Approved 2-25-91
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Carol H. Sader, Chairperson, at 1:30 a.m./p.m. on February 18, 1991 in room 423-S of the Capitol.

All members were present except:

Representative Theo Cribbs, Representative Steve Wiard, both excused

Committee staff present:

Emalene Correll, Research
Bill Wolff, Researach
Norman Furse, Revisor
Sue Hill, Committee Seacretary

Conferees appearing before the committee:

Richard Gannon, Executive Director, Ks. Board Healing Arts
Larry Buening, General Counsel, Ks. Board of Healing Arts
Chip Wheelen, Kansas Medical Society
Harold Riehm, Ks. Association of Ossteopathic Medicine

Chairperson Sader called meeting to order asking members to read over committee minutes.

Rep. Amos made a motion to amend minutes for February 12, 1991 to insert, at the bottom of page 1: "Mr. McDowell noted, Kansas Department of Health/Environment (KDHE) has capabilities and a federal grant of $90,000 already in place and capable of overseeing this program with no additional fiscal impact on KDHE for administrative and start up costs". Motion seconded by Rep. Lynch, motion carried.

Rep. Amos moved to approve minutes of February 12, 1991 as amended, seconded by Rep. Lynch, motion carried.

Chair drew attention to **HB 2128** and requested a briefing by staff.

Ms. Correll called attention to (Attachment No. 1, background information on Proposal No. 45. She noted HB 2128 is technical in nature for the most part. An exception to the technical aspects of the bill are in line 24, page 1 changing language from "substantially in conformity with" to "equivalent to". She gave background on Proposal 45 recommended by Interim Committee; and explained why this language change in HB 2128 will need careful consideration. In essence, line 24, page 1 is not simply a technical change. She noted perhaps the legislature might wish to look very carefully at what can be done to encourage the training of more advance nurse practitioners and physicians assistants for the rural areas of the state, rather than making this process more difficult. Doing this is clearly a policy issue she said. She answered questions.

HEARINGS BEGAN ON HB 2128.

Richard Gannon, Executive Director, Kansas Board of Healing Arts offered hand-out (Attachment No. 2. He noted the request to change language on page 1, line 24 was initiated because the Board of Healing Arts felt the change would clarify standards for the Board in determining acceptability of educational programs for physicians' assistantss. Other changes proposed on page 2, line 8, and page 3, line 5 are clean up technical changes. He answered questions, i.e., Wichita State University does have a 4 year educational program for physicians' assistants; there are approximately 140 physicians' assistants in Kansas; the Board has not investigated creating a Kansas examination, a national exam is currently given.

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.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 a.m./p.m. on February 18, 1991

Larry Buening, General Counsel, Ks. Board Healing Arts answered questions. There was discussion and numerous questions in regard to educational requirements for physicians' assistants in the state. It was noted the Regents have approved a 4 year program at Wichita State, the only program currently approved by the Regents. Programs other than this, i.e., 2 years with equivalencies still must be approved by Board of Regents. Lengthy discussion continued in regard to educational requirements and experience of a military corpman returning to the private sector who might choose a career as a physicians' assistant. Further discussion held in regard to phrase "equivalent to."

It was suggested that perhaps it would be helpful for new legislators to read again the report from Interim on the credentialing process. It was noted the ultimate determiner of whether or not the physician's assistant is qualified is the responsible physician.

HEARINGS CLOSED ON HB 2128.

BRIEFINGS ON HB 2141:

Mr. Furse outlined **HB 2141** noting the two major changes, i.e., reinstatement of a revoked license; costs incurred by the Board of Healing Arts, and or the licensee. He explained language changes, and detailed changes in regard to current law. Mr. Furse noted concerns in regard to the legal constitutional implications, and he will do this and report findings to the committee.

HEARINGS BEGAN ON HB 2141:

Richard Gannon, Executive Director of Kansas Board of Healing Arts offered hand-out (Attachment No. 3). Mr. Gannon noted lines 37 through 41 should be deleted. He outlined procedures in regard to applying for re-licensing, noting the requested change in the waiting period to 3 years and the raise in fee to not exceed $1000. He noted further proposed changes concerning assessment of the costs of the hearing procedures. He cited a specific case where the Board had to assume costs of proceedings up to $50,000. He answered numerous questions as did Mr. Larry Buening, General Counsel for Board of Healing Arts. Lengthy discussion and questions ensued, i.e., 3 years is too harsh a penalty; $1000 fine is too harsh; partial suspension might be a possibility such as allowing a physician to continue his general practice but not perform surgery; Board has great concerns with expenditures in regard to hearing process; Board expects the number of cases of hearings to increase; breakdown of hearing costs would be about 30% for court reporter and transcripts, 50% for the presiding officer, and 20% for the witnesses.

Chip Wheelen from the Kansas Medical Society offered hand-out, (Attachment No. 4). Mr. Wheelen noted there are cases in which a former licensee has been rehabilitated in less than three years and if reinstated could be offering health care services to patients. They do agree with proposed language in section 2 that would assess cost of administrative proceedings to the responsible parties and not have the Board's fee fund suffer a major expense each time they are involved in hearings. He stressed **HB 2141** would discourage frivolous filing for reinstatement, but does guarantee those that who deserve due-process have that opportunity.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on February 18, 1991

Harold Riehm, Executive Director of Kansas Association of Osteopathic Medicine spoke as a proponent, however has concerns. Section 2, does not just refer to revocation and appeal, it applies to all hearings of the Board of Healing Arts. This could be a powerful incentive to not file for re-licensure. He noted also that he represents physicians who do not care to be assessed large fees run for proceedings of other physicians. This equates to good doctors not wishing to pay for bad doctors proceedings. Questions and discussion followed Mr. Riehm's testimony.

HEARINGS CLOSED ON HB 2141.

Chair drew attention to (Attachment No. 5), regarding testimony given by Jeff Ellis, a member of Governors Commission on Health Care. (Mr. Ellis had given a slide presentation to committee on February 11th, and attachment is printed material of that presentation.

Chair also drew attention to (Attachment No. 6,) a memorandum prepared by Research and Revisor staff regarding Title X, Family Planning Law and Regulations.

Chair announced meeting tomorrow would be a Joint meeting to be held in the Kansas Historical Society Auditorium at 10th and Jackson streets from 12:00 to 3:00 p.m.

Chair adjourned the meeting.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date 2-18-1991

Name	Organization	Address
~~Jeff DeGraffenreid~~	~~PAs~~	~~Topeka~~
Harold E. Riehm	KAOM	Topeka
Chip Wheelen	Ks Med. Soc.	Topeka
Helen Stephens	KAPA	Topeka
[illegible]	KDHE	Topeka
[illegible]	Kansans for Life	Topeka
Keith R. Landis	Christian Science Committee on Publication for Kansas	Topeka
Larry Buening	Bd of Healing Arts	Topeka
Richard A. [illegible]	"	"
ALAN COBB	WICHITA HOSP'S	WICHITA

RE: PROPOSAL NO. 45 – ROLE OF PHYSICIANS' ASSISTANTS*

Proposal No. 45 charged the Special Committee on Public Health and Welfare to: review the role of physicians' assistants in the delivery of health care, including the oversight function of licensees in medicine and surgery; consider whether there are adequate safeguards to insure that such persons function within the law, including the degree to which the Board of Healing Arts has given adequate attention to the regulation of both physicians' assistants and the healing arts licensees who are responsible for their actions; and review the laws concerning physicians' assistants to determine whether such laws should be revised and by whom they should be administered.

Background

In 1977, an interim special committee of the Kansas Legislature was appointed to study the role of physician extenders, including the regulation of such persons, trends in utilization, the relationship of the physician extender to the supervising physician and health care institutions, and the economic impact of the use of physician extenders. That committee focused on two types of health care extenders -- the physicians' assistant and the expanded role nurse.

As the 1977 study indicated, Kansas recognized a role for physicians' assistants before that provider group was defined by nationally accepted standards. In 1972, the Legislature had enacted a single statute which directed the State Board of Regents to maintain a register of physicians' assistants and defined the term "physicians' assistant" to mean a skilled person who would be qualified by academic and practical training to provide patient services under the direction and supervision of a physician licensed to practice medicine and surgery and who would be responsible for the performance of that assistant. The Board was given authority to adopt rules and regulations necessary to carry out the provisions of the act. By the time of the 1977 study, the American Medical Association's Council on Medical Education was accrediting educational programs; the National Board of Medical Examiners had developed an examination for physicians' assistants; and the physicians' assistant program inaugurated at Wichita State University in 1972 could accommodate 30 students per class. In light of the then newly defined physician extender group, the 1977 Special Committee was asked to examine the standards to determine the definition and regulation of the persons involved in the relationship, i.e., the assistant and the supervising physician. Additionally, the study and the ultimate

* H.B. 2595 accompanies this report.

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definition of relationships was couched in terms of making health care available, particularly in rural Kansas, by persons other than persons licensed to practice medicine and surgery who were greatly in demand but short in supply.

Of importance to this study in 1989, are the conclusions reached by the earlier study committee in 1977, to the effect that the scope of practice of a physicians' assistant should be determined by the employing physician rather than by the Board of Healing Arts or by statute; that physicians' assistants must be an extension of the physician who establishes the standards for practice and the performance criteria for the physicians' assistant; and that supervision of the assistant by the physician could be accomplished by telephone, radio, closed circuit television, and the periodic review of patient records.

While the 1978 Legislature recognized the emergence of a new health care provider, the physicians' assistant, it did not credential that provider in the same way other health care professions and occupations have been recognized. Rather, the Legislature directed the Board of Healing Arts to accept names for placement on a "registry" of persons who meet the statutory qualifications to be physicians' assistants in Kansas; to remove a name if the person requested removal or the person had not been employed as a physicians' assistant during the preceding five-year period; and to refuse to register or to remove a name if the person had been determined to have practiced outside the scope of authority given the physicians' assistant by the responsible physician. In summary, while the title "Registered Physicians' Assistant," or words and abbreviations of like effect was reserved for persons whose names appeared on the registry a scope of practice for such persons was not set out in the law.

