and in this subsection, an application to the licensing agency for a new license which is not the renewal of a valid license shall include a certificate of need issued by the state agency. The provisions of this subsection (a) shall not apply to an application to the licensing agency for a new license solely because of the transfer of ownership of an existing health facility.

(b) 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 K.S.A. 65-4805 shall include a certificate of need issued by the state agency.

(c) The certificate of need forms shall be developed by the state agency.

History: L. 1976, ch. 280, § 3; L. 1978, ch. 260, § 3; L. 1979, ch. 191, § 3; L. 1980, ch. 197, § 2; July 1.

CASE ANNOTATIONS

1. Application for license must include a certificate of need. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 340, 343, 597 P.2d 664.

65-4804. Review of project proposal prerequisite to granting certificate; finding of need. 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 K.S.A. 65-4807, and the state agency has determined that, on the basis of evidence in the record with respect to community need as reflected in the state health plan or other criteria specified by the statewide health coordinating council until a state health plan is developed and approved, there is a sufficient need for the proposed project.

History: L. 1976, ch. 280, § 4; L. 1979, ch. 191, § 4; July 1.

65-4805. Projects requiring certificate of need before undertaking; "capital expenditure" defined; estimated costs, application; exempting certain HMO's from certificate of need requirements. (a) Except as otherwise provided in subsection (d), projects requiring a certificate of need before they are undertaken include, and shall be limited to, the following:

(1) The construction, development or other establishment of a new health facility.

(2) The construction, development or other establishment of additional bed capacity in a health facility.

(3) The offering of a health facility service which was not offered on a regular basis within the twelve-month period prior to the time such service is proposed to be offered.

(4) Any capital expenditure, as defined in subsection (b), made by or on behalf of a health facility; community mental health center required to be licensed pursuant to K.S.A. 1980 Supp. 75-3307b, treatment facility for drug abusers required to be licensed pursuant to K.S.A. 65-4601, or a treatment facility for alcoholics required to be licensed pursuant to K.S.A. 65-4012, except that this subsection (a)(4) shall not apply to expenditures solely for: (i) site acquisitions; or (ii) the termination or reduc-

tion of beds or services which previously had been provided in the facility.

(5) An acquisition made by or on behalf of a health facility under lease or comparable arrangement, or through donation, which would have required a certificate of need if the acquisition had been by purchase.

(6) Any expenditures made by or on behalf of a health facility in excess of one hundred fifty thousand dollars (\$150,000) in preparation for the offering or development of a project which would require a certificate of need under this subsection (a).

(7) The permanent redistribution of bed capacity among different licensure categories in a health facility, except for any redistribution resulting from a decision of the state agency which is responsible for certification under title XIX of the federal social security act.

(8) The acquisition of major medical equipment by any person, if such equipment will be used to provide health facility services to persons admitted to a health facility.

(b) As used in this section, "capital expenditure" means 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.

(c) Where the estimated costs of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is certified and filed with the state agency, within sixty (60) days before 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 costs of such project. If the state agency finds the estimate to be substantially

in error and that the project will cost in excess of one hundred fifty thousand dollars (\$150,000), the state agency may require that a certificate of need be obtained. 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 the health facility becomes aware that the actual cost for the proposed project will exceed such amount.

(d) Consistent with the provisions of subsection (b) of section 117 of the act of Congress entitled, "planning and resources development amendments of 1979" (Pub. L. 96-79), the state agency shall develop and adopt rules and regulations for the purpose of exempting certain health maintenance organizations from the requirements of obtaining certificates of need pursuant to K.S.A. 65-4801 *et seq.*; and amendments thereto, for those instances specified in subsection (b) of said section 117.

History: L. 1976, ch. 280, § 5; L. 1978, ch. 260, § 4; L. 1979, ch. 191, § 5; L. 1980, ch. 197, § 3; July 1.

CASE ANNOTATIONS

1. Construed; no certificate of need required for proposed cardiac surgery unit; estimated costs certified below statutory limit. *State ex rel. Metzler v. St. Francis Hosp. & Medical Center*, 227 K. 53, 55, 56, 57, 58, 605 P.2d 100.

65-4806. Submission of certificates of need applications; adoption of regulations; establishment of review cycles; contents of application; public document; copies; amendment or withdrawal; notice of filing. (a) Applicants who are required to apply for a certificate of need under K.S.A. 65-4805 shall submit an 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. The state agency shall adopt rules and regulations establishing review cycles for the efficient management of applications for certificates of need. Applications for certificates of need shall be submitted to the state agency only during such times as are prescribed in rules and regulations establishing review cycles.

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

(6) Projected staffing of the service.

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

(8) 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.

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

(c) 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 fee established by the state agency or the health systems agency in an amount approved by the director of accounts and reports under K.S.A. 1980 Supp. 45-204. 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.

(d) 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 incom-

plete 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.

History: L. 1976, ch. 280, § 6; L. 1978, ch. 347, § 13; L. 1980, ch. 198, § 2; April 23.

65-4807. Review of application by health systems agency; finding and recommendations to state agency. 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 record of the review proceedings, findings and recommendations to the state agency within sixty (60) days of the receipt of the completed application.

History: L. 1976, ch. 280, § 7; L. 1978, ch. 260, § 5; L. 1979, ch. 191, § 6; July 1.

CASE ANNOTATIONS

1. Applications reviewed and report made thereon to secretary of health and environment. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 322, 597 P.2d 654.

65-4808. State agency review of application; public hearings; approval, modification or denial; effect of failure to act; notice to health systems agencies of differences; reconsideration. (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. The state agency may conduct public hearings in the course of review of applications if the state agency determines that a public hearing is necessary for good cause shown, as defined in rules and regulations adopted by the state agency.

(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 disapproved 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.

(d) The state agency may adopt rules and regulations which establish procedures for reconsideration by the state agency of a state agency decision under subsections (a) or (b).

(e) The state agency's decision under subsections (a) or (b) shall constitute the final decision of the state agency under this section unless reconsideration of the state agency decision is undertaken pursuant to subsection (d). If such reconsideration is undertaken, the state agency's decision under subsection (d) shall constitute the final decision of the state agency under this section.

History: L. 1976, ch. 280, § 8; L. 1978, ch. 260, § 6; L. 1979, ch. 191, § 7; July 1.

