

Approved _____

Date

2-12-92

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at _____
Chairperson

10:00 a.m./p.m. on February 5, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Norman Furse, Revisor's Office
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Greg L. Reser, Kansas Department of Health and Environment
Linda Lubensky, Kansas Home Care Association
Cathy Rooney, Kansas Department of Health and Environment

Senator Ehrlich called the meeting to order at 10:00 a.m.

The Chairman asked for Committee bill requests. No requests were made.

Hearing on:

SB 539 - Home health agencies licensure requirements

Greg L. Reser, Medical Facilities Certification Administrator, Department of Health and Environment, submitted written testimony and appeared before the Committee in support of SB 539 and stated the bill is basically a technical amendment to the home health agency licensure law which is needed because of changes in Medicare certification requirements. (Attachment 1)

Linda Lubensky, Kansas Home Care Association, appeared before the Committee in support of SB 539 and recommended the adoption of the bill which would streamline the home health agency licensure and Medicare certification process as noted by the Department of Health and Environment.

The Chairman called for opponents on SB 539. No opponents appeared.

Hearing on:

SB 540 - Adult care homes use of certified nurse aides and fees.

Cathy Rooney, Bureau of Adult and Child Care, Department of Health and Environment, submitted written testimony and appeared before the Committee and stated the Department supports SB 540 because the bill proposed amending KSA 39-936 to make the state program consistent and comply with OBRA, thus assuring state participation in the Medicare/Medicaid programs. (Attachment 2) Committee discussion and clarification followed regarding the requirement that adult care homes contact the state nurse aide registry prior to using persons as a certified nurse aide, the refresher course, and the amendment that would delete the collection of an examination fee and allow collection of a certification fee.

The Chairman called for opponents on SB 540. No opponents appeared.

The Chairman asked for wishes of the Committee on SB 539. Senator Walker made the motion to recommend SB 539 favorably for passage, seconded

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./p.m. on February 5, _____, 1992

by Senator Hayden. No discussion followed. The motion carried. Senator Walker will carry the bill.

The Chairman asked for wishes of the Committee on SB 540. Senator Salisbury made the motion to recommend SB 540 favorably for passage, seconded by Senator Ward. No discussion followed The motion carried. Senator Hayden will carry the bill.

Review and consideration of carry-over bills:

The Chairman asked for wishes of the Committee on SB 312 - State employee payroll deductions authorized for wellness programs. Senator Walker made the motion to report SB 312 adversely, seconded by Senator Hayden. No discussion followed. The motion carried.

Staff Furse briefed the Committee on SB 532 - Providing for education, treatment and services concerning pregnancies and the effects of using certain substances.

The meeting was adjourned at 10:40 a.m. The next meeting of the Committee is scheduled for February 11, 1992, 10:00 a.m., Room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-5-92

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Linda Lukensky	KS Home Care Assoc.
Conroy Boone & Drey Cohen	KDHE
Joseph Keene	KDHE
Bob Gertz	KDHE
Lela Paslay	ARC / KANSAS
Ann Miller	ARC / KANSAS
Maureen Collins	SRS / ADHS
Michelle Zeller	Planned Parenthood
Donaron Pridgen	Social Work Student - WU
Gary Robbins	SRS Youth & Adult Services
Bill Henry	KS Optometric Assn
Betty Slaver	KS Engineering Society
Michelle Linton	Kansas Action for Children
Jan Clare	Kansas Governmental Consulting
Ruth Kay Rycott	Kan Co. & Private Assn.
Sharon Huffman	KDHE
Robert Epps	KCDC
Judy Belcome	SRS
	Clinicare



Department of Health and Environment
Azzie Young, Ph.D., Secretary

Reply to:

Testimony presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill No. 539

Background

In 1987, Congress passed the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) which required that the Health Care Financing Administration implement a flexible survey cycle in order to reduce the predictability of home health agency inspections. Many of the requirements authorized by OBRA '87 were implemented as part of Medicare home health regulations published August 14, 1989.

In March 1991, the Health Care Financing Administration established a survey system with no more than fifteen months between inspections for individual agencies and for a state-wide average of not more than twelve months between inspections. Certification periods are not time limited.

Issues

Since the Department conducts one inspection for both licensure and certification purposes, the objective of reducing the predictability of the survey cannot be accomplished unless the same rules are used for both certification and licensure. The Department proposed similar legislation in 1989 to change the annual licensure cycle for nursing homes, and last year, the Legislature amended child care law for similar purposes.

This same approach is adopted for home health agencies in Senate Bill 539. Under this approach, an agency would be required to file an annual report and pay an annual fee even though the license would not be "renewed." The amendments to Senate Bill 539 implement this change and also include the federal language establishing a maximum time between surveys.

