

Approved: Jan. 21, 1998 _____
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on January 15, 1998 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Russell Mills, Legislative Research Department
April Holman, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ann Deitcher, Committee Secretary

Conferees appearing before the committee:

Don Myer, Exec. Director KS Commission on Veterans Affairs
Warden Emmalee Conover, Winfield Correctional Facilities
Senator Greta Goodwin

Others attending: See attached list

It was moved by Senator Lawrence and seconded by Senator Petty that bill draft RS 1629 be introduced. The motion was carried on a voice vote.

Don Myer, Executive Director KS Commission on Veterans Affairs gave an update on Winfield Veterans' Home and Wichita Annex. (Attachment 1)

The Committee was told this would not be their only opportunity to have this issue before them due to the interest being shown.

In answer to questions of how they arrived at a cost-per-bed amount, Mr. Myer told the committee that the model used was developed in an evaluation by the Dept. of the Budget on the Kansas Soldiers Home. This was the model agreed to and utilized by the advisors' committee.

Mr. Myers when asked if he was assuming everyone in a veterans' home was eligible for Medicare, Mr. Myer said that in Kansas, veterans in these homes are in fact usually eligible for Medicare. There is a law in Kansas that the recipient must be a resident of the state for two years. This has not been challenged yet in Kansas. The VA allows states to make this discrimination. He said that with the accessibility of the Winfield hospital to the Oklahoma state line, there was the possibility of non-Kansans utilizing their facilities.

Senator Kerr read from a 1997 House Appropriations bill where \$1.7 million was appropriated for capitol improvements. He asked if, with the increase in Federal money, Kansas would not be expected to come up with any more money.

Mr. Myer said that at this time, he believed Kansas would not be expected to.

Asked for the on-going operational cost, as determined by their present financial projections, Mr. Myer said that for the fiscal year 1999, the amount they are asking the state of Kansas, out of the General Fund, to commit to is \$795,000 out of the \$3.3 million. He believed this to be the correct amount but promised to break it out for the committee. That would be the amount asked for when he comes before the sub-committee.

Mr. Myer said why, in projections given as to per-bed cost of operation, there were no increases reflected, was because he didn't account for inflation one way or another. There were no available factors to use. At the same time he also didn't put in an inflation factor for federal receipts where per diem payments will also go up. There has been an increase for each of the last ten years.

Stan Reed of VA Affairs offered the information that there has been an average annual increase of 9.9% in the last eleven years. There was an increase of the nursing home per diem. It went up to \$40 per day, while the assisted living per diem went from \$16.13 to \$17.78 per day. He said there were some VA proposals now that go up as much as a third of the actual daily cost of care.

Copies of SB 399 were handed out. Speaking in support of SB 399 was Mike Hutfles, Director of Public Affairs at SRS. He proposed a balloon to SB 399. (Attachment 2.)

Next to speak as a proponent of SB 399 was Warden Emmalee Conover of the Winfield Corrections Facility. She said that the amendments on SB 399 would provide an opportunity for inmate jobs in service to the Veteran's Home in areas of food service, grounds maintenance, facility maintenance and laundry services. These are all non-patient areas. The inmates would be supervised by the Department of Corrections employees.

She wanted to support an amendment to the bill, which clarifies the definition "non-patient areas". What the brunt of it is that inmates could be used in common areas, such as to clean the dining rooms or to paint the common hallways but at no time would an inmate go into a room, a sleeping area of a veteran, without supervision.

The use of inmate labor provides work opportunities for their inmates and provides service to the veteran's home. By using inmates in food service they will share and provide food for both - the veteran's home and the correctional facility at a lower cost than what it would be to staff separate kitchens. If they were unable to utilize this method they would be looking at constructing a new kitchen for the correctional facility because they have expanded beyond their current kitchen capabilities.

Warden Conover said that inmates have a history of working on state hospital grounds. At Osawatomie, Larned, Winfield and Topeka they have provided grounds maintenance. At Winfield, since July of 1997 they have provided laundry service. These work arrangements have been carried out with minimal difficulty.

Senator Greta Goodman appeared as a proponent of SB 399. She informed the committee that she serves on the Advisory Board of the Winfield State Hospital as well as the Winfield Correctional Facility and she spoke briefly on the benefit to the State as well as the Veterans' Facility in using inmate labor. (Attachment 3.)

Mike Hutfles, Director of Public Affairs for SRS, said that they were supportive of this legislation.