In every regard, the physicians' assistant has been seen by Kansas statutes to function as an extension of the responsible physician, unlike an expanded role nurse who functions at a higher and more independent level of nursing. Without a responsible physician, even for a short time, the physicians' assistant has been required to cease functioning. In matters of discipline, as noted above, the Board of Healing Arts has been authorized to remove the name of a person from the registry or refuse to place the name of a person on the registry if the physicians' assistant has practiced outside the scope of practice established by the responsible physician. The statutes have not defined professional misconduct nor authorized the Board to define such action by rules and regulations. From the outset of the Legislature's recognition of physicians' assistants, it has been the responsible physician who is accountable for the action of the physicians' assistant and, in matters of discipline, it has been the Legislature's intent that the

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responsible physician be accountable to the Board of Healing Arts for the actions of the physicians' assistant.

Finally, since 1977, the Legislature has been petitioned to treat physicians' assistants as if they represented an independent practice. In general, the petitions were presented by representatives of the physicians' assistants who sought a specific definition and recognition of their status or by the Board of Healing Arts seeking to find ways to regulate the practice of the physicians' assistants as if they were another professional group assigned to the Board by the Legislature to be regulated much as other "ancillary" health professions had been assigned for regulation. In fact, the amendments presented over the years by the Board of Healing Arts and the rules and regulations adopted by the Board all tend to regulate in a uniform manner, the persons assigned to the Board, notwithstanding basic differences created by the statutes. For its part, the Legislature has not adhered consistently to its original position on physicians' assistants and has added to the overall confusion on the subject.

In the 1989 Session, the Board of Healing Arts requested the introduction of a bill purportedly to provide greater authority to the Board to insure that the responsible physician provides adequate supervision and direction of a physicians' assistant. S.B. 183 created a renewal process, established fees for registration of physicians' assistants similar to that for physical therapists, and required the responsible physician to submit a request to the Board at the time the physicians' assistant applied for inclusion of such person's name on the registry according to rules and regulations adopted by the Board. Testimony of the Board indicated that forthcoming regulations would require the physician to provide a detailed list of all tasks the responsible physician intended to delegate to the physicians' assistant, a detailed list of prescription drugs for which the assistant could transmit a prescription order, and authority to the Board to refuse the request to place the name on the registry if the Board determined that the tasks delegated and the drugs authorized for transmission were not appropriate in light of the physicians' assistant's training and education. Further, the bill: required that an applicant for placement on the registry of physicians' assistants maintained by the Board complete an education and training course that includes at least two years of postsecondary education and training; authorized the Board to refuse to enter a name on the registry on any grounds for which a name can be removed from the registry and added to the grounds for removal of a name; and created a Physicians' Assistant Council to advise the Board. S.B. 183 became effective on July 1, 1989.

In his testimony before the 1989 Senate Committee on Public Health and Welfare, the Executive Director of the Board of Healing

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Arts described with considerable alarm and concern, that the Board of Healing Arts was experiencing serious problems with certain physicians' assistants and their responsible physicians. So strongly did the representative of the Board speak on the subject that the members became concerned about the whole regulatory and statutory scheme governing physicians' assistants. While S.B. 183 was enacted and became effective as noted, the concerns of the Legislature continued and became the subject of the study under Proposal No. 45.

Committee Activity

In the course of its study, the Special Committee on Public Health and Welfare received the comments of representatives of the following agencies and associations: the Kansas Academy of Physicians' Assistants; the Kansas Medical Society; the Kansas Pharmacists Association; the Kansas Association of Osteopathic Medicine; the Board of Healing Arts; and the Wichita State University. Additionally, several physicians' assistants presented testimony to the Committee.

Testimony presented by the representatives of the Board of Healing Arts, by the Kansas Academy of Physicians' Assistants, by several physicians' assistants, and by a responsible physician representing the Kansas Medical Society, recommended that no changes be made in the existing law. The Executive Director of the Board of Healing Arts, in remarks of a significantly different tenor than used during the legislative session, noted increasing cooperation among the Board, the medical profession, and physicians' assistants and proposed that until there had been an opportunity to implement the changes brought about by passage of S.B. 183, it would be premature to assume that further statutory changes are required. The General Counsel for the Board did recognize that "many of the existing statutes are in direct conflict with the original philosophy expounded in 1972," and indicated that the Board "would like to know if the original legislative intent applies or if the movement toward comprehensive regulation of this profession now accurately expresses the present philosophy of the Legislature."

In spite of the tenor of the testimony of the physicians' assistants and the medical profession indicating no need for a change in the laws, that same testimony revealed attitudes and practices that suggested some misunderstanding of the legislative intent underlying the laws relating to physicians' assistants and raised concerns on the part of Committee members, particularly those members who have been involved with the evolution of the physicians' assistants' statutes over the past decade. Testimony indicated that some physicians' assistants see their role as a more independent practice than envisioned by the Legislature, e.g., changing the supervising physician's medication orders when the

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physicians' assistant does not agree with the original orders, practicing in a clinic located at some distance from the supervising physician's place of practice without any requirement that new patients be first seen by the supervising physician or that prior evaluation of the physicians' assistant's prescribed regime be reviewed by the supervising physician, and fulfilling questionable dual roles in a hospital setting. Testimony also indicated that supervising physicians may be unfamiliar with the Kansas laws governing the relationship of the physician and a physicians' assistant and with the extent of supervision envisioned by the Legislature in enacting such laws. A review of several protocols entered into by physicians' assistants and a supervising physician indicated that such written agreements as to the role of the physicians' assistant may be a one-line statement that the physicians' assistant may not transmit prescription orders for certain schedules of controlled substances.

The Kansas Pharmacists Association expressed concern over an ever-expanding list of individuals, including physicians' assistants, who are allowed to transmit prescription orders. When presented with a prescription order transmitted by a physicians' assistant, the pharmacist has no idea what is included in the protocol between the physicians' assistant and the responsible physician since, unlike the nursing statutes, the statutes regulating physicians' assistants contain no requirement that drug orders that may be transmitted be set out in a written document. An additional problem for the pharmacist is the fact that protocols contain a negative formulary, i.e., protocols identify the drugs for which the physicians' assistant is prohibited from transmitting orders and generally are vague, e.g., controlled substances. The pharmacists strongly recommended that the Committee amend the statutes to require a positive formulary or a listing of drugs for which the physicians' assistant is allowed to transmit a prescription order.

Spokespersons for the Wichita State University reported that the Physician Assistant Program accepted its first class of students in 1973 and has begun a new class each fall since that year. At its inception, the program awarded a certificate to persons successfully completing the curriculum and the Committee was surprised and dismayed to discover that it has evolved into a baccalaureate degree program. Apparently, not even the Board of Healing Arts knew of the changing program, although it is the Board that approves the course of education and training for physicians' assistants and approves the examination which applicants for the registry must successfully complete.

Although the original intent of the physicians' assistant legislation was to create physician extenders to provide medical services in underserved areas, that intention was never written into the statutes. The Committee learned from the Board of Healing Arts that it has

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adopted a rule and regulation addressing practice locations (K.A.R. 106-60-14). Currently, there are approximately 110 physicians' assistants practicing in Kansas. Of that number, about 65 percent (72) serve in 51 rural counties. It should be noted, however, that not all such counties are designated as medically underserved areas. Thirteen of the 72 physicians' assistants practice in urban areas of those counties. Thirty-five percent (38) physicians' assistants are located in Johnson, Shawnee, Sedgwick, and Wyandotte counties. It also must be noted that not all persons residing in urban areas have access to medical care, and the use of physicians' assistants by nonprofit charitable clinics illustrates use of such persons in an urban setting to serve persons not otherwise able to access care.

Late in the interim, the Committee learned that the State of Tennessee had enacted physicians' assistant legislation which, as in Kansas, was based on the accountability of the responsible physician and which does not recognize the physicians' assistant as a separate profession. The Tennessee act seems to have successfully maintained a focus upon the responsible physician. In its essence, the Tennessee act simply defines "physician assistant" to mean an individual who renders services, whether diagnostic or therapeutic, which constitute the practice of medicine, and which, but for the provisions of the act, could only be performed by a licensed physician. Following from that clear definition, any physicians' assistant who rendered services inconsistent with the act would be considered to be practicing medicine without a license and be subject to appropriate legal action by the Tennessee Board of Medical Examiners, and any responsible physician who utilized the services of a physicians' assistant inconsistent with the provisions of the act would be subject to a finding of unprofessional conduct and disciplinary action by the Board. The Committee's review of the uncomplicated and concise Tennessee law presented an interesting contrast to the Kansas statutes which are complex and inconsistent.

Conclusions and Recommendations

The Committee concluded that the present statutes relating to the role of physicians' assistants in providing health care services are internally inconsistent, confusing, and lend themselves to a misleading interpretation of the intent of the Legislature as verified by testimony presented to the Committee. Further evidence of the lack of uniformity in interpreting the statutes is illustrated by the rules and regulations adopted by the Board of Healing Arts, the continued testimony of Board staff, and the failure of communication as to the proper role of the regulatory agency. For these reasons, the Committee concluded that the existing laws should be revised extensively to clarify the roles of a physicians' assistant whose name is entered on a

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register maintained by the Board of Healing Arts, a responsible physician, and the Board itself. Further, the Committee concluded that the original intent of the Legislature -- that the physicians' assistant have no independent role in providing patient services to the patients of a responsible physician but function only as an extension of a legally responsible physician -- should be reiterated and retained in revised statutes. The Committee has relied heavily on the laws of the State of Tennessee in preparing proposed revisions to the laws relating to physicians' assistants after finding that such laws not only appear to reflect the intent of the Kansas Legislature in regard to the appropriate role of physicians' assistants, but also allow the Legislature rather than an agency of the state to determine what constitutes appropriate relationships between a physicians' assistant and a responsible physician.

The bill prepared by the Committee, H.B. 2595, reflects the conclusions and recommendations of the Special Committee on Public Health and Welfare by removing from the existing laws much of the language that has been added as a result of the attempt by the Board of Healing Arts to treat in a uniform manner, all providers credentialed by the Board. The Committee recognizes that such uniformity in treatment makes the job of the Board and the Board staff easier. However, the members do not believe that administrative ease should be controlling when the Legislature makes its intent to differentiate between providers clear. The Committee bill provides that clarify by establishing that physicians' assistants are not registered as that term is used in the Kansas Act on Credentialing and as are other groups of ancillary health care providers regulated by the Board. In fact, a number of the statutory changes that appear in H.B. 2595 are made to change references to registered physicians' assistants to references to persons whose names are placed on a register maintained by the Board of Healing Arts. These changes return the laws to the language and clear intent adopted by the Legislature in the 1970s.