Recommendation

The Department respectfully recommends that the committee adopt Senate Bill 539 which will streamline the home health agency licensure and Medicare certification process.

Presented by: Greg L. Reser, Medical Facilities Certification Administrator
Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 5, 1992

Public H & W
Attachment #1
2-5-92



Department of Health and Environment
Azzie Young, Ph.D., Secretary

Reply to:

TESTIMONY PRESENTED TO THE
SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

BY

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill 540

Kansas has been a leader in nurse aide training, testing, and certification since the program was established in 1978. Over 50,000 persons have been certified as nurse aides since the program began. In 1987 and 1989 the United States Congress enacted a series of nursing home reform laws referred to as OBRA. Part of OBRA dealt with nurse aide training, testing, and registry requirements since a majority of states did not have training and testing requirements for nurse aides in place. In April 1991, federal Health Care Financing Administration (HCFA) audited the state for compliance with OBRA nurse aide requirements. The audit resulted in two citations for good management practices. However, a plan of correction was requested since the state program did not require nurse aides who have been out of the field for two years to complete a refresher course. Final federal regulations to implement OBRA nurse aide requirements were issued September 26, 1991, pointing out the need to make a few additional adjustments to the state program.

Senate Bill 540 makes the necessary adjustments to the program allowing Kansas to be consistent and in full compliance with OBRA. The following are the proposed amendments to KSA 39-936:

✓ KSA 39-936(c)(1), page one, lines 32-39, is being deleted since it is a repeat of item (2) on page two, lines 16-21.

✓ KSA 39-936(c)(4), which is item (3), page three, lines 2-8, is being amended to delete the collection of the examination fee and to allow collection of a certification fee. The current examination fee is \$7.50 and the proposed certification fee will be \$10 - the certification fee will be set in rules and

Public H & W
Attachment #2
2-5-92

regulations. OBRA does not prohibit a state from charging a certification fee to cover the state costs for certification of the trainee. However, OBRA does restrict a state from imposing upon the nurse aide trainee a training or examination fee or a fee to be placed on the registry.

New item (4), page three, lines 9-12, requires the department to establish a state registry containing information about nurse aides in accordance with OBRA. OBRA requires the registry to contain basic information about each nurse aide trainee (course; examination scores; address; identification number; if certified; any administrative confirmation of abuse, neglect, or exploitation; etc.).

New item (5), page three, lines 13-15, requires adult care homes to contact the state nurse aide registry prior to using persons as a certified nurse aides. This provision is consistent with OBRA requirements as well as complements the enforcement of the state nurse aide certification requirement by stopping employment of persons with forged or inappropriate certificates. In addition, the registry identifies to callers which aides who have an administrative hearing confirmation of abuse, neglect, or exploitation of any adult care home resident in accordance with KSA 39-1404, et seq. Current federal regulations prohibit a facility from using a person convicted in a court of law of abuse, neglect, or mistreatment of an individual and, as of April 1, 1992, anyone with an administrative hearing confirmation of abuse, neglect, or exploitation of an adult care home resident.

New item (6), page three, lines 16-23, beginning July 1, 1993, mandates adult care homes to require any nurse aide who has been out of the field for a two-year period to complete a refresher course. The department is to prepare guidelines for such a course and to approve or disapprove such courses. This provision is consistent with OBRA requirements and addresses the compliance issue identified by the HCFA auditors.

In conclusion, the department supports Senate Bill 540. The bill proposes amending KSA 39-936 to make the state program consistent and comply with OBRA; thus, assuring state participation in the Medicare/Medicaid programs.

Included with this testimony is a FY 1991 annual report that briefly describes the magnitude of the state training, testing, and certification program for nurse aides and the registry.

Presented by: Cathy Rooney, Director
Health Occupations Credentialing
Bureau of Adult and Child Care
February 5, 1992

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Health Occupations Credentialing
Bureau of Adult and Child Care