Senator Kerr asked if Mr. Hutfles would like to define "non-patient areas" as it has been suggested it be defined.

Mr. Hutfles declined, saying it was not felt necessary by his agency since it would not affect them.

Senator Kerr asked that before there was anything further discussed on this bill, the parties get together and come up with a single set of proposed amendments that everybody believes accomplishes what it needs to have to make it efficient.

Senator Kerr adjourned the meeting at 12:10 p.m.

The next meeting is scheduled for January 20, 1998

**Testimony by Don Myer, Executive Director
Kansas Commission on Veterans Affairs
on The Kansas Veterans Home and Wichita Annex
before the
Senate Ways and Means Committee
January 15th, 1998**

Mr. Chairman and members of the committee, my name is Don Myer, and I am the Executive Director of the Kansas Commission on Veterans Affairs. I am here today to provide you information the Kansas Veterans Home at Winfield and Wichita Annex. There have been many changes to the project since it was approved last legislative session, and as a result many questions have been raised by members of this committee, among others. I would like to address these questions for you this morning. Before I do, I would like to say that I believe that this project is still viable in concept as a construction project, and economically and operationally in the short term long term. I regret that information I presented last year to you as assumptions have not turned out to be entirely accurate, but the changes I will discuss still result in an attractive facility, provided at still considerable savings compared to new construction.

Assumptions have changed somewhat since the original concept. Original versus current assumptions are as follows:

Original

- a. Operations would begin the second half of FY 1998.
- b. Occupancy rate for the Kansas Veterans Home would be 25% (160 beds) for FY 98, 40% (320 beds) in FY 99, and 80% (320 beds) in FY 2000.
- c. Per Capita costs which were derived from a model based on the Kansas Soldiers' Home at Ft. Dodge. These equated to \$30,800 per year for Nursing residents, and \$14,750 per year for

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Attachment 1-1*

Assisted Living residents.

Current

- a. Operations will begin in the first quarter of FY 1999. Residents will be accepted no earlier than the second quarter.
- b. Occupancy is projected to be 160 beds by the end of FY 99, 300 by the end of FY 2000, and 348 by the end of FY 2001.
- c. Per Capita costs will still be based on the model developed by DOB from operations at the KSH.
- d. No additional SGF will be required above that budgeted for FY 98 and FY 99 and original projection for FY 2000.

At enclosure 1, you see a comparison of the original projections for rooms to be provided at the Veterans Home, and a summary of current projections. Factors for the reduction include:

- 1.) Architectural impacts. The original design was conducted based on drawings that were not representative of the present structure. Modifications had taken place which were not annotated. Windows, walls, and machinery space depictions were not accurate, and would in some cases preclude space being utilized as projected.

As mentioned above, the bathrooms in the Treatment building do not meet ADA standards. This was apparently "grand fathered" in the State Hospital, but will have to be corrected during the conversion to a Veterans Home. Not only will this drive up costs, it will cost beds, since the bathrooms must be enlarged.

Staff support spaces were not adequate in some instances. VA and KDHE requirements for soiled and clean linen storage, medication preparation and storage, and sanitary closets will preclude

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usage of some rooms as resident rooms as projected by the original report.

In some instances, converting spaces not intended for living space in the original plan would result in greater expense than the room would warrant. It would also have created an impression that there were "first class" and "second class" rooms.

2.) Quality of Life. The original design called for assisted living rooms averaging under 160 square feet each. Until clarified recently, I believed that it would be required that non-nursing rooms have 200 square feet, and qualify for "Assisted Living" licensure from KDHE in order for the Kansas Veterans Home to receive VA per diem payments. While switching from "Assisted Living" licensure to "Residential Living" will apparently meet KDHE (although not VA) standards, no other private or comparable state facilities are designed to this minimum standard.

Common areas, including dining and activity areas, are less than desirable in the original plan, and would also be on the low end of "quality of life". The original plan had a heavy reliance on gang toilet and bathing facilities, and utilized a ratio of 4 beds per toilet throughout the facility whenever possible. These factors all emphasize the "institutional" feel of the facility, rather than a homelike environment. These are items of concern in discussions with the VA in Washington, DC during design phase.