H.B. 2595 removes from the regulatory agency the responsibility of adopting rules and regulations that establish the practice relationship between a physicians' assistant and a responsible physician and sets out such relationship in the statutes, thereby placing the responsibility for defining the appropriate role of a physicians' assistant with the Legislature and the responsible physician. The bill also clarifies the role of the Board of Healing Arts as regulating the physician who assumes the responsibility of supervising a physicians' assistant, places the responsibility for the acts of a physicians' assistant clearly with the responsible physician rather than the Board, and requires the Board to initiate an action to enjoin the actions of a physicians' assistant who is unlawfully practicing the healing arts by acting outside the scope of patient services authorized by the law or by a responsible physician.

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The Committee further concludes that the responsibilities of the Board of Healing Arts as set out in the laws administered by the Board should be exercised by the Board and not delegated to advisory committees whether or not such advisory committees are created by law as is the currently authorized Physician's Assistant Council or as an ad hoc advisory group such as that created by the Board as early as 1985. Further, it is not the intent of the Committee that the responsibility of the Board for approving training be delegated to a private national association or accrediting agency if the policies and examination requirements of such private agencies are in conflict with Kansas policies and statutes.

Respectfully submitted,

November 28, 1989

Sen. Roy Ehrlich, Chairperson
Special Committee on Public
Health and Welfare

Rep. Marvin Littlejohn,
Vice-Chairperson
Rep. Gene Amos
Rep. Belle Borum
Rep. Jessie Branson*
Rep. Theo Cribbs
Rep. Dorothy Flottman
Rep. Ron Reinert
Rep. Ellen Samuelson
Rep. Elaine Wells
Rep. Lawrence Wilbert

Sen. Jim Allen
Sen. Bernard Kanan
Sen. Audrey Langworthy
Sen. Edward Reilly
Sen. John Strick
Sen. Doug Walker

* Ranking minority member.

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Board of Healing Arts

MEMORANDUM

To: House Committee on Public Health and Welfare

From: Richard G. Gannon, Executive Director

Re: Testimony on HB 2128

Date: February 18, 1991

Madam Chairperson and Members of the Committee, thank you for the opportunity to appear before you as a proponent of House Bill 2128.

As you may recall, this bill was requested by the Board to be introduced as a committee bill during your meeting in the Board office on January 31, 1991. The bill was requested primarily to correct inadvertent errors which had been made in the adoption of K.S.A. 1990 Supp. 65-2896a and 65-2986b as enacted by the 1989 Legislature.

On the first page at lines 24 and 25, the words "substantially in conformity with" are replaced with "equivalent to the" relating to the educational program for physicians' assistants approved by the State Board of Regents. While this is a minor and, perhaps, an unnecessary change, the Board felt this new language was clearer

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HAROLD GULDNER, SYRACUSE
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GLENN I. KERBS, DODGE CITY
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IRWIN WAXMAN, D.P.M., PRAIRIE VILLAGE
KENNETH D. WEDEL, M.D., MINNEAPOLIS
RON ZOELLER, D.C., TOPEKA

than the present language as far as giving the Board a standard to utilize in determining the acceptability of educational programs for physicians' assistants.

The changes made at page 2, line 8, and at page 3, line 5, are purely technical in nature and serve only to correct obvious errors in the Legislation as it was enacted by the Legislature in 1989.

Again, thank you for the opportunity to appear before you. I would certainly be willing to answer any questions you might have.

RGG:LTB:lw

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Board of Healing Arts

M E M O R A N D U M

To: House Committee on Public Health and Welfare

From: Richard G. Gannon, Executive Director

Re: Testimony on HB 2141

Date: February 14, 1991

Again, it is a pleasure to appear before you and provide testimony in support of House Bill 2141. This is another bill which was requested by the Board to be introduced through this committee when the committee met at the Board office on January 31, 1991.

Section (1) of the bill would totally amend K.S.A. 1990 Supp. 65-2844. That statute presently provides that an individual whose license has been revoked may apply for reinstatement at any time after the expiration of one year from the date of revocation. The second sentence of the present statute also enables the Board to adopt rules and regulations concerning notice and hearing on an Application For Reinstatement of a revoked license. This second sentence has basically been rendered unnecessary due to the passage of the Kansas Administrative Procedure Act which has been made

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RON ZOELLER, D.C., Topeka

applicable to the Board in all of its administrative hearing processes. The new language for this statute would extend to three years the date an individual whose license has been revoked may apply for reinstatement. It also provides a statutory maximum fee for such an application to be $1,000. Thirdly, the statute clearly places the burden of proof upon the applicant to provide evidence to justify reinstatement. Fourth, if an Application For Reinstatement is denied, the statute would again require that three years expire before a second Application For Reinstatement could be filed. Next, all proceedings on the Application For Reinstatement are especially made subject to the Kansas Administrative Procedure Act. Finally, it needs to be specifically noted that the Board, at any time, even prior to the expiration of the three years from the date of revocation, is expressly given the discretion to stay the effectiveness of an Order of Revocation and allow an individual to return to practice should the facts and circumstances so warrant.

The bill originally submitted by the Board relating to section (2) and the amendments made to K.S.A. 65-2846 was to delete the existing language of the statute. Therefore, the Board requests an amendment be made to House Bill No. 2141 which would delete all of the language contained in lines 37 through 41 on page one. The

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new language is intended to be totally in lieu of the existing language of K.S.A. 65-2846.

Under the present language of K.S.A. 65-2846, the Board may tax witness fees and costs according to the statutes pertaining to the assessment of such fees and costs by the district court. However, costs of presiding officers for the administrative hearings, appearance fees by court reporters, expert witness fees, consultant services fees and the costs of making the required transcripts in order to maintain an official agency record are not costs or fees which are allowed in district court cases. During FY 90, the Board expended in excess of $30,000 for such matters. To date in FY 91, approximately $15,000 has been so expended. While the amendments made to K.S.A. 65-2846 would not affect the expenditure level limitation of the Board set by the Legislature on a fiscal year basis, it would enable the Board to recoup at least part of the expenses and fees it incurs during administrative hearings and add some amounts to the Healing Arts Fee Fund.

The Board considers House Bill 2141 to be extremely important. One example will make this very clear. On February 6, 1988, the Board issued a Final Order revoking the medical license of a particular Kansas physician. The total fees and expenditures incurred by the Board through the investigative and hearing process

which led to the revocation exceeded $50,000. Yet, none of these fees and expenses were of the type which can be assessed under the statutes regarding the taxing of costs in district court cases. Approximately 1 1/2 years after the Order of Revocation, on August 25, 1989, an Application For Reinstatement of the license was filed. That fee was $250. Following a hearing, the Board denied the Application For Reinstatement. However, an appeal of that determination was taken and the case is presently pending before the Supreme Court for oral arguments on February 25, 1991. Yet, a second Application For Reinstatement was filed and is now pending before the Board even while the first Application For Reinstatement is still in the judicial process. Enactment of House Bill 2141 would enable the Board to recoup from the individual against whom the disciplinary action was taken the expenses and fees incurred. The Board considers this much more fair and equitable. Under the present law, the fees and expenses incurred in these administrative proceedings are, in essence, paid for by the large majority of licensees and registrants against whom no disciplinary proceedings are brought. Further, the three-year limitation on the Applications For Reinstatement would preclude an individual whose license has been revoked from continuing to file Applications For Reinstatement and requiring the hearings associated with such as

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frequently as every day, week or month. The Board firmly believes that the present statutory language enables individuals with revoked licenses to abuse the provisions of present law and file burdensome, oppressive and frivolous applications.

Thank you again for the opportunity to appear in front of you. I am happy to yield to any questions you might have.

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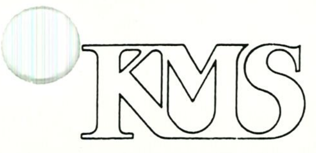

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

February 14, 1991

TO: House Public Health and Welfare Committee

FROM: Kansas Medical Society

SUBJECT: House Bill 2141; Healing Arts Act Amendments

Thank you for this opportunity to express our general support for the provisions of HB 2141. Section 1 of the bill would preclude the need to expend staff time and other resources for unnecessary proceedings to determine that a former licensee should not be reinstated. We would stress, however, that there may be instances when a former licensee has been sufficiently rehabilitated within less than three years and his or her health care services should be made available to prospective patients. In those instances, the Board would have the opportunity to "stay the effectiveness of an order of revocation." We believe that this is an essential feature of the amendatory language in that it would grant the Board the necessary flexibility to review individual cases based on the circumstances.

We also agree with section 2 of the bill in that it would allow the Board to assess the cost of administrative proceedings to the responsible parties. This means that the Healing Arts Fee Fund would not suffer a major expense every time that the Board is required to engage in lengthy administrative hearings. Under the current law, the Healing Arts Fee Fund finances such cost and thereby is paid by all licensees under the Board. The amendatory language in HB 2141 would be more equitable and would also discourage frivolous applications for hearings.

We believe that passage of HB 2141 would improve the efficiency and effectiveness of the State Board of Healing Arts. Thank you for considering our comments. We urge you to recommend HB 2141 for passage.

/cb

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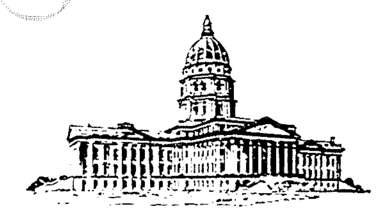
attm #4

CAROL H. SADER
REPRESENTATIVE, TWENTY-SECOND DISTRICT
JOHNSON COUNTY
8612 LINDEN DR.
SHAWNEE MISSION, KANSAS 66207
HOME: (913) 341-9440
CAPITOL OFFICE: (913) 296-7675

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRPERSON: PUBLIC HEALTH AND WELFARE
VICE-CHAIRPERSON: ECONOMIC DEVELOPMENT
VICE-CHAIRPERSON: JOINT COMMITTEE ON HEALTH CARE DECISIONS FOR THE 1990'S
RANKING DEMOCRATIC MEMBER: SRS TASK FORCE
MEMBER: PENSIONS, INVESTMENTS AND BENEFITS
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

February 18, 1991

SLIDE PRESENTATION BY GOVERNOR'S COMMISSION
ON HEALTH CARE.