FY 1991 - Nurse Aide Programs

Introduction

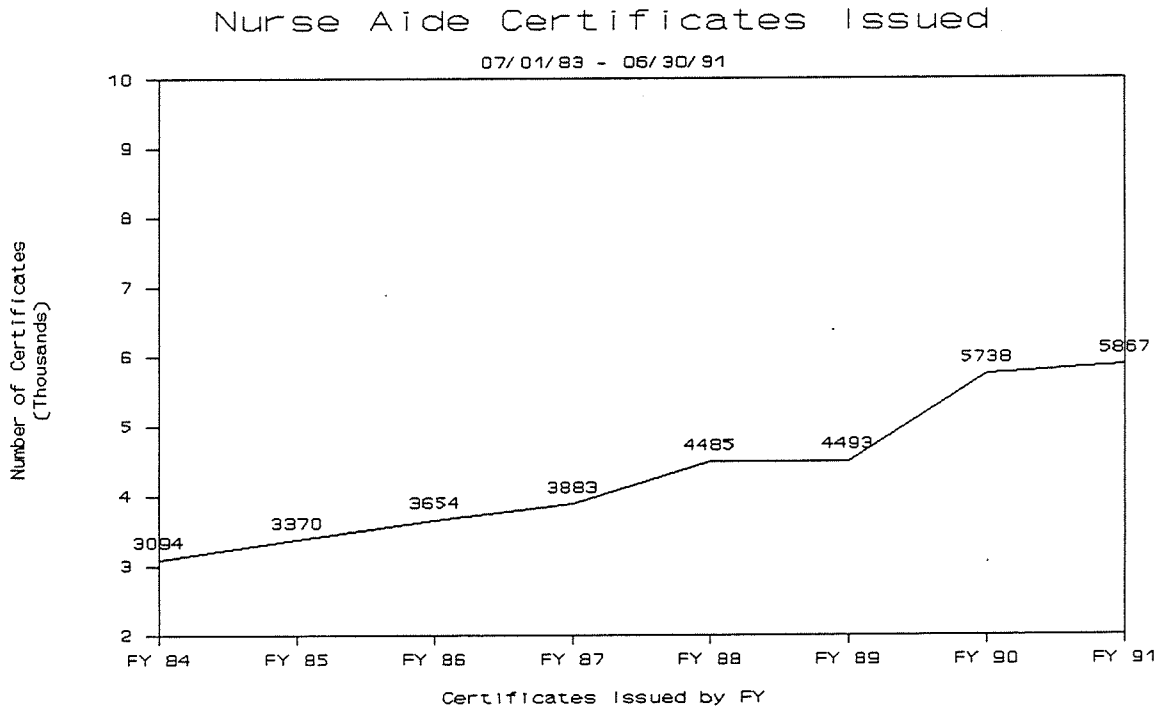
The goal of state and federal laws governing the nurse aide program is to improve the quality of care provided in nursing facilities by ensuring that each nurse aide has the training, practical knowledge, and skills to care for residents and to ensure that no nurse aide is known to have abused, neglected, or exploited a resident. It is a joint responsibility between nursing facilities and the Kansas Department of Health and Environment to meet this goal.

This report illustrates the magnitude of the Kansas nurse aide certification, course training, testing, and registry program; general supply and demand of certified nurse aides; characteristics of nurse aide trainees; and the program's compliance with federal Omnibus Budget Reconciliation Acts (OBRA) of 1987 and 1989 (also known as nursing home reform laws).

Certifications

Since October 1978, the Kansas Department of Health and Environment has certified 50,857 persons as nurse aides. A state nurse aide certificate means the person has successfully completed a 90-hour state-approved course, a skills demonstration evaluation, and state examination. All persons who have received a certificate are listed in the Kansas nurse aide registry and meet training and testing standards of both Kansas and federal laws.

In FY 1991, 5,867 persons were certified as nurse aides. The graph below shows the increase of persons being certified in Kansas from FY 1984 through FY 1991:



23 - 658

Since FY 1984, the average rate of growth of persons receiving certificates has been 12 percent. This gradual increase in persons being certified may reflect the nursing facilities' need for additional staff required to meet the increased residents' health care needs. The 28 percent increase that was experienced from FY 1989 to FY 1990 may reflect the increased abilities to educate nursing facilities¹ and enforce standards regarding the nurse aide program due to OBRA, the formation of the Credentialing Unit within the bureau, and computer and office automation.

Supply and Demand²

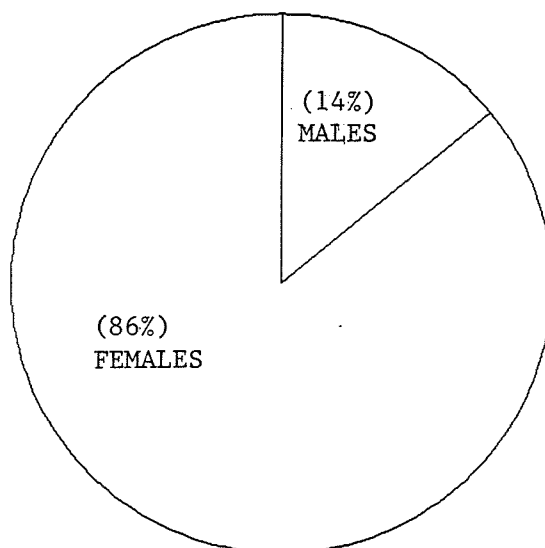
The supply of annually certified nurse aids should adequately meet the employment demands of the nursing facilities who are required to use certified nurse aides. We believe this is true even giving consideration to the estimated 50 percent turnover rate of nurse aides. For example, in calendar year 1990 there were 9,593 FTEs nurse aide positions in 419 nursing facilities (9,353 FTEs in nursing homes and an estimated 240 FTEs in hospital distinct part long-term care units). During that same year, 5,537 persons were certified as nurse aides. Thus, 58 percent of FTE positions could be filled with new trainees alone.