Original projections for costs at the Kansas Veterans Home are shown at figure one. They were based on assumptions listed in para 2 above. As can be seen in figure 2, current projections which follow the same model, are lower than original projections. The reason is demonstrated in figure 3 through 5. The original occupancy projection was a "stair step", assuming occupancy at a constant level for the entire fiscal year. Current projections assume that there will be a "ramp up" period of up to three years before maximum occupancy is reached. Overall costs for these years should therefore be lower than originally projected. By the third year of operation (FY

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2001), operational costs will more closely approximate original projections. Enclosure 6 shows the currently projected "ramp up" of FTE at the KVH, as opposed to the original concept of full employment for the entire fiscal year. This is a major reason operational costs are projected to be lower in FY 99.

The original estimated was that the state would recover capitol improvement expenses at the KVH in approximately 10 years. The recovery of these expenses was based on several assumptions:

a. Capitol improvements would consist of construction costs and architectural/engineering fees of \$6,940,182.

b. While true cost savings would not be realized, cost avoidance to the state was possible. Under the Medicaid Program, SRS provides funding for similar services to the elderly as would be offered at the Kansas Veterans home. Annual costs for provision of either Nursing beds or Assisted living beds, would be:

	<u>KVH</u>	<u>SRS/Medicaid</u>
Nursing	\$30,800	\$20,856
Asst Living	\$14,750	\$18,000

The state share of these costs was estimated to be 20% for the KVH, and 35% for the SRS programs.

c. Operations at the KVH would "ramp up" at the following rate:

<u>FY</u>	<u>Nursing Beds</u>	<u>Asst Living Beds</u>	<u>Total</u>
98	64	38	102
99	99	62	161
2000	200	121	321

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The original figure for Capitol Improvement included all construction item costs plus Architectural/Engineering Fees from the original Jones-Gillam study. Similar costs developed by the firm Wilson, Darnell&Mann would now total \$11,836,620.

As shown at enclosure 7, assuming the states' share of costs remain the same, the cost avoidance would be \$1,140 and \$3,350 for operating nursing beds and assisted living beds, respectively, at the Kansas Veterans Home. At this rate, as shown in enclosure 8, the state SIBF investment of \$1.7 million would be recovered in 4 years (FY 2002); total state expenditures of \$4,200,000 (\$1.7 million SIBF plus \$2.5 million SGF) would be recovered in 7 years (FY 2005); total state and local expenditures would be recovered in 9 years (FY 2007); total project construction costs would be recovered in 17 years (FY 2015); and total state and federal capitol improvement expenditures would be recovered in 21 years (FY 2019).

If the states' share of costs rise to 25% at the KVH (the level assumed for the Kansas Soldiers Home at Ft. Dodge), recovery of capitol improvement for the same costs listed above would be 9 years (FY 2007); 20 years (FY 2018); 26 years (FY 24); 50 years (FY 48); and 61 years (FY 59), respectively.

At this time, the VA controlling headquarters in Kansas City and KCVA are working on the development of a business plan to be presented to the Kansas Legislature and the VA national headquarters in Washington D.C. Enclosures 11 and 12 are nothing more than the draft outline of options for goods, services, and costs we are exploring, and represent the "box" we believe our relationship will ultimately fit into.

Mr. Chairman, this concludes my update, and now I would be happy to answer any questions you might have at this time.

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Room Comparison

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Attachment 1-6

	WDM-HW			Jones-Gillam			Difference		
	<u>Long Term</u>	<u>Assisted Living</u>	<u>Total</u>	<u>Long Term</u>	<u>Assisted Living</u>	<u>Total</u>	<u>Long Term</u>	<u>Assisted Living</u>	<u>Total</u>
Medical Services	88	21	109	85	28	113	3	-7	-4
Treatment Services	41	18	59	57	30	87	-16	-12	-28
Holly	100	0	100	105	0	105	-5	0	-5
Juniper	0	80	80	0	96	96	0	-16	-16
Total	229	119	348	247	154	401	-18	-35	-53

Current Projections

	Long Term Beds	Assisted Living Beds	Total Beds
FY 98	NA	NA	NA
FY 99	100	60	160
FY 200	200	100	300
FY 200	229	119	348

Kansas Veterans Home Costs

FY 97 Projections

	Long Term		Assisted Living		Total	
	Beds	Cost	Beds	Cost	Beds	Cost
FY 98	64	\$1,141,321	38	\$324,529	102	\$1,465,850 *
FY 99	99	\$3,049,200	62	\$914,500	161	\$3,963,700
FY 2000	200	\$6,160,000	121	\$1,784,750	321	\$7,944,750
FY 2001	NA	NA	NA	NA	NA	NA