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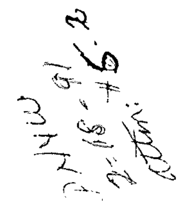
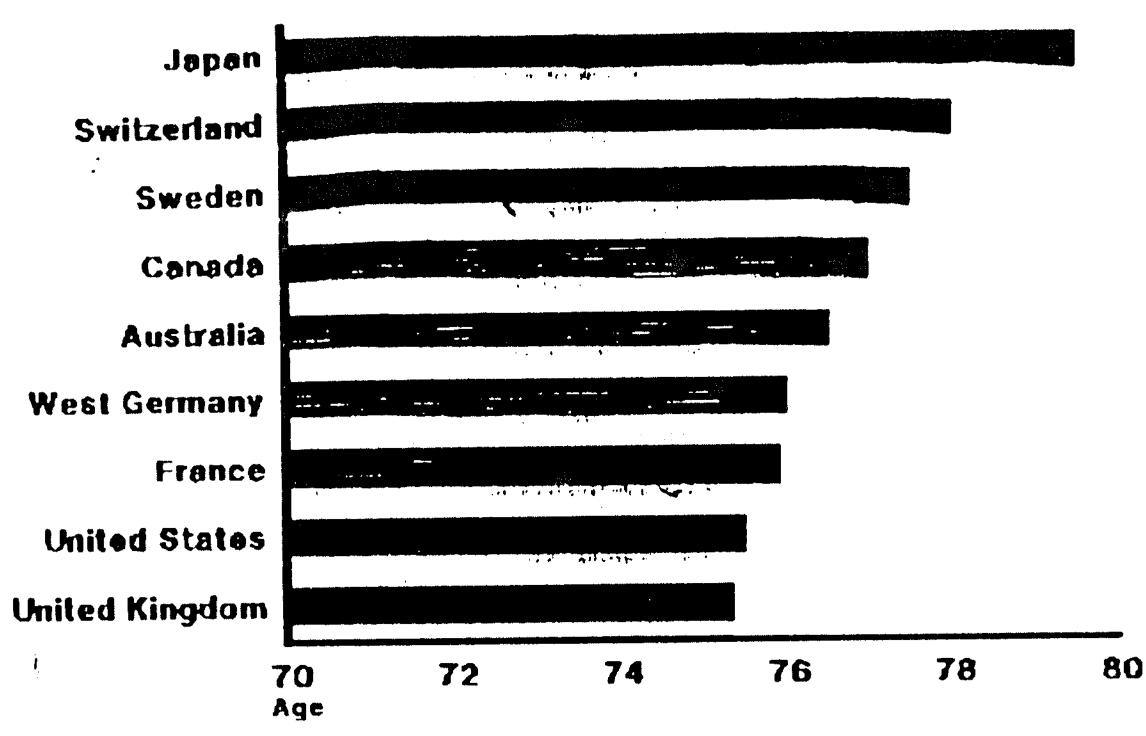
Don Duffy Presentation #9



Life Expectancy If Born in 1989



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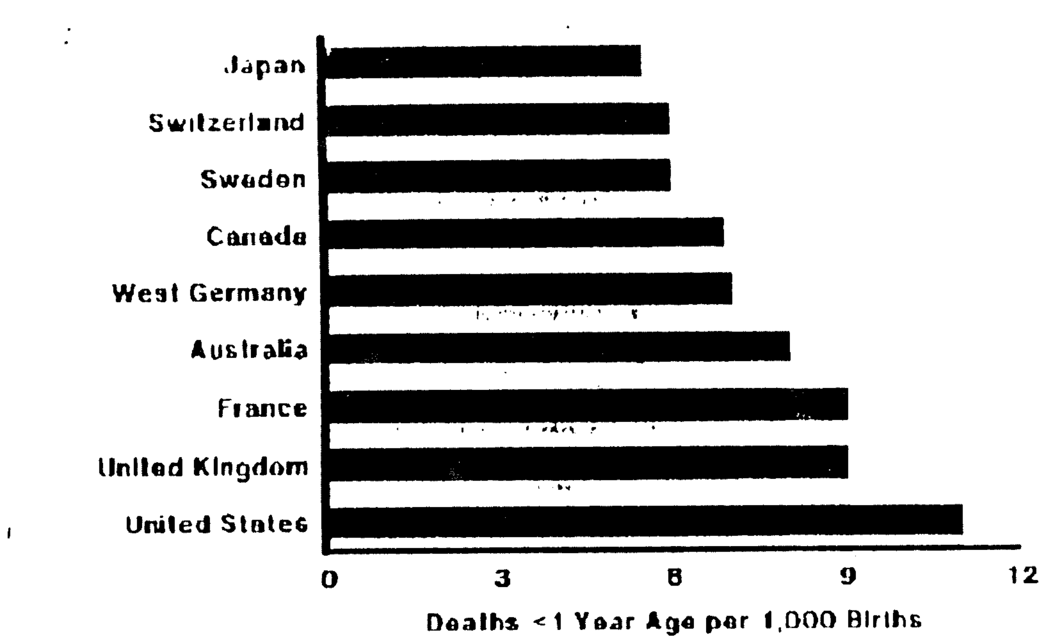
Don Duffy Presentation #05

Infant Mortality Rates



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Don Duffy Presentation #11

Factors Driving Health Care Costs

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Don Duffy Presentation #01A

Factors Driving Health Care Costs

- General Inflation

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FERGN FRAME NM GP CAPT JUST EDIT COLOR SITCH
HCV LIN HUE 160
RGB LIN CHROMA 136
SPA COL VALUE 001

SLIDE #B5209.08 Don Duffy Presentation #11B

Factors Driving Health Care Costs

- General Inflation
- New Technology

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SLIDE #B5209.09 Don Duffy Presentation #11C

Factors Driving Health Care Costs

- General Inflation
- New Technology
- Increased Utilization and Intensity

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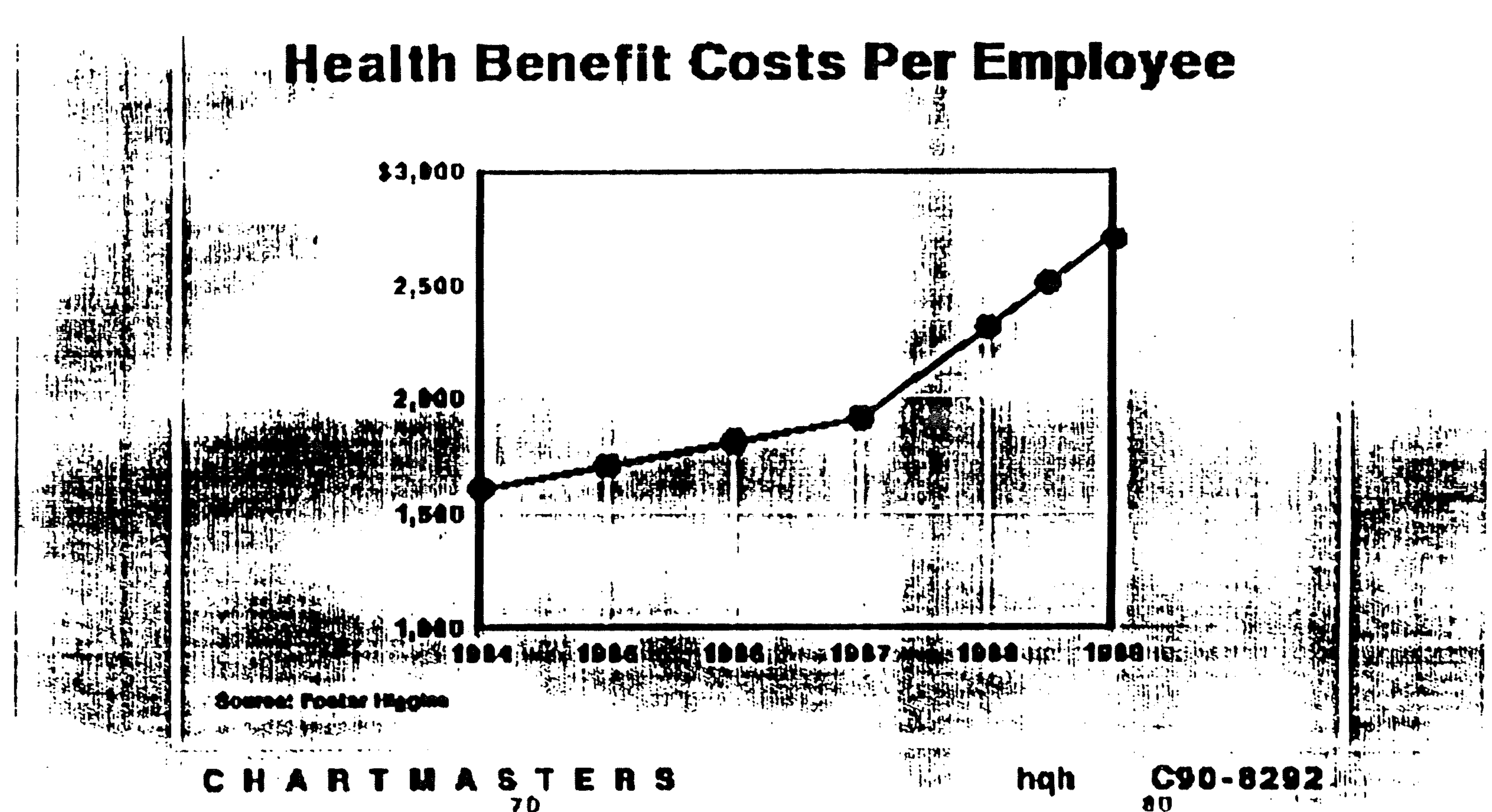
Don Duffy Presentation #12