CASE ANNOTATIONS

1. Secretary of health and environment makes decision on issuance of certificates of need for health facilities and conditions thereon. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 322, 597 P.2d 654.

65-4809. Effective date of final decision; hearing, when; stay of decision pending hearing and entry of final decision. Any final decision of the state agency issued pursuant to K.S.A. 65-4808, 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 by the review agency 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 by the appropriate health systems agency shall operate to suspend and stay the state agency's certificate of need decision pending the hearing and entry of a final decision by the review agency.

History: L. 1976, ch. 280, § 9; L. 1979, ch. 191, § 8; July 1.

CASE ANNOTATIONS

1. Statewide health coordinating council is review agency for issuance of certificates of need, unless governor designates another pursuant to subsection (f) of 65-4801; state corporation commission so designated by Executive Order 78-35. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 322, 325, 332, 597 P.2d 654.

2. Cited; taxpayers had standing to challenge issuance of general obligation bonds under 19-18,128 in absence of proper certificate of need. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 337, 597 P.2d 664.

65-4810. Hearing within 30 days of request or protest; place of hearing; notice, contents. As soon as a written request for a hearing on a final decision issued pursuant to K.S.A. 65-4808, 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 a reasonable time but not more than thirty (30) days of the date the request for hearing or protest was received. The place of hearing shall be within the affected health service area 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.

History: L. 1976, ch. 280, § 10; L. 1979, ch. 191, § 9; July 1.

CASE ANNOTATIONS

1. Procedure set forth in this section is consistent with due process; determination is quasi-judicial. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 329, 597 P.2d 654.

65-4811. Parties to review proceedings. Parties to the review proceedings shall be the applicant, the state agency, the health systems agency filing a written protest or requesting to be a party to a hearing requested by another party and the potentially adversely affected health facility filing a written request for a hearing or requesting to be a party to a hearing requested by another party.

History: L. 1976, ch. 280, § 11; L. 1978, ch. 260, § 7; July 1.

CASE ANNOTATIONS

1. "Potentially adversely affected health facility" construed; proper parties for appeal determined. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 325, 326, 597 P.2d 654.

65-4812. Hearing held by review agency or hearing officer; hearing on record and not *de novo*; location of hearing; administration of oaths or affirmations. The hearing may be held by the review agency or a hearing officer, as ordered by the review agency. The hearing shall be on the record and shall not be a *de novo* hearing. Every hearing shall be held within the affected health service area 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.

History: L. 1976, ch. 280, § 12; L. 1979, ch. 191, § 10; July 1.

CASE ANNOTATIONS

1. Hearing officer appointed to conduct hearing. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 323, 597 P.2d 654.

65-4813. Conduct of hearing; right to counsel; depositions; transcripts; costs. (a) At every hearing conducted pursuant to K.S.A. 65-4812, each party shall have the right to be represented by counsel.

(b) Depositions shall be taken in the manner prescribed by law for the taking of depositions in civil actions in district courts of this state.

(c) A transcript of the hearing shall be available upon request to anyone 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.

(d) The costs of the hearing shall be taxed as such costs would be taxed in a district court of this state.

History: L. 1976, ch. 280, § 13; L. 1979, ch. 191, § 11; July 1.

65-4814. Decisions; contents; copies to parties; effective date; approval upon failure of review agency to act. (a) The decision of the review agency shall set forth the findings of fact and a determination of the issue presented and may approve or disapprove the decision of the state agency. Any decision of the review agency directing the state agency to issue 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 K.S.A. 65-4812.

(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 issue a decision within sixty (60) days of the close of the hearing, the decision of the state agency shall be deemed approved.

History: L. 1976, ch. 280, § 14; L. 1978, ch. 260, § 8; L. 1979, ch. 191, § 12; July 1.

65-4815. Approval final, when appeal rights exhausted; certificate of need; termination of approval, when; revocation of certificate of need, procedure. (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 has approved an application without modification or approved an application subject to modification becomes 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, modernization 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.

(c) A certificate of need may be revoked by the state agency if the state agency, after giving notice to the person issued the certificate of need and after a hearing, finds that the application for the certificate of need or the supporting documents submitted by or at the request of the person issued the certificate of need contained false or misleading statements or misrepresented material facts. The state agency shall prescribe by rules and regulations the procedure for the issuance of notice and the conduct of hearings under this subsection (c). The hearing shall be conducted by the state agency or by a hearing officer appointed by the state agency to conduct the hearing. The state agency or the hearing officer shall have authority to subpoena witnesses, administer oaths, take testimony and make rulings relating to the conduct of the hearing and the admissibility of evidence at the hearing. The decision of the state agency shall be in writing and shall specify the findings of facts and conclusions of law upon which the decision is based.

History: L. 1976, ch. 280, § 15; L. 1979, ch. 191, § 13; July 1.

CASE ANNOTATIONS

1. Certificate of need cannot be extended for more than one year beyond initial period of approval; litigation does not toll statute. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 336, 343, 597 P.2d 664.

65-4816. Appeal of review agency decision to district court; jurisdiction of court; notice of appeal; record filed with clerk of court. Any party to the hearing under K.S.A. 65-4812 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 one of such counties. The district court shall have the jurisdiction to affirm, modify, vacate or reverse the decision of the review agency 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 K.S.A. 65-4812 within ten (10) days thereafter. The review agency, within twenty (20) days after being served, shall file with the clerk of the district court the record upon which the review agency based its decision.

History: L. 1976, ch. 280, § 16; L. 1978, ch. 260, § 9; July 1.

CASE ANNOTATIONS

1. "Potentially adversely affected health facility" construed; proper parties for appeal determined. *Suburban Medical Center v. Olathe Community Hosp.*, 226 K. 320, 326, 332, 597 P.2d 654.

65-4817. Replacement or repair of certain depreciable assets with certificate of need. 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.

History: L. 1976, ch. 280, § 17; July 1.

65-4818. Act inapplicable to certain projects. This act shall not apply to any health facility project undertaken prior to the effective date of this act for which a certificate of need was not required at the time such project was undertaken or to a health facility project granted a certificate of need prior to the effective date of this act, except that the provisions of subsection (b) of K.S.A. 65-4815 shall apply to any health facility project 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.

History: L. 1976, ch. 280, § 18; July 1.

CASE ANNOTATIONS

1. Cited in review of procedure for issuance of bonds for hospital under 19-18,128. *Pratt v. Board of Thomas County Comm'rs*, 226 K. 333, 340, 341, 342, 597 P.2d 664.