Annual
Costs/bed: **\$30,800** **\$14,750**

* Operations for less than full FY

Current Projections

	Long Term		Assisted Living		Total	
	Beds	Cost	Beds	Cost	Beds	Cost
FY 98	NA	NA	NA	NA	NA	\$55,000.00 *
FY 99	100	\$2,310,000	60	\$663,750	160	\$3,311,332 **
FY 2000	200	\$4,748,333	100	\$1,204,583	300	\$5,952,917
FY 2001	229	\$6,958,233	119	\$1,699,938	348	\$8,658,171

Annual
Costs/bed: **\$30,800** **\$14,750**

* Transition costs only

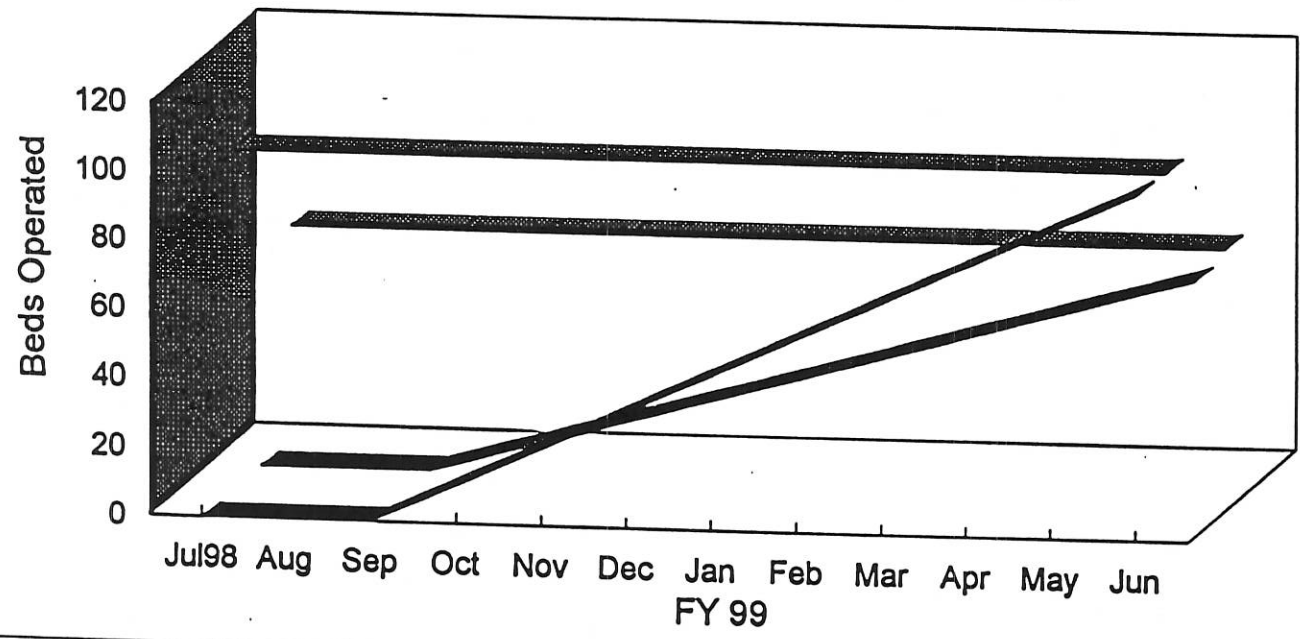
** includes approximately \$300,000 in start-up operating costs not included in KSH model