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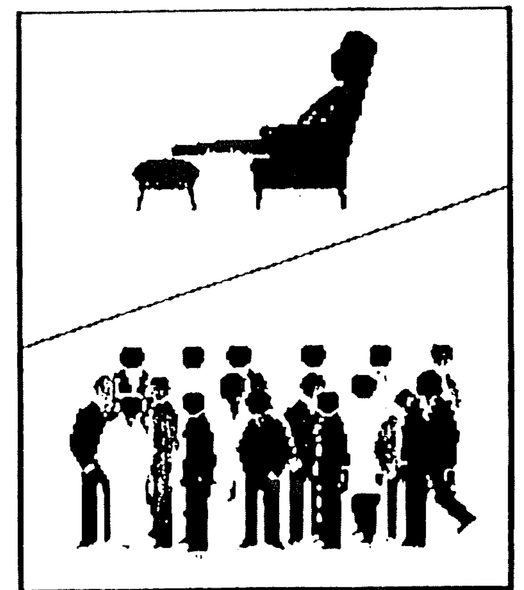
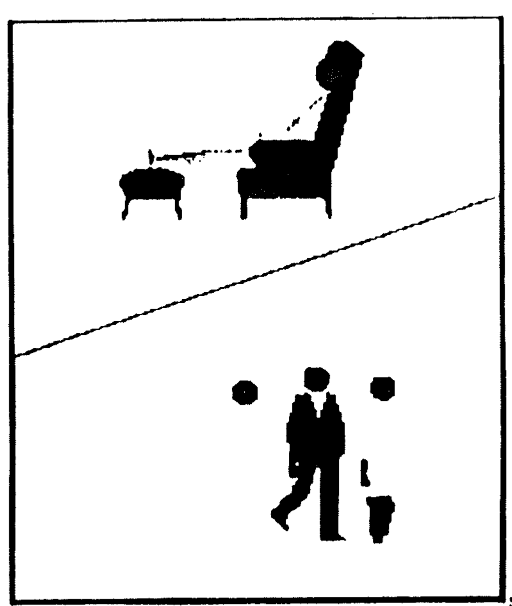
Don Duffy Presentation #11

Ratio Of U.S. Workers To Retirees



1950



1992

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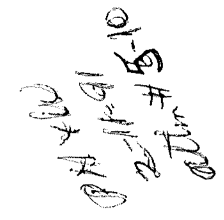

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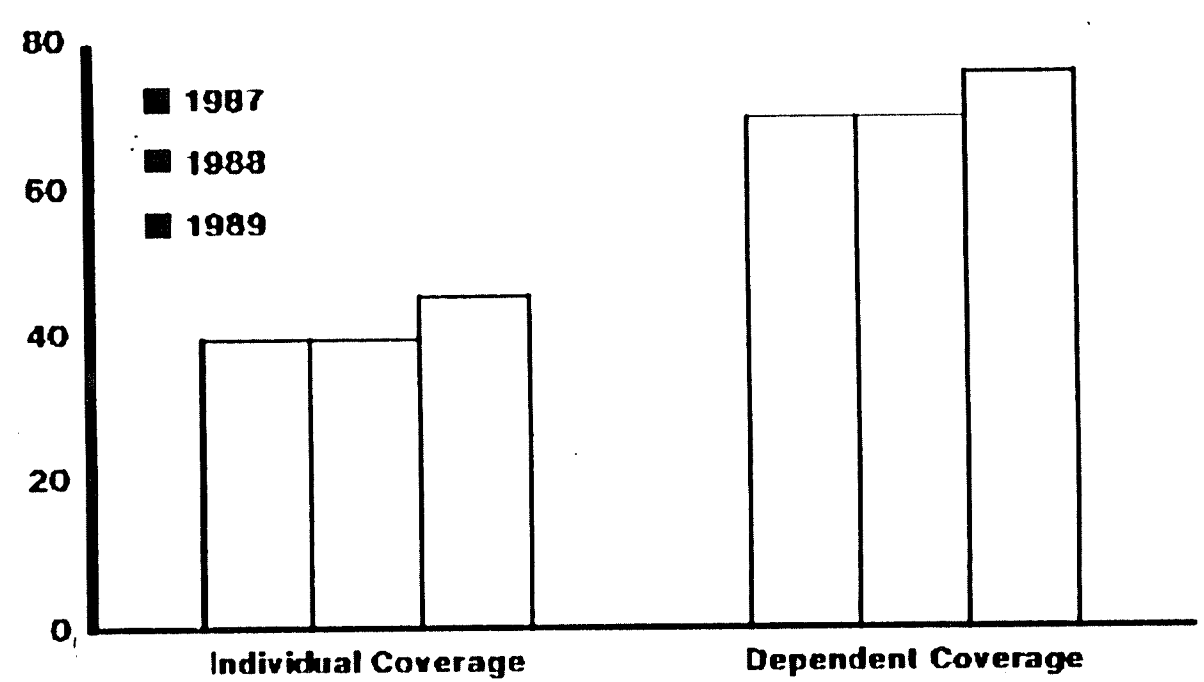
Percent Of Employers Requiring Employee Contributions to Premiums



Source: Foster Higgins

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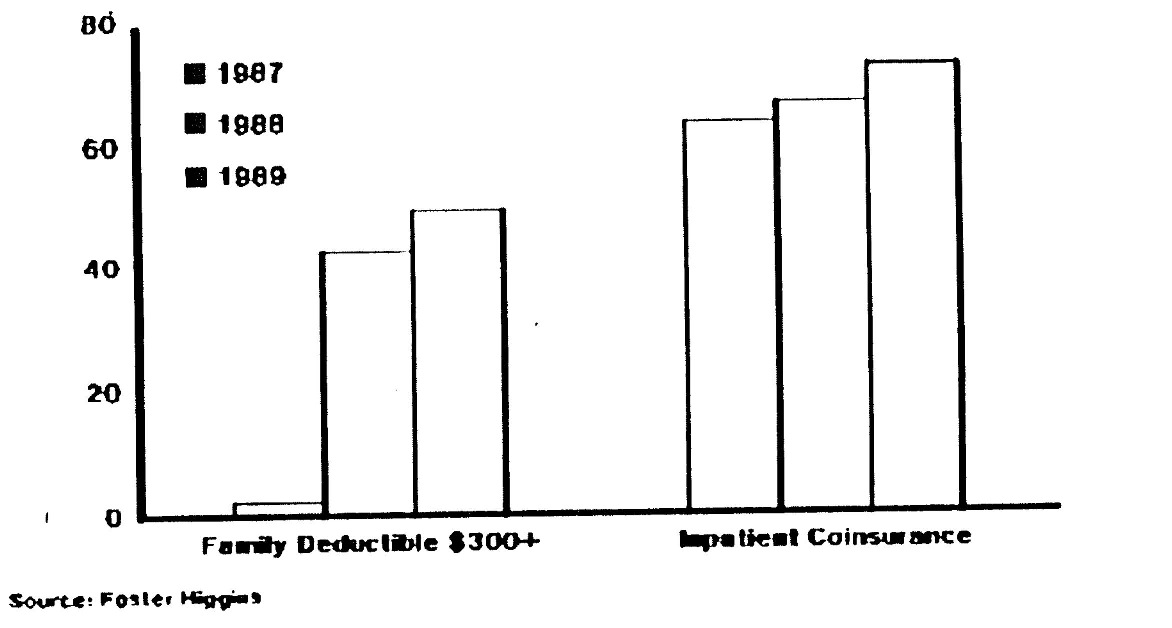
Percent Of Employers With Other Selected Cost Sharing Features



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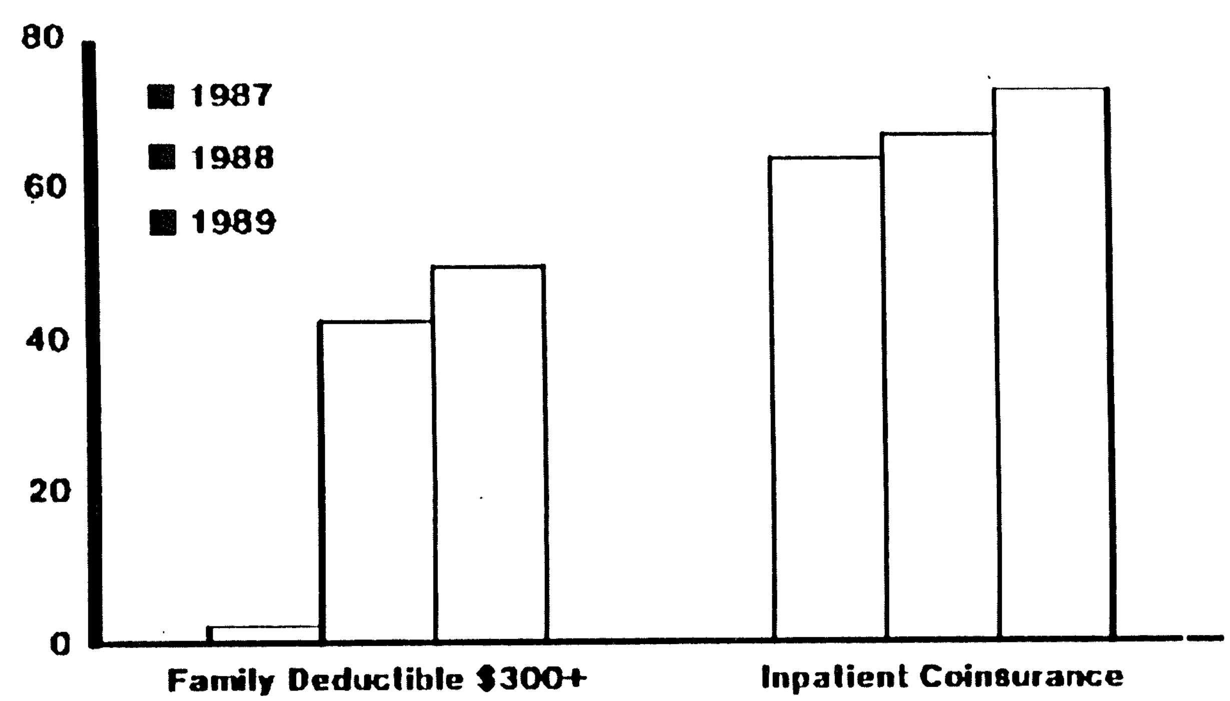