65-4819. Act inapplicable to facilities owned or operated by federal government. This act shall not apply to any health facility that is owned or operated by the United States government.

History: L. 1976, ch. 280, § 19; L. 1978, ch. 260, § 10; July 1.

65-4820. Action to enjoin undertaking project. The state agency may file a civil action to enjoin: (a) Any person from undertaking a project described in K.S.A. 65-4805 as requiring a certificate of need unless a certificate of need has been granted under this act; or (b) any person from undertaking or continuing a project for which a certificate of need has been granted which significantly differs from the project for which

the certificate of need was granted originally; or (c) any person from undertaking or continuing a project for which a certificate of need has been revoked pursuant to subsection (c) of K.S.A. 65-4815.

History: L. 1976, ch. 280, § 20; L. 1979, ch. 191, § 14; July 1.

CASE ANNOTATIONS.

1. No error by trial court in not issuing injunction hereunder; no certificate of need required. *State ex rel. Metzler v. St. Francis Hosp. & Medical Center*, 227 K. 53, 55, 57, 605 P.2d 100.

65-4821. Rules and regulations. (a) The state agency, as such term is defined in K.S.A. 65-4801, may adopt rules and regulations as are necessary to implement and administer the provisions of K.S.A. 65-4801 to 65-4820, inclusive, and acts amendatory thereof and supplemental thereto.

(b) Any rules and regulations adopted by the state agency prior to the effective date of this act to implement and administer the provisions of K.S.A. 65-4801 to 65-4820, inclusive, shall remain in full force and effect until amended, modified, suspended, revoked or nullified pursuant to law.

History: L. 1980, ch. 198, § 3; April 23.

AMENDMENTS TO K.S.A. 65-4801, et seq., PASSED BY THE 1982 LEGISLATURE

CHAPTER 272

House Bill No. 2750

AN ACT relating to health facilities; concerning certificates of need for such facilities; providing for the expiration of the act; amending K.S.A. 65-4801, 65-4805, 65-4808, 65-4809, 65-4811, 65-4815 and 65-4816 and repealing the existing sections; also repealing K.S.A. 65-4810, 65-4812 and 65-4813.

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

Section 1. K.S.A. 65-4801 is hereby amended to read as follows: 65-4801. 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. 1980 Supp. 39-927 and K.S.A. 65-428, and the department of social and rehabilitation services with reference to facilities licensed pursuant to K.S.A. 1980 1981 Supp. 75-3307b, exclusive of facilities for the mentally retarded, community mental health centers and facilities serving other handicapped persons; and the commissioner of insurance with reference to organizations granted certificates of authority pursuant to K.S.A. 1980 Supp. 40-3204.

(b) "Health facility" means a medical care facility as defined in K.S.A. 65-425; psychiatric hospital; health maintenance organization as defined in K.S.A. 1980 Supp. 40-3202; adult care home, which term shall be limited to skilled nursing home, intermediate nursing care home and intermediate personal care home as said such terms are defined in K.S.A. 1980 Supp. 39-923; and kidney disease treatment center, including centers not located in a medical care facility.

(c) "State agency" means the secretary of the department 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 amendments thereto, 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 or other agency designated by the governor.

(g) (f) "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) (g) "Health facility service" means a clinically related service, including, but not limited to, a diagnostic, curative or rehabilitative service, provided in or through a health facility and the entities in or through which such services are provided.

(i) (h) "Person" means the state of Kansas or any political subdivision or instrumentality thereof, any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(j) (i) "To offer" when used in connection with health facility services means that the health facility holds itself out as capable of providing, or as having the means for the provision of, specified health facility services.

~~(k)~~ (j) "Major medical equipment" means medical equipment which costs in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ \$400,000, except such term shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of an office of a person licensed to practice a branch of the healing arts, is independent of a health facility, and has been determined under title XVIII of the federal social security act to meet the requirements of paragraphs (10) and (11) of subsection (s) of section 1861 of ~~said such~~ act (42 U.S.C. 1395x). In determining whether medical equipment has a value in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ \$400,000, the value of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included.

~~(k)~~ (k) "Health maintenance organization" shall be defined for purposes of this act in the same manner as said term is defined in K.S.A. 1980 Supp. 40-3202.

Sec. 2. K.S.A. 65-4805 is hereby amended to read as follows: 65-4805. (a) Except as otherwise provided in subsection (d), projects requiring a certificate of need before they are undertaken include, and shall be limited to, the following:

(1) The construction, development or other establishment of a new health facility.

(2) The construction, development or other establishment of additional bed capacity in a health facility, *except the state agency may exempt projects for additions of 10 beds or 10% of the health facility's licensed beds, whichever is less. Such exemption shall be limited to projects proposed in any two-year period.*

(3) The offering of a health facility service *having an estimated annual operating budget of more than \$250,000 and which was not offered on a regular basis within the twelve-month period prior to the time such service is proposed to be offered.*

(4) Any capital expenditure, as defined in subsection (b), made by or on behalf of a health facility, community mental health center required to be licensed pursuant to K.S.A. ~~1980~~ 1981 Supp. 75-3307b *and amendments thereto*, treatment facility for drug abusers required to be licensed pursuant to K.S.A. 65-4601 *and amendments thereto*, or a treatment facility for alcoholics required to be licensed pursuant to K.S.A. 65-4012 *and amendments thereto*, except that this subsection (a)(4) shall not apply to expenditures solely for: (i) Site acquisitions; or (ii) the termination or reduction of beds or services which previously had been provided in the facility.

(5) An acquisition made by or on behalf of a health facility under lease or comparable arrangement, or through donation, which would have required a certificate of need if the acquisition had been by purchase.

(6) Any expenditure made by or on behalf of a health facility in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ \$600,000 in preparation for the offering or development of a project which would require a certificate of need under this subsection (a).

(7) The permanent redistribution of bed capacity among different licensure categories in a health facility, except for any redistribution resulting from a decision of the state agency which is responsible for certification under title XIX of the federal social security act.

(8) The acquisition of major medical equipment by any person, if such equipment will be used to provide health facility services to persons admitted to a health facility.

(b) As used in this section, "capital expenditure" means 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)~~ \$600,000. 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.