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Occupancy Projections

FY 99

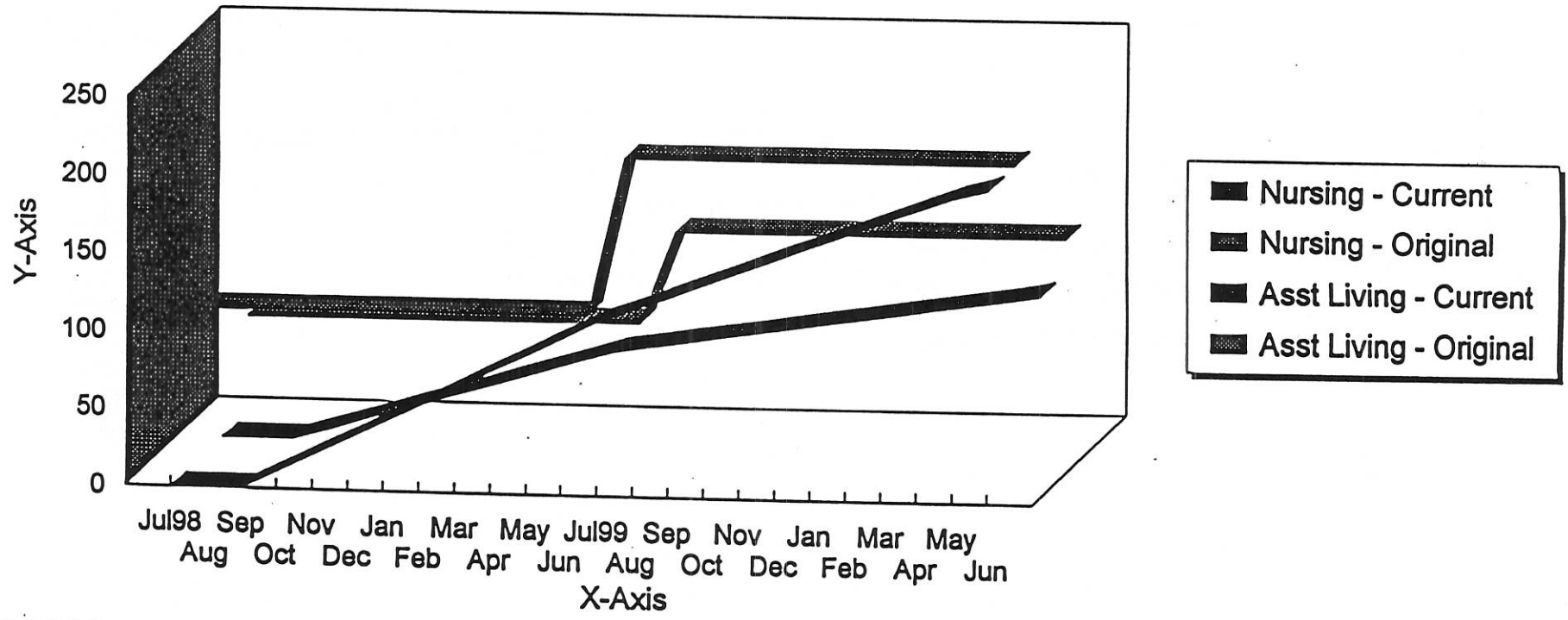


- Nursing - Current
- ▨ Nursing - Original
- Asst Living - Current
- ▨ Asst Living - Original