For nursing homes during calendar year 1990, 25,297 residents were provided care by a direct care staff totaling 13,084.9 FTEs. Thus, 72 percent (or 9,353) of direct care staff were nurse aides, seven percent (or 972.6) were RNs, 15 percent (or 1,928.4) were LPNs, and six percent (or 830.9) were activities directors and social services designees.

Trainee Characteristics

Figures show that nurse aide trainees were primarily female between the ages of 20-29 who had a high school diploma or GED. The preceding graphs are the specific breakdowns on gender, age, and education level of nurse aide trainees in the last six months:

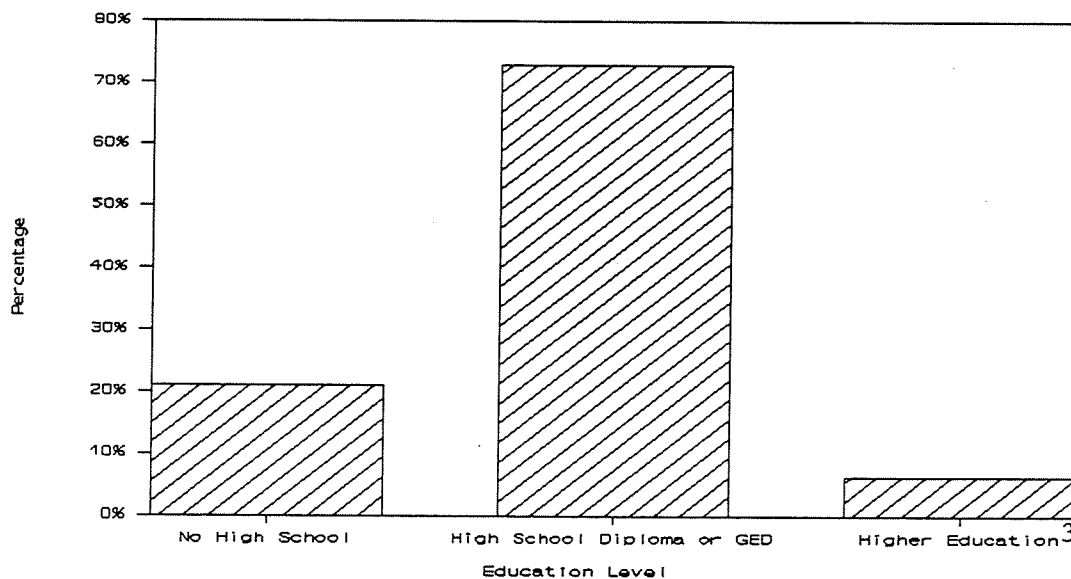
% of Nurse Aide Trainees by Gender



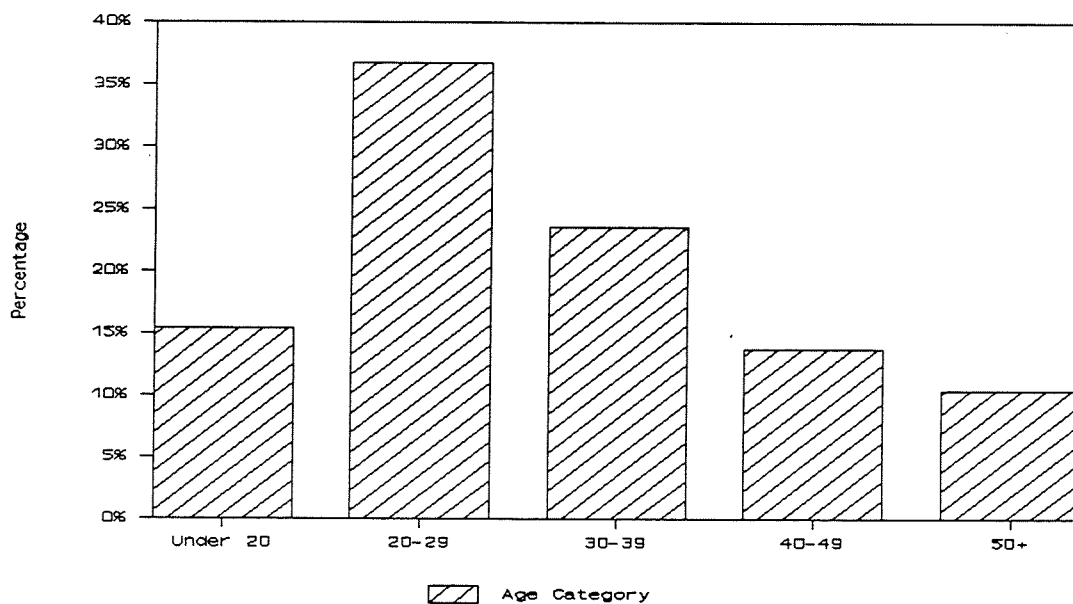
¹Nursing facilities refer to the nursing homes and hospital distinct part long-term care units in Kansas.