(c) Where the estimated costs of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is certified and filed with the state agency, within ~~sixty~~ (60) 60 days before the date on which the obligation for such expenditure is incurred, by a registered architect or, licensed professional engineer or a certified public accountant to be ~~one hundred fifty thousand dollars (\$150,000)~~ or less than the amounts specified in subsection (j) of K.S.A. 65-4801 and amendments thereto, and subsections (a)(3), (a)(6) and (b) of K.S.A. 65-4805 and amendments thereto, such expenditure shall be deemed not to exceed ~~one hundred fifty thousand dollars (\$150,000)~~ such amounts regardless of the actual costs of such project. If the state agency finds the estimate to be substantially in error and that the project will cost in excess of ~~one hundred fifty thousand dollars (\$150,000)~~ such amounts, the state agency may require that a certificate of need be obtained. Where the actual cost of the project exceeds ~~one hundred fifty thousand dollars (\$150,000)~~ such amounts, 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) 30 days after the date on which the health facility becomes aware that the actual cost for the proposed project will exceed such amount.

(d) Consistent with the provisions of subsection (b) of section 117 of the act of Congress entitled, "planning and resources development amendments of 1979" (Pub. L. 96-79), the state agency shall develop and adopt rules and regulations for the purpose of exempting certain health maintenance organizations from the requirements of obtaining certificates of need pursuant to K.S.A. 65-4801 *et seq.*, and amendments thereto, for those instances specified in subsection (b) of said such section 117.

Sec. 3. K.S.A. 65-4808 is hereby amended to read as follows: 65-4808. (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) 90 days of receipt of the completed application. The state agency may con-

duct public hearings in the course of review of applications if the state agency determines that a public hearing is necessary for good cause shown, as defined in rules and regulations adopted by the state agency.

(b) If the state agency does not issue its decision within ~~ninety (90)~~ 90 days after the receipt of a completed application, it shall be deemed that the state agency has disapproved the application for a certificate of need. ~~the applicant may bring an action in the appropriate state court to require the state agency to approve or disapprove the application.~~

(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.

(d) The state agency may adopt rules and regulations which establish procedures for reconsideration by the state agency of a state agency decision under subsections (a) or (b).

(e) The state agency's decision under subsections (a) or (b) shall constitute the final decision of the state agency under this section unless reconsideration of the state agency decision is undertaken pursuant to subsection (d). If such reconsideration is undertaken, the state agency's decision under subsection (d) shall constitute the final decision of the state agency under this section.

Sec. 4. K.S.A. 65-4809 is hereby amended to read as follows: 65-4809. Any final decision of the state agency issued pursuant to K.S.A. 65-4808 *and amendments thereto*, shall take effect ~~thirty (30)~~ 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, a health systems agency with the review agency requesting a hearing by the review agency or a health facility which believes its interests are adversely affected by the decision requests in writing a hearing by the review agency *duly appeals such decision in accordance with K.S.A. 65-4816 and amendments thereto.*

~~The applicant's or health facility's written request for a hearing or the filing of a written protest by the appropriate health systems agency. Such appeal shall operate to suspend and stay the state agency's certificate of need decision pending the hearing and entry of a final decision by the review agency disposition of the appeal.~~

Sec. 5. K.S.A. 65-4811 is hereby amended to read as follows: 65-4811. Parties to the review *any appeal* proceedings shall be limited to the applicant, the state agency, the health systems agency filing a written protest or requesting to be a party to a hearing requested by another party and the potentially and the potentially adversely affected health facility filing a written request for a hearing or requesting to be a party to a hearing requested by another party.

Sec. 6. K.S.A. 65-4815 is hereby amended to read as follows: 65-4815. (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 has approved an application without modification

or, approved an application subject to modification or approved an application in accordance with subsection (b) of K.S.A. 65-4808 and amendments thereto, becomes final, the state agency shall issue a certificate of need to the applicant.

(b) Approval shall terminate ~~twelve (12)~~ 12 months after the date of such approval unless the applicant has commenced construction, modernization 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)~~ 12 months upon the showing of good cause for the extension.

(c) A certificate of need may be revoked by the state agency if the state agency, after giving notice to the person issued the certificate of need and after a hearing, finds that the application for the certificate of need or the supporting documents submitted by or at the request of the person issued the certificate of need contained false or misleading statements or misrepresented material facts. The state agency shall prescribe by rules and regulations the procedure for the issuance of notice and the conduct of hearings under this subsection (c). The hearing shall be conducted by the state agency or by a hearing officer appointed by the state agency to conduct the hearing. The state agency or the hearing officer shall have authority to subpoena witnesses, administer oaths, take testimony and make rulings relating to the conduct of the hearing and the admissibility of evidence at the hearing. The decision of the state agency shall be in writing and shall specify the findings of facts and conclusions of law upon which the decision is based.

Sec. 7. K.S.A. 65-4816 is hereby amended to read as follows: 65-4816. Any party to the hearing under K.S.A. ~~65-4812~~ specified under K.S.A. 65-4811 and amendments thereto, may appeal the decision of the ~~review~~ state 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 one of such counties. The district court shall have the jurisdiction to affirm, ~~modify~~, vacate or reverse the decision of the ~~review~~ state agency being appealed. Notice of ~~said~~ such 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 K.S.A. 65-4812 within ten ~~(10)~~ 10 days thereafter. The ~~review~~ state agency, within ~~twenty (20)~~ 20 days after being served, shall file with the clerk of the district court the record upon which the ~~review~~ state agency based its decision.

New Sec. 8. The provisions of K.S.A. 65-4801 to 65-4821, inclusive, and amendments thereto, shall expire on July 1, 1983.

Sec. 9. K.S.A. 65-4801, 65-4805, 65-4808 to 65-4813, inclusive, 65-4815 and 65-4816 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

APPENDIX B
KANSAS CERTIFICATE OF NEED PROGRAM REGULATIONS

K.A.R. 28-42-1: Definitions:

- a. Sponsor
- b. Predevelopment Activities
- c. Directly Affected Persons
- d. Permanent Redistribution of Bed Capacity
- e. Physical Construction
- f. Schematic Phase
- g. Design Development Phase
- h. Estimated Project Cost
- i. Final Project Cost

K.A.R. 28-42-2: Reserved for future use.

K.A.R. 28-42-3: Notification Before Application

K.A.R. 28-42-4: Conference Before Application

K.A.R. 28-42-5: Application for Certificate

K.A.R. 28-42-6: Public Hearing Requirements

K.A.R. 28-42-7: Review by State Agency

K.A.R. 28-42-8: Reserved for future use.