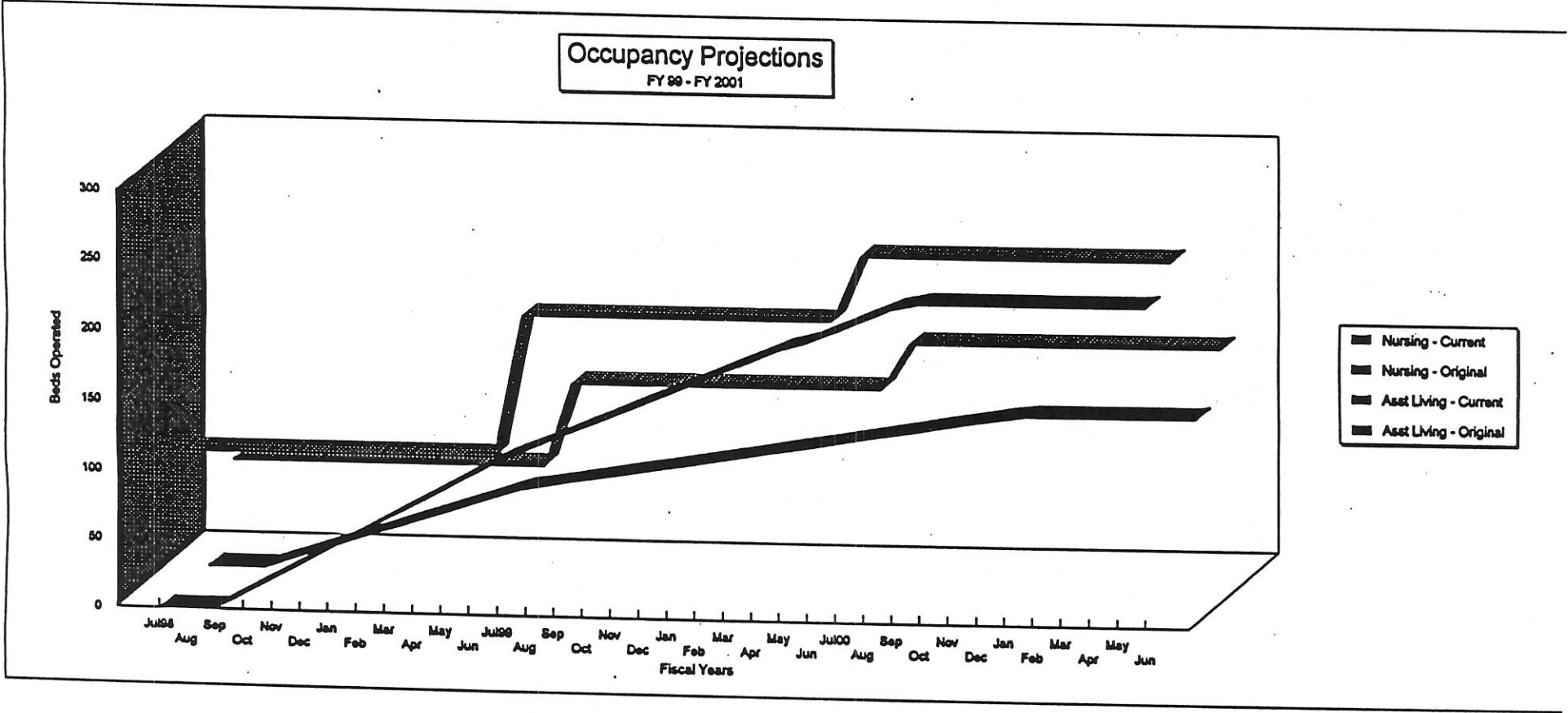
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Occupancy Projections

FY 99 & FY 2000



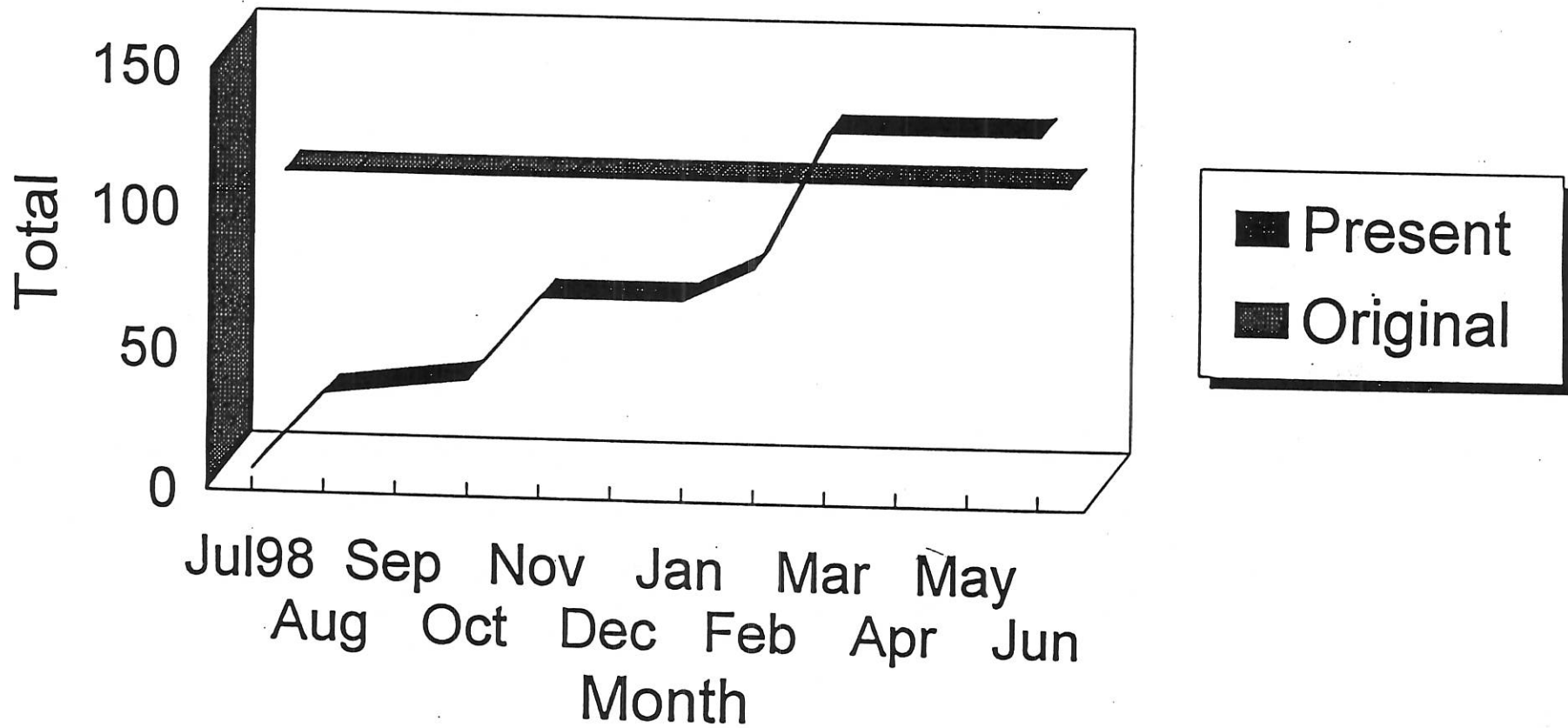
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S with
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Attachment 1-11