²Data obtained from Annual Nursing Home Survey, KDHE, 12-31-90.

% of Nurse Aide Trainees by Education



% of Nurse Aide Trainees by Age



³Higher education is defined as LPN training, diploma nursing, associate, bachelor, master, or education specialist degrees or PhDs.

Registry

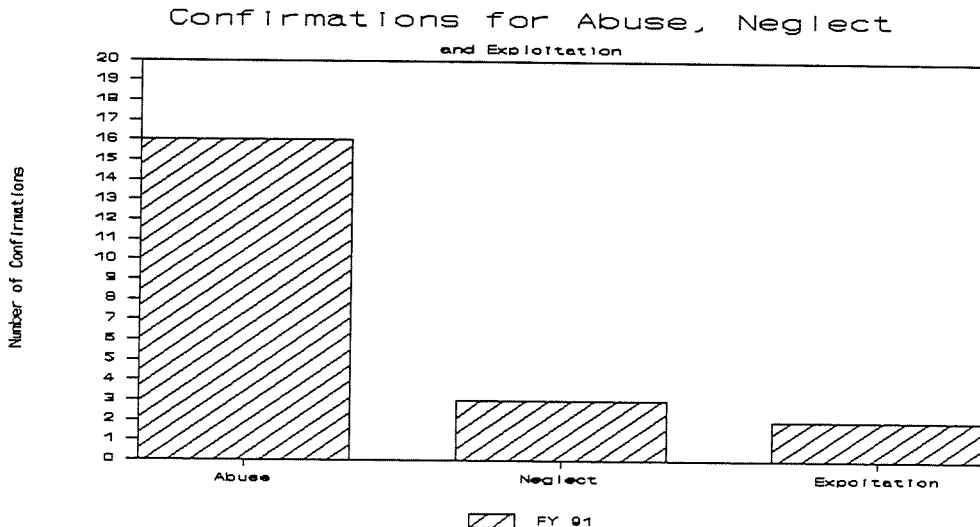
OBRA laws require that each state establish and maintain a registry and, prior to a nursing facility employing a person as a nurse aide, the facility must contact the registry. The registry inquiry is to confirm that the person holds a valid nurse aide certificate and to see whether the person has an administrative record of abuse, neglect, or exploitation. A confirmation letter is automatically issued to each nursing facility about each registry inquiry to show proof of compliance with contacting the registry. In FY 1991, the Kansas registry contained approximately 56,000 records about nurse aide, home health aide, and medication aide trainees, and certified aides in each of the aide categories.

The Kansas nurse aide registry has been taking phone inquiries since January 2, 1991. For the last six months of FY 1991, 6,933 phone inquiries have been handled by the registry operator and 7,546 confirmation letters of phone and written registry inquiries have been issued. The registry provides accurate and speedy service to the caller. For example, on the average, 55 phone inquiries are handled daily with a response time of 40-60 seconds per record inquiry with a set maximum of five record inquiries per caller. The UCD phone option used with the registry phone number allows the registry operator to take a call and have three callers automatically placed on hold with a recorded message. Any long distance caller is transferred to the first hold position. The registry hours are from 8:00 a.m. to 12:00 noon and 1:00 to 3:00 p.m., Monday through Friday, excluding state holidays.