Source: Foster Higgins

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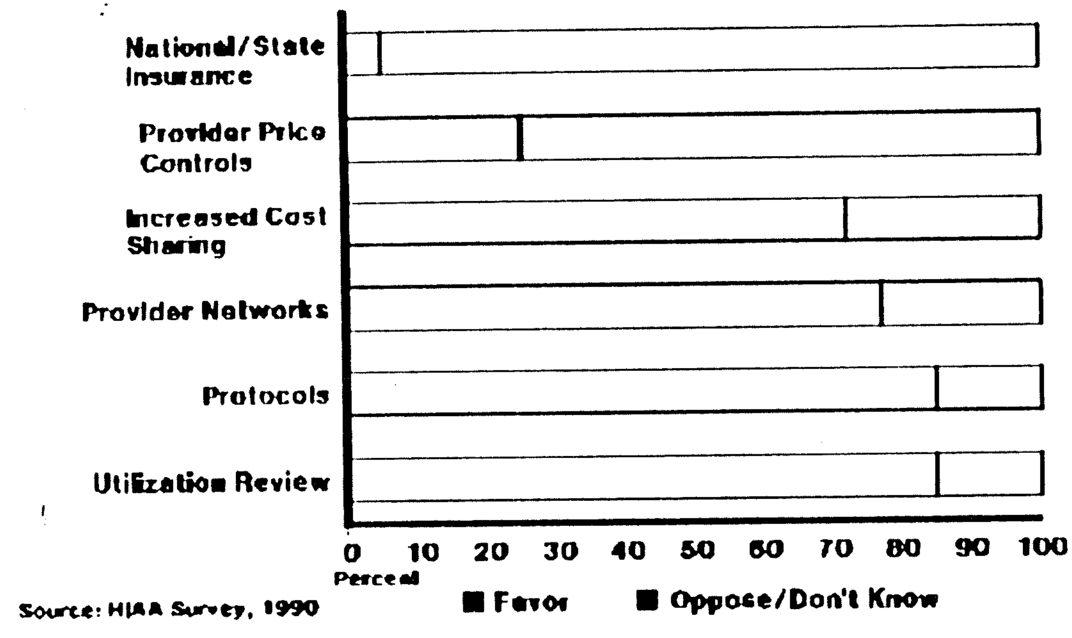
Don Duffy Presentation #16

Survey of Chief Executives on Solutions to Health Costs



Source: HIAA Survey, 1990

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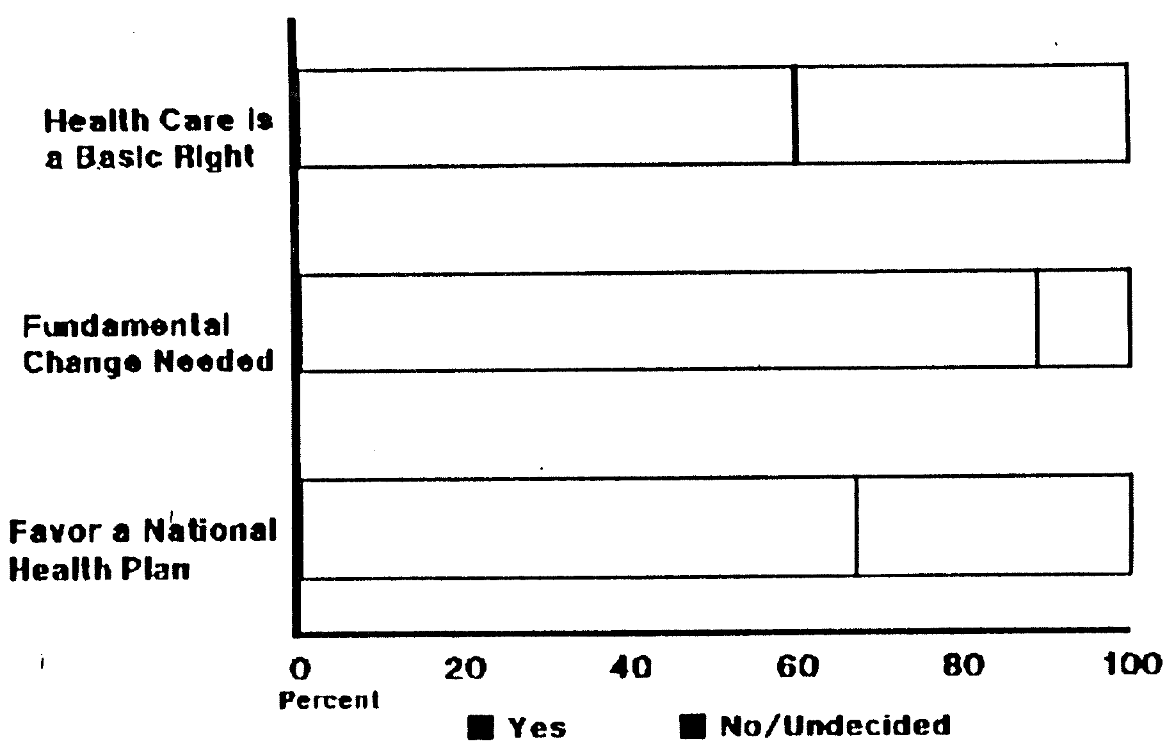
Don Duffy Presentation #17

Public Attitudes on Health Care Issues



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February 18, 19[illegible]

MEMORANDUM

To: House Committee on Public Health and Welfare

From: Norman Furse, Revisor of Statutes Office
Emalene Correll, Kansas Legislative Research Department

Re: Title X, Family Planning Law and Regulations

Federal legislation known as the Family Planning Services and Population Research Act (P.L. 91-572) was enacted in 1970. The 1970 Act added Title X, "Population Research and Voluntary Family Planning Programs," to the Public Health Services Act. The federal legislation authorizes federal funds for comprehensive family planning services.

Section 1002 of Title X authorizes the Secretary of Health and Human Services to make grants to state health authorities to assist in planning, establishing, maintaining, coordinating, and evaluating family planning services. No grant may be made unless the state health authority has submitted and had approved a comprehensive program of family planning services. In Kansas, federal grant funds are made available under Title X to the Department of Health and Environment, which in turn makes grants from the federal funds to local grantees who agree to provide family planning services that are in compliance with federal law and regulations. In addition to providing support for family planning services through grants of federal funds to grantee clinics, the Department also provides direct support to small health departments through services such as Pap smears at state contract rates, payments of physician and advanced registered nurse practitioner services, and pharmaceutical services and laboratory services at state contract rates.

Attached are copies of applicable sections of the federal law, 42 U.S. Code, Sections 300a-5 through 300a-7 (Attachment 1), and federal regulations, 42 CFR 59.1 through 59.13 (Attachment 2). **In reviewing the attached federal regulations, note that the regulations identified as 42 CFR 59.8 through 59.10 are not in effect in Kansas or other states in the jurisdiction of the U.S. Tenth Circuit Court of Appeals because the Tenth Circuit Court has enjoined their enforcement.** The U.S. Supreme Court heard oral arguments on October 30, 1990, in *Rust* v. *Sullivan*, challenging the regulations cited on both statutory and constitutional grounds. A decision in the case has not been handed down.

See attached map for counties in which family planning services are available as a part of the comprehensive state plan as required by Title X. Note that Wyandotte County has a separate federal grant (Attachment 3).

Attachment No. 4 is a list of the grantees that make up the component of the federally approved Kansas plan for comprehensive family planning services that are receiving federal Title X funds in the current state fiscal year. Attachment No. 5 is a list of the counties receiving direct support services in the fiscal year which make up the other component of the plan for comprehensive services.

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Attachment No. 1

year beginning July 1, 1975, for purposes of this section, see section 204(1) of Pub.L. 94-274, Apr. 21, 1976, 90 Stat. 392, set out as a note under section 390e of Title 7, Agriculture.

Legislative History. For legislative history and purpose of Pub.L. 91-572, see 1970 U.S. Code Cong. and Adm.News, p. 5068. See, also, Pub.L. 94-63, 1975 U.S.Code Cong. and Adm.News, p. 469.

Code of Federal Regulations

Funding of health services projects, see 42 CFR 50.201 et seq.
Grant policies and procedures for,
Family planning services, see 42 CFR 59.1 et seq.
Research projects, see 42 CFR 52.1 et seq.

§ 300a-5. Voluntary participation by individuals; participation not prerequisite for eligibility or receipt of other services and information

The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this subchapter (whether by grant or contract) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information.

(July 1, 1944, c. 373, Title X, § 1007, as added Dec. 24, 1970, Pub.L. 91-572, § 6 (c), 84 Stat. 1508.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-572, see 1970 U.S. Code Cong. and Adm.News, p. 5068.

Library References

Social Security and Public Welfare ⚷4.5.
C.J.S. Social Security and Public Welfare § 10

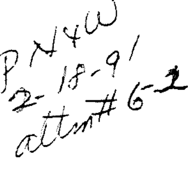
§ 300a-6. Prohibition against funding programs using abortion as family planning method

None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning.

(July 1, 1944, c. 373, Title X, § 1008, as added Dec. 24, 1970, Pub.L. 91-572, § 6 (c), 84 Stat. 1508.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 91-572, see 1970 U.S. Code Cong. and Adm.News, p. 5068.



Notes of Decisions

Referral services 2
State regulation or control 1

1. State regulation or control

NDCC 14-02.3-01 et seq., prohibiting public funds from being used as family planning funds by any person or agency performing or referring or encouraging abortion conflicts with mandate of this subchapter that comprehensive health care be provided by its grantees, including referrals to other services when medically indicated; therefore, statute is invalid under U.S.C.A.Const.Art. 6 cl. 2. Valley Family Planning v. State of N. D., C.A.N.D. 1981, 661 F.2d 99.

2. Referral services

State may, consistent with this subchapter forbid the use of funds for abortion referral services. Valley Family Planning v. State of N. D., D.C.N.D.1980, 489 F.Supp. 238.

§ 300a-6a. Plans and reports

Submission of report to Congress; purposes of plan

(a) Not later than seven months after the close of each fiscal year, the Secretary shall make a report to the Congress setting forth a plan to be carried out over the next five fiscal years for—

(1) extension of family planning services to all persons desiring such services,

(2) family planning and population research programs,

(3) training of necessary manpower for the programs authorized by this subchapter and other Federal laws for which the Secretary has responsibility and which pertain to family planning, and

(4) carrying out the other purposes set forth in this subchapter and the Family Planning Services and Population Research Act of 1970.

Minimum requirements for plan

(b) Such a plan shall, at a minimum, indicate on a phased basis—

(1) the number of individuals to be served by family planning programs under this subchapter and other Federal laws for which the Secretary has responsibility, the types of family planning and population growth information and educational materials to be developed under such laws and how they will be made available, the research goals to be reached under such laws, and the manpower to be trained under such laws;

(2) an estimate of the costs and personnel requirements needed to meet the purposes of this subchapter and other Federal laws for which the Secretary has responsibility and which pertain to family planning programs; and

(3) the steps to be taken to maintain a systematic reporting system capable of yielding comprehensive data on which service figures and program evaluations for the Department of Health and Human Services shall be based.