FTE Projections

FY 99



Capitol Improvement Recovery

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Attachment 1-12

Type Bed	KVH Cost	State Share	Sub-total State cost	SRS Cost	State Share	Sub-total State cost	Cost Avoidance
Nursing	\$30,800.00	20.00%	\$6,160.00	\$20,856.00	35.00%	\$7,299.60	\$1,140
Asst Living	\$14,750.00	20.00%	\$2,950.00	\$18,000.00	35.00%	\$6,300.00	\$3,350

**Kansas Veterans Home
Capitol Improvement Recovery**

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FY	Beds		KVH Cost		Sub-total	SRS Cost		Sub-total	FY Cost Avoidance	Total Cost Avoidance
	Nursing	Asst	Nursing	Asst		Nursing	Asst			
99	100	60	\$616,000	\$177,000	\$793,000	\$729,960	\$378,000	\$1,107,960	\$314,960	\$314,960
00	200	100	\$1,232,000	\$295,000	\$1,527,000	\$1,459,920	\$630,000	\$2,089,920	\$562,920	\$877,880
01	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$1,537,498
02	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$2,197,117
03	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$2,856,735
04	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$3,516,354
05	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$4,175,972
06	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$4,835,590
07	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$5,495,209
08	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$6,154,827
09	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$6,814,446
10	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$7,474,064
11	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$8,133,682
12	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$8,793,301
13	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$9,452,919
14	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$10,112,538
15	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$10,772,156
16	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$11,431,774
17	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$12,091,393
18	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$12,751,011
19	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$13,410,630
20	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$14,070,248
21	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$14,729,866
22	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$15,389,485
23	229	119	\$1,410,640	\$351,050	\$1,761,690	\$1,671,608	\$749,700	\$2,421,308	\$659,618	\$16,049,103

Kansas Veterans Home at Winfield

Project Budget

	WD&M/ H&W	Jones- Gillam	Increase
<u>Construction Items:</u>			
1. Building Renovation			
a. Holly building	\$1,894,578	\$1,117,488	\$777,090
b. Juniper building	\$1,773,352	\$986,119	\$787,233
2. Sitework and Utilities (Holly and Juniper)	\$690,247	\$537,500	\$152,747
3. Building Renovation			
a. Medical Services Building	\$2,765,796	\$1,829,454	\$936,342
b. Treatment Building	\$2,349,067	\$1,316,178	\$1,032,889
c. New Central Mechanical Room	\$457,298	\$361,500	\$95,798
4. Sitework and Utilities (Medical Services and Treatment Bldgs)	\$599,167	\$151,400	\$447,767
5. Fixed Equipment	\$155,000	\$0	\$155,000
6. Miscellaneous	\$300,000	\$67,500	\$232,500
Subtotal	\$10,984,505	\$6,367,139	\$4,617,366
<u>Other Costs:</u>			
7. Building Acquisition	\$2,500,000	\$2,500,000	\$0
8. Moveable Equipment Budget	\$470,000	\$0	\$470,000
9. Architectural/Engineering Fees (design team)	\$852,115	\$573,043	\$279,072
10. Other Arch./Engineering Fees (survey, soils, matl. testing & observation, HVAC balancing and commissioning)	\$200,000	\$0	\$200,000
11. Printing and Postage	\$75,000	\$0	\$75,000
12. Div. of Architectural Services Admin Fee	\$109,845	\$0	\$109,845
13. Contingency	\$379,935	\$0	\$379,935
Subtotal	\$4,586,895	\$3,073,043	\$1,513,852
Project Total	\$15,571,400	\$9,440,182	\$6,131,218
35% of total	\$5,449,990.00	\$3,304,063.70	