The registry requirement has: (1) reinforced the state's certification requirement by stopping employment of persons with forged or inappropriate certificates; (2) opened communications between nursing facilities and other state registries with the nurse aide program staff; and (3) identified to the public and nursing facilities aides who have confirmation records of abuse, neglect, or exploitation of residents. The following is a chart on the type of phone callers the registry received from January 2, 1991 through June 30, 1991:

<u>Type of Caller</u>	<u>Number of Inquiries Received</u>
Kansas nursing facilities	5,824
Non-Kansas nursing facilities	184
Other state registries	75
Aides/public	462
Other agencies	378
State surveyors	10
Total	6,933

Twenty-one nurse aides were confirmed of abuse, neglect, or exploitation and their records entered into the registry between October 1, 1990 through June 30, 1991. The graph below shows the number of confirmations per abuse, neglect, or exploitation category:



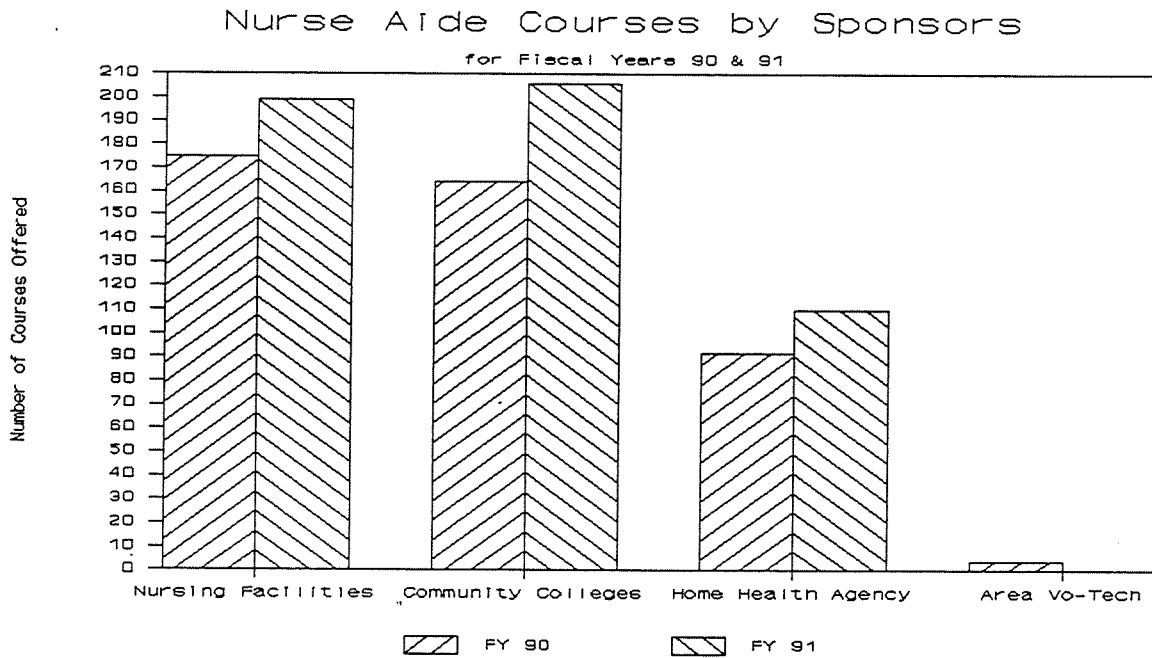
Examples of abusive behavior included aides making verbal threats or degrading comments to residents, and aides striking residents causing bruising. One case of neglect resulted in a resident breaking a leg because the aide refused to follow transfer procedures. Exploitation occurred when a resident's signature was forged by an aide and jewelry stolen by another aide.

KSA 39-1404, et seq., authorizes the Kansas Department of Health and Environment to investigate and confirm abuse, neglect, or exploitation of nursing home residents. In the case of nurse aides who are alleged to have committed one of these actions, a confirmation is only issued after offering an administrative hearing and appeal rights to the nurse aide to assure due process. Any nurse aide confirmation is recorded in the registry along with any disputing comments by the nurse aide on the final confirmation.

Federal regulation (CFR 483.13(c)(1)) allows nursing facilities the discretion on whether to continue employment or to initially hire a nurse aide with a record of abuse, neglect, or exploitation in the registry. After April 1, 1992, the regulations will prohibit employment of anyone listed in the registry with such a record. Currently facilities are prohibited only from hiring any person convicted in a court of law of abusing, neglecting, or mistreating an individual.

Courses

In FY 1991, 515 state-approved nurse aide courses were conducted across Kansas. As Attachment 1 shows, one or more courses were held in all but 17 out of 105 counties. There was an 18 percent (or 80) increase in the number of courses conducted in FY 1991 compared to FY 1990. Actual figures for other fiscal years are not complete so a comparison is not provided. The graph below shows the total number of courses conducted in FY 1990 and FY 1991:



The breakdown of the 515 courses conducted in FY 1991 by sponsor is as follows:

<u>No. of Courses</u>	<u>Percentage</u>	<u>Sponsor</u>
199	39%	Nursing facilities
206	40%	Community colleges
110	21%	Area vocational-technical schools

There were 193 active state-approved registered nurse instructors for the nurse aide courses in FY 1991 and 402 nonactive (did not conduct a course or become approved in fiscal year 1991).