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§ 300a–6. Prohibition against funding programs using abortion as family planning method

Notes of Decisions

Constitutionality ½
Information about abortion 4
Reasonableness of regulations 5
Use of nonfederal funds 3
Validity of regulations 6

½. Constitutionality

Regulations promulgated under Title X of the Public Health Service Act and prohibiting any counseling or referrals for abortion services and imposing restrictions on privately funded abortion-related activities violated constitutional right of reproductive choice. Com. of Mass. v. Secretary of Health and Human Services, C.A.1 (Mass.) 1989, 873 F.2d 1528.

3. Use of nonfederal funds

Federal regulations denying federal grant funds to otherwise eligible health clinics on ground they provide abortion counseling or referrals, even with nonfederal funds, constituted impermissible penalty for exercise of constitutionally protected rights; regulations went beyond mere refusal to subsidize. Com. of Mass. v. Bowen, D.Mass.1988, 679 F.Supp. 137.

4. Information about abortion

Secretary of Health and Human Services was not authorized by Title X to enact regulations that restrict a woman's access to information about abortion; neither congressional history nor Secretary's prior contemporaneous interpretations of Title X supported finding that Congress intended to prohibit family planning clinics funded by Title X to provide women with access to information about abortions. Planned Parenthood Federation of America v. Bowen, D.Colo.1988, 680 F.Supp. 1465.

5. Reasonableness of regulations

Under section of Title X prohibiting use of funds in programs in which abortion is method of family planning, new regulations, withholding grants of federal funds from those who wished to counsel women about abortion, refer them to abortion providers or advocate, encourage or promote abortion in other ways or who failed to separate their abortion facilities were supported by sufficiently reasonable grounds that they would not be set aside as arbitrary or capricious. State of N.Y. v. Bowen, S.D.N.Y.1988, 690 F.Supp. 1261, affirmed 863 F.2d 46.

6. Validity of regulations

Regulations promulgated under Title X of Public Health Services Act and applying extensive prohibitions against abortion counseling, referral and abortion-related actitivies to recipient-generated income as well as to federal funds exceeded Secretary of Health and Human Services' authority. Com. of Mass. v. Secretary of Health and Human Services, C.A.1 (Mass.) 1989, 873 F.2d 1528.

Regulations promulgated by Department of Health and Human Services withholding Title X funds from those who failed to separate facilities and personnel used in abortions and abortion counseling from those used in other family planning activities did not impose burden so excessive as to infringe upon recipients' constitutional rights, nor did regulations infringe upon recipients' rights to exercise free speech in abortion counseling programs supported by funds from other sources. State of N.Y. v. Bowen, S.D.N.Y. 1988, 690 F.Supp. 1261, affirmed 863 F.2d 46.

§ 300a–7. Sterilization or abortion

(a) Omitted

(b) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C.A. § 201 et seq.], the Community Mental Health Centers Act [42 U.S.C.A. § 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C.A. § 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

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achment No. 2

health, or the conservation of grant funds.

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

Subpart A—Project Grants for Family Planning Services

Sec.
59.1 To what programs do these regulations apply?
59.2 Definitions.
59.3 Who is eligible to apply for a family planning services grant?
59.4 How does one apply for a family planning services grant?
59.5 What requirements must be met by a family planning project?
59.6 What procedures apply to assure the suitability of informational and educational material?
59.7 Standards of compliance with prohibition on abortion.
59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.
59.9 Maintenance of program integrity.
59.10 Prohibition on activities that encourage, promote or advocate abortion.
59.11 What criteria will the Department of Health and Human Services (HHS) use to decide which family planning services projects to fund and in what amount?
59.12 How is a grant awarded?
59.13 For what purposes may grant funds be used?
59.14 What other HHS regulations apply to grants under this subpart?
59.15 Confidentiality.
59.16 Inventions or discoveries.
59.17 Additional conditions.

Subpart B—[Reserved]

Subpart C—Grants for Family Planning Service Training

59.201 Applicability.
59.202 Definitions.
59.203 Eligibility.
59.204 Application for a grant.
59.205 Project requirements.
59.206 Evaluation and grant award.
59.207 Payments.
59.208 Use of project funds.
59.209 Civil rights.
59.210 Inventions or discoveries.
59.211 Publications and copyright.
59.212 Grantee accountability.
59.213 [Reserved]
59.214 Additional conditions.
59.215 Applicability of 45 CFR Part 74.

Subpart A—Project Grants for Family Planning Services

AUTHORITY: 42 U.S.C. 300a-4.

SOURCE: 45 FR 37436, June 3, 1980, unless otherwise noted.

EFFECTIVE DATE NOTE: At 53 FR 2922, Feb. 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants, codified at §§ 59.7-59.10 and various technical and conforming amendments were made to other sections of pre-existing regulations. Since the promulgation of this rule, four suits have been filed in various court jurisdictions. Consequently, the regulations are currently effective with respect to certain organizations and not with respect to others.

Users of this volume with questions as to whether these regulations are in effect with regard to them are encouraged to consult the Director of the Office of Family Planning, Public Health Service, Department of Health and Human Services (202) 245-0153. PHS published a document providing notice of these court actions in the FEDERAL REGISTER at 53 FR 49320, Dec. 7, 1988.

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

"*Act*" means the Public Health Service Act, as amended.

"*Family*" means a social unit composed of one person, or two or more persons living together, as a household.

"*Family planning*" means the process of establishing objectives for the number and spacing of one's children and selecting the means by which these objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility,

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including contraceptive methods (including natural family planning and abstinence) and the management of infertility (including adoption). Family planning services includes preconceptional counseling, education, and general reproductive health care (including diagnosis and treatment of infections which threaten reproductive capability). Family planning does not include pregnancy care (including obstetric or prenatal care). As required by section 1008 of the Act, abortion may not be included as a method of family planning in the Title X project. Family planning, as supported under this subpart, should reduce the incidence of abortion.

"*Grantee*" means the organization to which a grant is awarded under section 1001 of the Act.

"*Low income family*" means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1060.2). "*Low-income family*" also includes members of families whose annual family income exceeds this amount, but who, as determined by the Title X project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

"*Nonprofit,*" as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

"*Prenatal care*" means medical services provided to a pregnant woman to promote maternal and fetal health.

"*Program*" and "*project*" are used interchangeably and mean a coherent assembly of plans, activities and supporting resources contained within an administrative framework.

"*Secretary*" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"*State*" means one of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, Northern Marianas, or the Trust Territory of the Pacific Islands.

"*Title X*" means Title X of the Act, 42 U.S.C. 300, *et seq.*

"*Title X program*" and "*Title X project*" are used interchangeably and mean the identified program which is approved by the Secretary for support under section 1001 of the Act, as the context may require. Title X project funds include all funds allocated to the Title X program, including but not limited to grant funds, grant-related income or matching funds.

[45 FR 37436, June 3, 1980, as amended at 48 FR 3614, Jan. 26, 1983; 49 FR 38118, Sept. 27, 1984; 53 FR 2944, 2946, Feb. 2, 1988]

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) A description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) A budget and justification of the amount of grant funds requested;

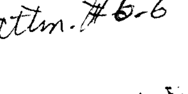
(3) A description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) Such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved



family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, such as natural family planning, it may participate as part of a Title X project as long as the entire Title X project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other service, assistance from or participation in any other program of the applicant.[1]

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Provide that priority in the provision of services will be given to persons from low-income families.

(6) Provide that no charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized to or is under legal obligation to pay this charge.

(7) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent CSA Income Poverty Guidelines (45 CFR 1060.2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(8) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX or title XX of the Social Security Act, a written agreement with the title XIX or title XX agency is required.

(9)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(10) Provide for an Advisory Committee as required by § 59.6.

(b) In addition to the requirements of paragraph (a) of this section, each Title X project must meet each of the following requirements unless the Secretary determines that the Title X project has established good cause for its omission. Each Title X project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for

[1] Section 205 of Pub. L. 94-63 states: "Any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

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the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical service agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to (i) achieve community understanding of the objectives of the Title X program, (ii) inform the community of the availability of services, and (iii) promote continued participation in the Title X project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and in-service training for all Title X project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for Title X project participants will be authorized by the Title X project director or his designee on the Title X project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other Federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and methods of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the Title X project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

(Sec. 215, Public Health Service Act, 58 Stat. 690, 42 U.S.C. 216; sec. 1006(a), Public Health Service Act, 84 Stat. 1507, 42 U.S.C. 300a-4(a); sec. 931(b)(1) of Pub. L. 97-35, 95 Stat. 570, 42 U.S.C. 300(a))

[45 FR 37436, June 3, 1980, as amended at 49 FR 38118, Sept. 27, 1984; 53 FR 2944, 2946, Feb. 2, 1988]

§ 59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurances satisfactory to the Secretary that the Title X project shall provide for the review and approval of informational and educational materials developed or made available under the Title X project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of Title X of the Act. The Title X project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in paragraph (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

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(iv) Determine whether the material is suitable for the population or community to which it is to be made available; and

(v) Establish a written record of its determinations.

[45 FR 37436, June 3, 1980, as amended at 53 FR 2946, Feb. 2, 1988]

§ 59.7 Standards of compliance with prohibition on abortion.

A project may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that it does not include abortion as a method of family planning. Such assurance must include, as a minimum, representations (supported by such documentation as the Secretary may request) as to compliance with each of the requirements in § 59.8 through § 59.10. A project must comply with such requirements at all times during the period for which support under Title X is provided.

[53 FR 2944, Feb. 2, 1988]

EFFECTIVE DATE NOTE: At 53 FR 2922, Feb. 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants, codified at §§ 59.7-59.10 and various technical and conforming amendments were made to other sections of pre-existing regulations. Since the promulgation of this rule, four suits have been filed in various court jurisdictions. Consequently, the regulations are currently effective with respect to certain organizations and not with respect to others.

Users of this volume with questions as to whether these regulations are in effect with regard to them are encouraged to consult the Director of the Office of Family Planning, Public Health Service, Department of Health and Human Services (202) 245-0153. PHS published a document providing notice of these court actions in the FEDERAL REGISTER at 53 FR 49320, Dec. 7, 1988.