K.A.R. 28-42-9: Reconsideration of a State Agency Decision

K.A.R. 28-42-10: Exemptions for Health Maintenance Organizations

K.A.R. 28-42-11: Progress Reports

K.A.R. 28-42-12: Commencement of Construction

K.A.R. 28-42-13: Extensions of a Certificate of Need

K.A.R. 28-42-14: Transferability of Certificate

K.A.R. 28-42-15: Substantial Compliance with Certificate of Need Authority

K.A.R. 28-42-16: Revocation of a Certificate

28-42-1. Definitions. (a) "Sponsor" means a person who notifies the state agency of his or her intent to undertake a project which requires a certificate of need, or a person who submits an application for a certificate of need.

(b) "Predevelopment activities" means those activities in preparation for the offering or development of a project which requires a certificate of need, including architectural designs, plans, working drawings, and specifications.

(c) "Directly affected persons" means the sponsor, the health systems agency serving the area in which the proposed project is to be located, health systems agencies serving contiguous areas, members of the public who shall be served by the proposed project, health facilities located in the health service area of the proposed project which provide services similar to those of the proposed project, health facilities which have notified the state agency formally of an intention to provide similar services in the future, and any agency which establishes rates for health facilities in the health service area of the proposed project.

(d) "Permanent redistribution of bed capacity" means a health facility's conversion from one licensure category to another, of more than ten (10) beds or ten percent (10%) of its total bed capacity, whichever is less, for a period of over ninety (90) days.

(e) "Physical construction" means in the case of a new health facility or lateral additions to an existing health facility, the excavation for the foundation, or installation of foundation forms, pilings, or footings by the contractor. In the case of vertical additions to an existing health facility, "physical construction" means the construction of the structural framework by the contractor, and in the case of renovation or alteration of an existing health facility, "physical construction" means installation of fixtures in an unfinished area, or removal of existing fixtures in an area in preparation for new construction by the contractor.

(f) "Schematic phase" means that phase of a construction project during which studies consisting of drawings and other documents illustrating the scale and relationship of project components are developed.

(g) "Design development phase" means that phase of a construction project during which drawings and other documents are produced which fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials and such other essentials as may be appropriate.

(h) "Estimated project cost" means: (1) in the case of a construction project, the total project cost as certified by a registered architect or licensed professional engineer during the schematic phase of architectural development; or

(2) in the case of a project which consists solely of equipment purchases, a certified estimate of cost from the vendor of the equipment.

(i) "Final project cost" means: (1) in the case of a construction project, the total project cost as certified by a registered architect or licensed professional engineer at the design development phase; or

(2) in the case of a project which consists solely of equipment purchases, the total cost of the equipment as specified in the purchase agreement. (Authorized by K.S.A. 65-4704, 65-4805, 65-4806, 65-4808, 65-4815,

65-4821; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, November 12, 1980; amended May 1, 1981.)

28-42-2. (Reserved for future use.)

28-42-3. Notification before application. Any person who intends to undertake any project which may require a certificate of need shall notify the state agency of that intent before he or she submits an application for a certificate. The state agency shall be notified at least thirty (30) days before the person submits an application according to procedures adopted by the state agency. The state agency shall then determine whether the project requires a certificate of need. If the applicant does not submit an application within six (6) months of notifying the state agency, notification may be withdrawn. (Authorized by K.S.A. 65-4806 and 65-4821; effective May 1, 1979; amended, E-81-34, November 12, 1980; amended May 1, 1981.)

28-42-4. Conference before application. After a sponsor has notified the state agency of his or her intent to undertake a project which may require a certificate of need, and the state agency has determined that a certificate of need is required, the sponsor shall schedule a conference with the health systems agency. The purpose of the conference shall be to provide the sponsor with technical assistance in preparing the application and to review with the sponsor the plans, criteria, and procedures applicable to the proposed project. The health systems agency shall promptly inform the state agency by letter of the issues discussed and results of the conference. The conference shall be held before the sponsor submits an application for a certificate of need. (Authorized by K.S.A. 65-4806; effective May 1, 1979.)

28-42-5. Application for certificate. (a) There shall be twelve (12) application cycles. A cycle shall begin on the second Monday of each month and only those applications submitted in triplicate to both the state agency and in the requested number (not to exceed twenty (20) copies) to the appropriate health systems agency by that date shall be considered by the state agency during that particular application cycle. The state agency shall review each application to determine if it is complete and shall notify the sponsor by the fifteenth day of the applicable application cycle of whether the application is complete. If so, the application shall be filed on the fifteenth day of the applicable application cycle. If the application is incomplete, however, the state agency shall notify the sponsor of the additional information needed to complete the application. Incomplete applications will be reviewed again during the application cycle commencing after the date upon which the information needed to complete the application is submitted.

(b) If after three (3) months, the sponsor has not responded to the state agency's request for additional information, the state agency may notify the sponsor that the application is considered withdrawn.

(c) The state agency shall not accept for review an application for a certificate of need for a project which was previously denied unless the appeal process relating to the denial has been exhausted.

(d) All completed applications reviewed in the same cycle which pertain to similar types of services, facilities, or equipment affecting the same health service area as determined by the state agency, shall be considered in relation to each other. (Authorized by K.S.A. 65-4704, 65-4806, 65-4808, 65-4821; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, November 12, 1980; amended May 1, 1981.)

28-42-6. Public hearing requirements. At every public hearing conducted by a health systems agency or the state agency: (a) The hearing shall be recorded by a certified shorthand reporter who shall also administer oaths and affirmations.

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

(c) Any person desiring to be heard shall be afforded an opportunity to submit, either orally or in writing, as directed by the hearing officer, any information which is relevant to the hearing.

(d) The sponsor, representatives of the health systems agency, representatives of potentially adversely affected health facilities, and the hearing officer may direct relevant questions to any person who testifies at the hearing.

(e) Written evidence shall become part of the record if it is identified, offered, and accepted as an exhibit. (Authorized by K.S.A. 65-4704, 65-4804, 65-4808; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980.)