Testing

There are 15 state testing sites spread across the state (see Attachment 2). The Kansas City, Wichita, and Topeka sites conduct tests monthly, while the remaining sites conduct tests every other month. In FY 1991, 4,476 persons took the 100 multiple-choice question state examination (written/ oral). Ninety-five percent was the passing rate, with a five percent failure rate.

Federal Audit

The federal Health Care Financing Administration evaluated in April 1991 the nurse aide training program and Kansas nurse aide registry for compliance with OBRA requirements for state participation in the Medicare/Medicaid programs. During the exit interview of the audit, it was stated that Kansas has a model training program and registry system. It also appeared that portions of OBRA were actually taken word by word from Kansas' statutes, regulations, or procedures. Two citations for good management were the results of the audit.

The auditors stated that Kansas has a superb process for reviewing, approving, and monitoring nurse aide training programs. The auditors visited a course being conducted at a nursing facility and thoroughly reviewed state office records. The auditors were particularly impressed with the registry system's "extensive database, the great database access capacity, speed of the computer program, the local area network system, the automatic confirmation letters sent to specific phone inquiries, and the use of the UCD phone system." Along with the two good management citations, the auditors requested a plan of correction on the one deficiency of the training program, specifically the state law (KSA 39-936) needs to be amended to require a refresher course for all nurse aides who have been out of the field for two years. Senate Bill 540 addresses this issue and is under legislative consideration.

Summary

Since 1978 Kansas has been certifying nurse aides and has overall experienced annual increases in the total number of persons certified annually. In FY 1991, 5,867 persons were certified. The supply of certified nurse aides in Kansas should meet the employment demands of the industry. The number of training courses conducted and the number of course instructors are adequate to meet the training needs of the trainees and industry. In FY 1991, 515 courses were offered across the state and 193 instructors were actively in the field. Nursing facilities and community colleges provide about the same number of courses annually (about 200 apiece). There is a 95 percent pass rate for the state nurse aide examinations. The state testing sites are geographically distributed across the state and hold testing either monthly or every other month. The registry provides accurate and speedy service to some 55 callers daily. The registry helps ensure that the goal of the nurse aide program is met by enforcing that only appropriately trained and tested persons are hired as nurse aides and provides employers with any abuse, neglect, or exploitation records on perspective nurse aide employees. The Kansas nurse aide program will continue to be in good standing with OBRA requirements should state law KSA 39-936 be amended to require a refresher course for all nurse aides who have been out of the field for two years.

Prepared by: Cathy Rooney, Director
 Pamela Matalone, Administrative Officer I
 Health Occupations Credentialing
 Bureau of Adult and Child Care
 January 23, 1992