§ 59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.

(a)(1) A Title X project may not provide counseling concerning the use of abortion as a method of family planning or provide referral for abortion as a method of family planning.

(2) Because Title X funds are intended only for family planning, once a client served by a Title X project is diagnosed as pregnant, she must be referred for appropriate prenatal and/or social services by furnishing a list of available providers that promote the welfare of mother and unborn child. She must also be provided with information necessary to protect the health of mother and unborn child until such time as the referral appointment is kept. In cases in which emergency care is required, however, the Title X project shall be required only to refer the client immediately to an appropriate provider of emergency medical services.

(3) A Title X project may not use prenatal, social service or emergency medical or other referrals as an indirect means of encouraging or promoting abortion as a method of family planning, such as by weighing the list of referrals in favor of health care providers which perform abortions, by including on the list of referral providers health care providers whose principal business is the provision of abortions, by excluding available providers who do not provide abortions, or by "steering" clients to providers who offer abortion as a method of family planning.

(4) Nothing in this subpart shall be construed as prohibiting the provision of information to a project client which is medically necessary to assess the risks and benefits of different methods of contraception in the course of selecting a method; *provided*, that the provision of this information does not include counseling with respect to or otherwise promote abortion as a method of family planning.

(b) *Examples.* (1) A pregnant client of a Title X project requests prenatal care services, which project personnel are qualified to provide. Because the provision of such services is outside the scope of family planning supported by Title X, the client must be referred to appropriate providers of prenatal care.

(2) A Title X project discovers an ectopic pregnancy in the course of conducting a physical examination of a client. Referral arrangements for emergency medical care are immediately provided. Such action is in compliance with the requirements of paragraph (a)(2) of this section.

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(3) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The Title X project tells her that it does not refer for abortion but provides her a list which includes, among other health care providers, a local clinic which principally provides abortions. Inclusion of the clinic on the list is inconsistent with paragraph (a)(3) of this section.

(4) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The project tells her that it does not refer for abortion and provides her a list which consists of hospitals and clinics and other providers which provide prenatal care and also provide abortions. None of the entries on the list are providers that principally provide abortions. Although there are several appropriate providers of prenatal care in the area which do not provide or refer for abortions, none of these providers are included on the list. Provision of the list is inconsistent with paragraph (a)(3) of this section.

(5) A pregnant woman requests information on abortion and asks the Title X project to refer her to an abortion provider. The project counselor tells her that the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion counseling or referral.

[53 FR 2945, Feb. 2, 1988]

EFFECTIVE DATE NOTE: At 53 FR 2922, Feb. 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants, codified at §§ 59.7-59.10 and various technical and conforming amendments were made to other sections of pre-existing regulations. Since the promulgation of this rule, four suits have been filed in various court jurisdictions. Consequently, the regulations are currently effective with respect to certain organizations and not with respect to others.

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§ 59.9 Maintenance of program integrity.

A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and § 59.8 and § 59.10 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include (but are not limited to):

(a) The existence of separate accounting records;

(b) The degree of separation from facilities (*e.g.*, treatment, consultation, examination, and waiting rooms) in which prohibited activities occur and the extent of such prohibited activities;

(c) The existence of separate personnel;

(d) The extent to which signs and other forms of identification of the Title X project are present and signs and material promoting abortion are absent.

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[53 FR 2945, Feb. 2, 1988]

EFFECTIVE DATE NOTE: At 53 FR 2922, Feb. 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grantees and applicants for grants, codified at §§ 59.7-59.10 and various technical and conforming amendments were made to other sections of pre-existing regulations. Since the promulgation of this rule, four suits have been filed in various court jurisdictions. Consequently, the regulations are currently effective with respect to certain organizations and not with respect to others.

Users of this volume with questions as to whether these regulations are in effect with regard to them are encouraged to consult the Director of the Office of Family Planning, Public Health Service, Department of Health and Human Services (202) 245-0153. PHS published a document providing notice of these court actions in the FEDERAL REGISTER at a 53 FR 49320, Dec. 7, 1988.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A Title X project may not encourage, promote or advocate abortion as a method of family planning. This requirement prohibits actions to assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of Title X project funds for the following:

(1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

(2) Providing speakers to promote the use of abortion as a method of family planning;

(3) Paying dues to any group that as a significant part of its activities advocates abortion as a method of family planning;

(4) Using legal action to make abortion available in any way as a method of family planning; and

(5) Developing or disseminating in any way materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning.

(b) *Examples.* (1) Clients at a Title X project are given brochures advertising an abortion clinic. Provision of the brochure violates subparagraph (a) of this section.

(2) A Title X project makes an appointment for a pregnant client with an abortion clinic. The Title X project has violated paragraph (a) of this section.

(3) A Title X project pays dues to a state association which, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association violates paragraph (a)(3) of this section.

(4) An organization conducts a number of activities, including operating a Title X project. The organization uses non-project funds to pay dues to an association which, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association by the organization does not violate paragraph (a)(3) of this section.

(5) An organization that operates a Title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a Title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, using no project funds to do so. The Title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a Title X project employee speaks before a legislative body in support of abortion as a method of family planning. The Title X project has not violated paragraph (a) of this section.

[53 FR 2945, Feb. 2, 1988]

EFFECTIVE DATE NOTE: At 53 FR 2922, Feb. 2, 1988, the Department of Health and Human Services promulgated rules revising the requirements for compliance by grant-

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ees and applicants for grants, codified at §§ 59.7-59.10 and various technical and conforming amendments were made to other sections of pre-existing regulations. Since the promulgation of this rule, four suits have been filed in various court jurisdictions. Consequently, the regulations are currently effective with respect to certain organizations and not with respect to others.

Users of this volume with questions as to whether these regulations are in effect with regard to them are encouraged to consult the Director of the Office of Family Planning, Public Health Service, Department of Health and Human Services (202) 245-0153. PHS published a document providing notice of these court actions in the FEDERAL REGISTER at 53 FR 49320, Dec. 7, 1988.

§ 59.11 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those Title X projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the Title X project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the Title X project. No grant may be made for less than 90 percent of the Title X project's costs, as so estimated, unless the grant is to be made for a Title X project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent of the Title X project's estimated costs.

[45 FR 37436, June 3, 1980. Redesignated and amended at 53 FR 2944, 2946, Feb. 2, 1988]

§ 59.12 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the Title X project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(b) Generally the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[45 FR 37436, June 3, 1980. Redesignated and amended at 53 FR 2944, 2946, Feb. 2, 1988]

§ 59.13 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

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Title X Family Planning Services

Kansas Department of Health and Environment

FY 91

CHEYENNE
RAWLINS
DECATUR
NORTON
PHILLIPS
SMITH
JEWELL
REPUBLIC
WASHINGTON
MARSHALL
NEMAHA
BROWN
DONIPHAN
SHERMAN
THOMAS
SHERIDAN
GRAHAM
ROOKS
OSBORNE
MITCHELL
CLOUD
CLAY
RILEY
POTTAWATOMIE
JACKSON
ATCHISON
JEFFERSON
LEAVENWORTH
WYANDOTTE
WALLACE
LOGAN
GOVE
TREGO
ELLIS
RUSSELL
LINCOLN
OTTAWA
DICKINSON
GEARY
WABAUNSEE
SHAWNEE
DOUGLAS
JOHNSON
SALINE
ELLSWORTH
MORRIS
OSAGE
GREELEY
WICHITA
SCOTT
LANE
NESS
RUSH
BARTON
LYON
FRANKLIN
MIAMI
McPHERSON
MARION
RICE
CHASE
COFFEY
ANDERSON
LINN
HAMILTON
KEARNY
FINNEY
HODGEMAN
PAWNEE
RENO
HARVEY
GRAY
EDWARDS
STAFFORD
BUTLER
GREENWOOD
WOODSON
ALLEN
BOURBON
FORD
SEDGWICK
STANTON
GRANT
HASKELL
PRATT
KIOWA
KINGMAN
WILSON
NEOSHO
CRAWFORD
ELK
MORTON
STEVENS
SEWARD
MEADE
CLARK
BARBER
COMANCHE
HARPER
SUMNER
COWLEY
MONTGOMERY
LABETTE
CHAUTAUQUA
CHEROKEE

Direct Support

Grantee

[Att]achment No. 3

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SFY 91 FUNDING - GRANTS COMPONENT

GRANTEE	PRESENT FUNDING
Barton	$17,945
Cloud	13,608
Crawford	24,000
Douglas	70,162
Geary	27,000
Johnson - Olathe/Shawnee Mission	68,987
Labette/Cherokee/Montgomery	21,000
Leavenworth	21,751
Lyon	27,000
McPherson	13,000
Mitchell/Jewell	13,053
Osage	8,000
Reno	25,000
Riley	41,888
Saline	30,940
Sedgwick	86,360
Shawnee	95,200
Butler/Greenwood	15,232
SEK Multi-County Allen/Anderson/Bourbon/Linn/Woodson	39,200
NEK Multi-County Atchison/Brown/Jackson	19,040
Dodge City Family Planning (Ford County)	24,000
Planned Parenthood Hays (Ellis County)	30,700
Planned Parenthood of Kansas (Wichita)	85,000
TOTAL	$818,066

SFY 91 FUNDING - DIRECT SUPPORT COMPONENT

	PRESENT FUNDING
Chautauqua	$3,000
Clay	3,500
Coffey	1,000
Decatur	2,000
Dickinson	2,000
Ellsworth	1,500
Finney	10,500
Franklin	7,000
Grant	4,500
Harper	1,600
Harvey	6,300
Jefferson	2,500
Kearny	800
Kingman	800
Lane	1,000
Lincoln	1,400
Meade	1,200
Miami	3,500
Morris	2,000
Morton	1,500
Neosho	1,500
Norton	1,500
Osborne	1,200
Pawnee	4,500
Phillips	2,000
Pottawatomie	1,800
Pratt	2,700
Rice	1,000
Rooks	1,500
Seward	12,000
Sherman	2,400
Smith	1,800
Stafford	1,100
Stanton	2,000
Sumner	2,000
Thomas	2,800
Trego	1,800
Wabaunsee	2,000
Washington	1,500
TOTAL	$ 104,700

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