28-42-7. Review by state agency. (a) The health systems agency shall submit its record to the state agency, which record shall consist of at least the following: (1) if a public hearing is held, (A) a transcribed copy of the public hearing proceedings prepared by a certified shorthand reporter, along with a statement indicating the cost of transcribing the record, which cost shall be paid by the state agency;

(B) a summary of the hearing which specifies who testified and any exhibits introduced, identified, and accepted;

(C) any written arguments or briefs submitted to the health systems agency by any directly affected person. Such documents shall be delivered, within three (3) days of its delivery to the health systems agency, to the sponsor and any potentially adversely affected health facilities, representatives of which appeared at the public hearing;

(D) the health systems agency's findings of fact regarding each review objective and criterion, established by the statewide health coordinating council, and its recommendation concerning the project;

(E) a certified statement that the review complied with all relevant statutes and regulations and that documentation of such compliance is available; or

(2) if a public hearing is not held, subparts (C), (D), and (E) of section (1), the health systems agency's analysis of the project, and any written response by the sponsor to the health systems agency's analysis.

(b) In rendering its decision, the state agency shall consider evidence contained in the application, record of the public hearing, if one is held, written arguments or briefs, and the health systems agency's findings of fact and recommendations.

(c) If a public hearing is not held by the health systems agency, the state agency shall consider evidence contained in the application, the health systems agency's analysis of the proposed project, any response by the sponsor to the health systems agency's analysis, any written comments submitted to the health systems agency, and the health systems agency's findings of fact and recommendations.

(d) The state agency may find that there is good cause shown for conducting a public hearing if: (1) significant, relevant information is not included in the record submitted by the health systems agency; or

(2) there have been significant changes in the factors or circumstances reflected in the record submitted by the health systems agency; or

(3) the health systems agency materially failed to follow established procedures in compiling the information submitted to the state agency; or

(4) the state agency determines there are other bases which constitute good cause for conducting a public hearing.

(e) Any evidence presented to the state agency relating to cause for holding a public hearing shall be submitted on or before the seventieth (70th) day following the date upon which the application was filed.

(f) If the state agency conducts a public hearing based upon any of the reasons stated in subsection (d), the complete transcript of that hearing shall become part of the record upon which the state agency renders its decision, and the state agency shall render its decision within ninety (90) days of the date upon which the application was filed. (Authorized by K.S.A. 65-4704, 65-4807, 65-4808; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980.)

28-42-8. (Reserved for future use.)

28-42-9. Reconsideration of a state agency decision. (a) Any person may request the state agency to reconsider its decision. Requests for reconsideration shall be received by the state agency no later than fifteen (15) days after the date of the state agency decision and shall be granted only upon good cause shown therefor.

(b) The state agency may find good cause for reconsideration of its decision if a request for reconsideration: (1) presents significant, relevant information not previously considered by the state agency;

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;

(3) demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or

(4) states other grounds which the state agency determines to constitute good cause shown.

(c) If the state agency finds that good cause has been shown, it shall conduct a public hearing for reconsideration of the decision. The hearing shall commence within thirty (30) days of the receipt of the request for a reconsideration and the state agency shall render its decision upon reconsideration within forty-five (45) days of the hearing.

(d) The state agency shall provide written notification of the hearing to the person requesting the hearing, the sponsor, the health systems agency which reviewed the project, and others upon request. (Authorized by K.S.A.

65-4704 and 65-4808; effective E-81-7, March 12, 1980; effective May 1, 1980.)

28-42-10. Exemptions for health maintenance organizations. (a) Projects specified in K.S.A. 65-4805(a)(1) shall not be reviewed for certificates of need if exemption requests are filed with and approved by the state agency and the state agency determines the sponsors to be health maintenance organizations.

(b) Projects specified in K.S.A. 65-4805(a)(2) to 65-4805(a)(8) shall not be reviewed for certificates of need if exemption requests are filed with and approved by the state agency and the state agency determines the sponsors to be: (1) a health maintenance organization or a combination of health maintenance organizations which, (A) have in their service areas enrollments of at least fifty thousand (50,000) individuals;

(B) shall offer the services in locations which are reasonably accessible to the enrolled populations; and

(C) demonstrate that at least seventy-five percent (75%) of those who shall receive the services shall be enrollees of the health maintenance organizations; or

(2) health facilities which are or shall be controlled by health maintenance organizations meeting the conditions set forth in (A), (B), and (C) of (b)(1) of this regulation; or

(3) health facilities or portions of health facilities which are or shall be leased to health maintenance organizations meeting the conditions set forth in (A), (B), and (C) of (b)(1) of this regulation and which have at least fifteen (15) years remaining in the term of the lease.

(c) Facilities or equipment receiving exemptions pursuant to paragraph (b) of this regulation shall not be sold or leased, nor shall control or use of these assets be transferred to any other organizations unless: (1) the state agency issues certificates of need approving their sale, lease, or acquisition; or

(2) the state agency grants exemptions pursuant to paragraph (b) of this regulation.

(d) Certificate of need applications submitted by health maintenance organizations or by health care facilities controlled or leased by health maintenance organizations for projects which are not exempt from review shall be approved by the state agency if it is determined that: (1) the proposed projects are required to meet the needs of the members of the health maintenance organizations and of the new members which such organizations can be reasonably expected to enroll; and

(2) the health maintenance organizations are unable to provide, through services or facilities which can be reasonably expected to be available to the organizations, their health facility services in a reasonable and cost-effective manner which is consistent with the basic methods of operation of the organizations and which make such services available on long-term bases through physicians and other health professionals associated with them.

(e) Facilities or equipment receiving certificates of need pursuant to paragraph (d) of this regulation shall not be sold or leased, nor shall control or use of these assets be transferred to any other organizations

unless certificates of need are issued by the state agency for their sale, lease, or acquisition. (Authorized by K.S.A. 65-4805 and 65-4821; effective November 12, 1980; amended May 1, 1981.)

28-42-11. Progress reports. Sponsors who have been issued a certificate of need shall submit progress reports at least annually, according to procedures the state agency shall specify, until the project is completed. The state agency may require additional periodic reports. (Authorized by K.S.A. 65-4815; effective May 1, 1979.)

28-42-12. Commencement of construction. (a) The sponsor shall notify the state agency when it commences construction and shall indicate the anticipated completion date of the project.

(b) The sponsor has commenced construction when he or she has: (1) provided the state agency with a copy of the construction contract which specifies the date by which actual construction is scheduled to begin and the date by which it is scheduled to be completed;

(2) provided evidence to the state agency demonstrating that the sponsor has the funds available to complete the project; and

(3) provided documentation that physical construction has begun.