NUMBER OF NURSE AIDE COURSES BY TRAINING SITE
PER COUNTY, FISCAL YEAR 91

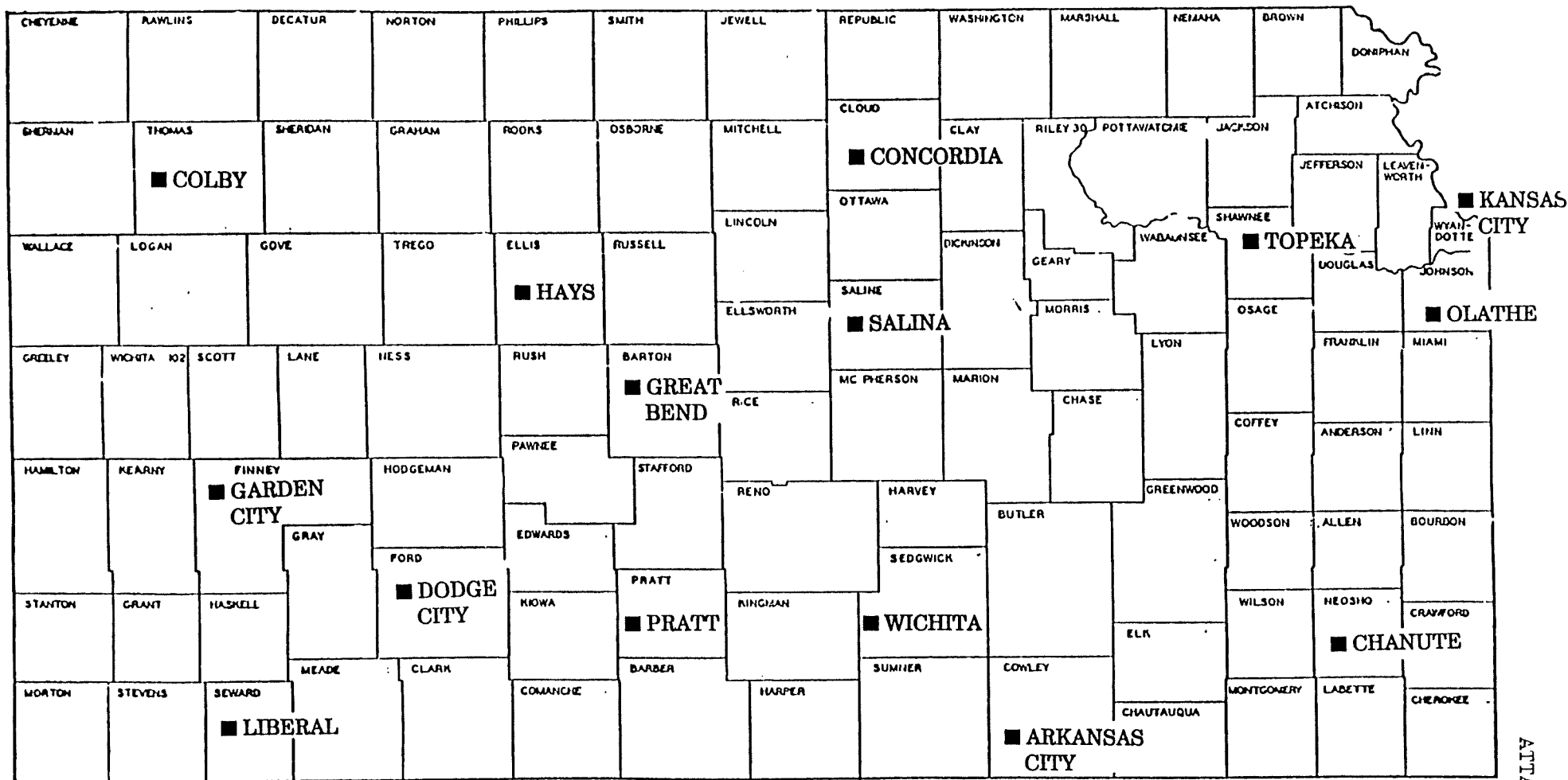
CHEYENNE 0	RAWLINS 0	DECATUR 5	NORTON 2	PHILLIPS 4	SMITH 2	JEWELL 2	REPUBLIC 3	WASHINGTON 2	MARSHALL 4	NEMAHA 3	BROWN 6	DONIPHAN 0		
SHERIDAN 6	THOMAS 0	SHERIDAN 1	GRAHAM 1	ROOKS 1	OSBORNE 1	MITCHELL 6	CLOUD 7	CLAY 4	RILEY JO 7	POTTAWATOMIE 1	JACKSON 1	ATCHISON 4		
WALLACE 1	LOGAN 0	GOVE 2	TREGO 5	ELLIS 0	RUSSELL 4	LINCOLN 2	OTTAWA 5	DICKINSON 6	GEARY 4	WADAWNSSEE 0	SHAWNEE 29	JEFFERSON 4	LEAVENWORTH 7	WYATT DOTTE 23
GREELEY 2	WYOMING 0	SCOTT 1	LANE 1	NESS 0	RUSH 0	BARTON 10	ELLSWORTH 4	SALINE 5	MORRIS 6	LYON 11	OSAGE 6	DOUGLAS 8	JOHNSON 40	
HAMILTON 3	KEARNY 7	FINNEY 1	HODGEMAN 2	PAWNEE 0	STAFFORD 1	RICE 3	MC PHERSON 8	MARION 6	CHASE 0	COFFEY 0	FRANKLIN 8	MIAMI 6		
STANTON 0	GRANT 3	HASKELL 1	GRAY 0	FORD 8	EDWARDS 2	RENO 18	HARVEY 10	BUTLER 7	GREENWOOD 4	WOODSON 0	ANDERSON 3	LINN 2		
MORTON 3	STEVENS 2	SEWARD 3	MEADE 3	CLARK 1	KIOWA 1	PRATT 12	KINGMAN 5	SEDGWICK 41	ELK 1	WILSON 3	ALLEN 6	BOURBON 7		
					COMANCHE 2	BARBER 1	HARPER 3	SUMNER 5	COWLEY 9	CHAUTAUQUA 0	NEOSHO 4	CRAYFORD 14		
										MONTGOMERY 12	LABETTE 9	CHEROKEE 5		

Total courses = 515

Prepared by Kansas Department of Health and Environment
Health Occupations Credentialing
Bureau of Adult and Child Care

6-6

LOCATIONS OF STATE TESTING SITES



Total sites = 15

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 Health Occupations Credentialing
 Bureau of Adult and Child Care

ATTACHMENT

01-2