(c) A certificate of need shall terminate twelve (12) months after its effective date unless the sponsor has commenced construction or has requested of, and received from the state agency, an extension of the certificate of need, pursuant to K.A.R. 28-42-13. (Authorized by K.S.A. 65-4704, 65-4804, 65-4815, 65-4821; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980; amended, E-81-34, November 12, 1980; amended May 1, 1981.)

28-42-13. Extensions of a certificate of need. The state agency will not extend its approval of a project, unless the sponsor of the project submits, at least sixty (60) days prior to the expiration date of the state agency's original approval, a written request for an extension of such approval. The secretary may waive the sixty (60) day requirement for good cause shown. No extension of the state agency's approval will be granted unless the sponsor of the project makes a showing of good cause for such extension. Further, no extension exceeding twelve (12) additional months shall be granted. (Authorized by K.S.A. 65-4704, 65-4808, 65-4815; effective May 1, 1979; amended, E-81-7, March 12, 1980; amended May 1, 1980.)

28-42-14. Transferability of certificate. The secretary may permit a certificate of need to be transferred from the sponsor if the transferee provides adequate written justification of his or her ability to satisfy the requirements of the sponsor's certificate of need. (Authorized by K.S.A. 65-4802; effective May 1, 1979.)

28-42-15. Substantial compliance with certificate of need authority. (a) A project is in substantial compliance with certificate of need authority when: (1) the final project cost does not exceed the estimated project cost by more than twenty percent (20%), exclusive of inflationary increases which can be documented by the sponsor; and

(2) there is no change in the scope of the project which, in itself, meets or exceeds one or more of the thresholds for certificate of need review, as set forth in K.S.A. 1980 Supp. 65-4805(a)(1), (2), (3), (5), (6), (7), and (8).

(b) The sponsor shall submit to the state agency periodic written reports of progress toward completing the project until the project is operational. One of these progress reports shall be a report at the design development phase of the project, prior to construction bid letting. (Authorized by K.S.A. 65-4704, 65-4820, 65-4821; effective E-81-34, November 12, 1980; effective May 1, 1981.)

28-42-16. Revocation of a certificate. (a) The state agency may revoke a certificate of need at any time if, after a hearing, the secretary determines that the approval of the certificate was based upon evidence found to be false, misleading, or misrepresented. The state agency, either upon its own motion, or upon a complaint filed therewith by any person, shall schedule a hearing if there exist reasonable grounds to believe that the approval of any certificate of need was based upon such evidence. The purpose of any such hearing shall be to determine whether such approval was, in fact, based upon such evidence.

(b) Notice of any such hearing shall be served, by certified mail, upon the certificate holder. The notice shall advise of the date, time, and place of the hearing and shall state, with particularity, the grounds upon which the agency bases its belief that approval of the certificate of need may have been based upon false, misleading, or misrepresented evidence. No such hearing shall be held less than twenty (20) calendar days from the date upon which notice of the hearing was sent to the certificate holder.

(c) (1) If the hearing officer at any such hearing is other than the secretary, subsequent to such hearing, the hearing officer shall make written recommendations to the secretary, specifying the hearing officer's findings of fact, conclusions of law, if any, and a suggested disposition of the matter.

(2) if the secretary presided at the hearing conducted pursuant to this section, or following receipt by the secretary of the hearing officer's written recommendations, the secretary shall consider the matter and render a final decision regarding the same, which decision shall state the secretary's findings of fact, conclusions of law, if any, and the ultimate disposition of the matter.

(d) A copy of the secretary's decision shall be sent by certified mail to the certificate holder. The effective date of such decision shall be twenty (20) calendar days following the date upon which the secretary's decision was sent to the certificate holder. (Authorized by K.S.A. 65-4704, 65-4808, and 65-4815; effective E-81-7, March 12, 1980; effective May 1, 1980.)

APPENDIX C
ADDRESSES OF STATE AGENCY AND ADVISORY AGENCIES
AND MAP OF HEALTH SERVICE AREAS

NOTE: All requests for information and application forms should be directed to the State Agency.

State Agency

Kansas Department of Health and Environment
Office of Health Planning
6700 South Topeka Avenue, Building 321
Topeka, Kansas 66620
(913) 862-9360, ext. 536

Health Systems Agencies

Health Systems Agency of Northeast Kansas (HSANEK)
1195 S.W. Buchanan, Suite 101
Topeka, Kansas 66604
(913) 233-3385

Health Systems Agency of Southeast Kansas (HSASEK)
Allied Building
355 North Waco, Suite 209
Wichita, Kansas 67202
(316) 264-2861

Please Note: There is no health systems agency in Health Service Areas I and IV (see the map on Page C-2 for counties in each Kansas health service area).

Department of Health and Environment

Office of Health Facilities
6700 South Topeka Avenue, Building 740
Topeka, Kansas 66620
(913) 862-9360, ext. 578

Commissioner of Insurance

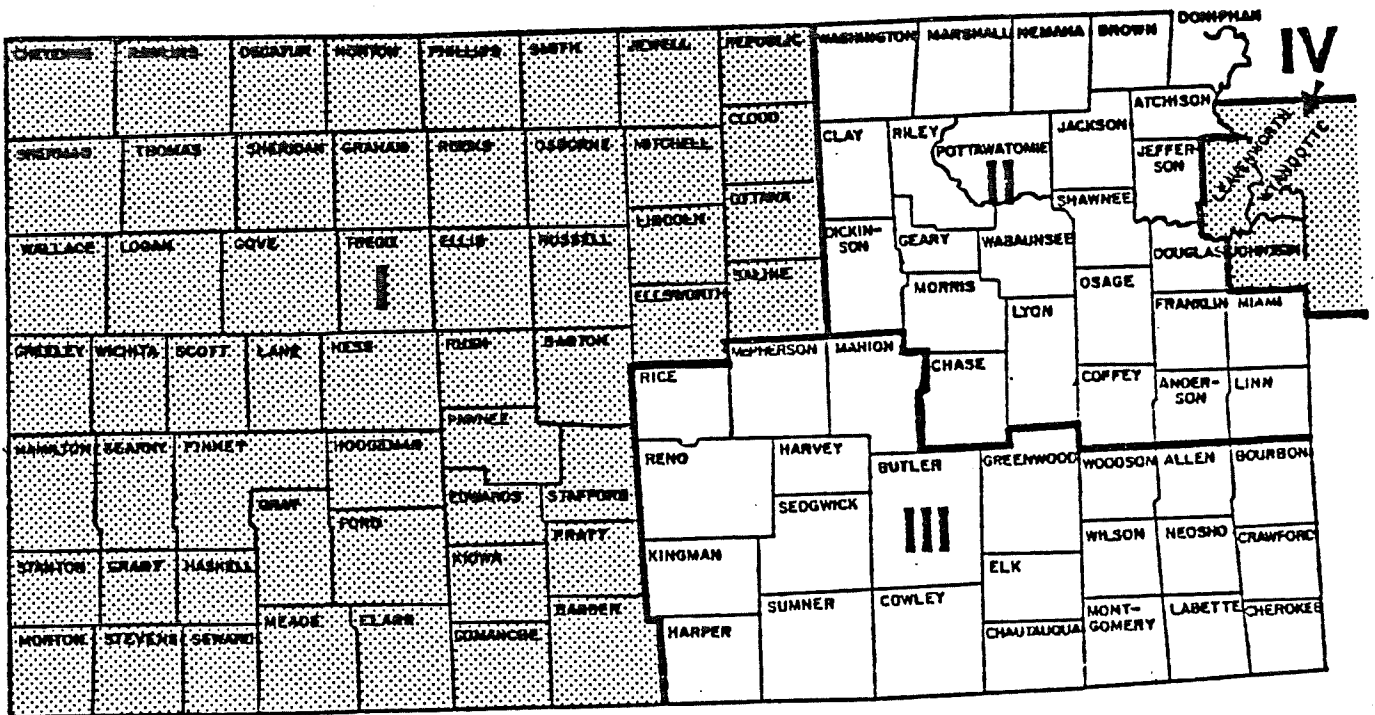
Commissioner of Insurance
Kansas Insurance Department
State Office Building, First Floor
Topeka, Kansas 66612
(913) 296-3071

Department of Social and Rehabilitation Services

Mental Health and Retardation Services
State Office Building, Fifth Floor
Topeka, Kansas 66612
(913) 296-3774

Alcohol and Drug Abuse Services
2700 West Sixth Street, Biddle Building
Topeka, Kansas 66606
(913) 296-3825

KANSAS HEALTH SERVICE AREAS



There is no health systems agency in operation in the health service area.

February 14, 1983

An Approach to Improving Services in Nursing Homes

House Public Health and Welfare Committee

By Barbara J. Sabol

Secretary, Department of Health and Environment

Over the past few years there have been attempts at improving the quality of care in Adult Care Facilities, but the balance between what is the best for patients in care and what the nursing home industry is able or willing to accommodate has been a delicate one and there is room for improvement.

The Department of Health and Environment has developed a strong program to enforce the standards for the nursing home environment, services and proper management. This program will continue to be strengthened. The Department has promulgated standards of care up to the limits allowed by State statutes, and from time to time we have recommended changes in the statutes. Last session we began placing all persons responsible for operating nursing homes on the license and supported Senate Bill No. 902 which required the inclusion of owners to be a party to the license so that accountability for management could be strengthened. This was passed resoundingly by the Legislature. This session Senate Bill No. 10 would limit the number of corporations (persons) on the license to three. We support its passage as well.

Today, I would like to bring another matter to your attention, namely, the training required to achieve the basic skills of the nursing home staff who provide the predominant day to day hands-on nursing services for the individuals in these places. I speak to the nurse aides who feed, bathe, change bedding, transfer patients and daily provide other services to elderly, frail and/or handicapped people in adult care homes.

The situation here is becoming more strained. Our Kansas citizens are becoming older, those in nursing homes are more impaired, and the need for adequately trained staff is greater. The turnover of staff is great, 36% of the aides providing care to people are untrained, yet our Kansas statutes do not allow our agency to require that training be completed before an aide has been employed for 90 days.

No other group giving such intimate and important care in our State can do so without any training. This state of affairs does not serve our older citizens well nor the State itself.

I would like to bring you a proposal in conceptual form for your consideration and ask that you have a bill drafted for fuller deliberation of this matter this session.

The concept is this: An aide can be employed by a nursing home without having had any training, but the aide should not be allowed to perform any "hands-on" services for a patient until that skill has been taught by individuals capable of teaching the skill to acceptable standards and the skill has been learned by the aide. The skills I speak of which require training are feeding stroke victims, transferring patients with special needs and problems from bed to wheelchair and wheelchair to bed, making beds with a patient in it, taking

*(attachment
no. 4.)*

pulse, blood pressure, and temperature and the like. There are many services an aide can perform after employment which would not require special skills. Some of these include moving a patient in a wheelchair, delivering meals to a patient, taking water and answering a call light, etc.

A task force comprised of Secretaries and other officials of the Board of Nursing, Social and Rehabilitation Services, Health and Environment, Education, Aging, Human Resources, and the Board of Regents examined the issue of recruitment and employment training for adult care home aides as directed by the 1980 Senate Concurrent Resolution No. 1673. The task force recommended implementation of a forty-hour program of post-employment training for direct care staff, mandated to be successfully completed within the first seven days of employment.

One proposal would be to take the existing ninety-hour course and divide it so that a basic forty-hours is given to aides in the first one to two weeks of employment, the remainder given later so that certification can be achieved as soon as possible. There may be other approaches.

Another proposal would be a flexible program of phased training in which aides would be trained one skill at a time after which they would be checked out by an R.N. and then allowed to perform that nursing service. For example, an aide could be taught how to bathe male and female patients and when proficient would be allowed to perform that service, learn another skill and then perform it, etc.

There may be other workable possibilities any of which would provide training of the skills needed to provide safe and efficient services to people in these homes -- even though the program we invent to do this may not be perfect, it will far excel the current situation of no training for ninety-days and 36% of the aides being untrained.

In summary, the concept to be placed in the statute should be framed so that aides may be employed, but may not provide services requiring a nursing skill without training. Certification would come after completion of training for all the nursing skills. The forty-hour proposal has been most studied and was found acceptable by the leadership of all agencies involved.

We stand ready to assist the committee in exploring possibilities, developing the new statutory language, and in implementing this policy should it become law.

Thank you for the opportunity to speak to this important issue today. I would be happy to answer questions.