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Attachment 1-14*

THE CITY OF  WINFIELD

CITY HALL
200 E. Ninth - P.O. Box 646
Winfield, KS 67156-0646
Phone (316) 221-5500
FAX (316) 221-5590

OPERATION CENTER
2701 E. Ninth - P.O. Box 646
Winfield, KS 67156-0646
Phone (316) 221-5600
FAX (316) 221-5591

September 15, 1997

Mr. Don Myer
Executive Director
Kansas Commission on Veteran's Affairs
700 Southwest Jackson
Room #701
Topeka, Kansas 66603-3743

Dear Mr. Myer:

The Winfield City Commission has approved a financial commitment of \$1.25 million to the State of Kansas to develop a Kansas Veteran's Home at the site of the Winfield State Hospital and Training Center. Our financial obligation will be met through a combination of infrastructure and cash investment to develop the campus as a Veteran's facility.

If you have any questions or comments, please contact our office. As always, it is a pleasure to work together to develop the Kansas Veteran's Home in Winfield.

Sincerely,



Warren Porter
City Manager

ENC. 10

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Attachment 1-15

ECONOMIC COST OPTION ANALYSIS
 WICHITA ENHANCED USE INITIATIVE

ACQUISITION STRATEGIES		
BUILD 60 BED NHC NEW CONSTRUCTION	\$95	\$2,816,750
IF STATE CAPITAL TREASURY FINANCING @ 6.25% 10YEAR MATURITY	add	\$1,760,469
GRAND TOTAL		\$4,577,219

ACQUISITION STRATEGIES			BO COST	TOTAL
LEASE 60 BED NHC				
LONG TERM LEASE @ 35YRS	\$153,000	\$5,355,000	?	
LONG TERM LEASE @ 20YRS		\$3,060,000	?	
LONG TERM LEASE @ 10YRS		\$1,530,000	?	
BUILD-OUT COST (BLDG 60 RETROFITTING)			?	

ACQUISITION STRATEGIES	
LEASE TO BUY OPTION	
LUMP SUM PAYMENT ON TRUST FUND	\$1,350,000

ACQUISITION STRATEGIES	

60 4590 \$1,675,350.00

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 Attachment 1-16

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Attachment 1-17

ENHANCED - USE	SHARED AGREEMENTS
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CATEGORY A
REAL STATE SUPPORT
 29650 SF

RENT COST	\$153,000
UTILITIES	
STEAM HEAT (Flat)	
ELECTRICITY (Metered)	
WATER (Metered)	
MAINTENANCE SUPPORT	
SECURITY	
TOTAL	

CATEGORY B
OPERATIONS SUPPORT

HOUSEKEEPING	
LAUNDRY	
DIETETICS	
WASTE MANAGEMENT	
BIOMED SUPPORT	
IRM/TELECOMM	
TOTAL	

CATEGORY C
CLINICAL SUPPORT

PHARMACY	
DENTAL	
PSYCHIATRY	
PHYSICIAN	
PHYSICAL T	
CHAPLAIN	
VOLUNTARY	
TOTAL	

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary



For additional information, contact:

SRS Office of Research
Suzanne Woods, Director
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.3329 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office
Diane Duffy, CFO
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Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676

**Senate Ways and Means
Thursday, January 15, 1998**

Testimony: SB 399

**Office of the Secretary
Rochelle Chronister, Secretary
785.296.3274**

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Attachment 2-1*

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Senate Ways and Means
Testimony on SB 399
January 15, 1998

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today. My name is Mike Hutfles, Director of Public Affairs at SRS. I come to you today wearing two different hats.

First, as Chairman of the Evaluation and Analysis Committee, I'm here to support SB 399. This committee consisted of four members of the Executive Branch and four Legislators. The Committee recommended that Winfield State Hospital and Training Center be converted to the Kansas Veterans' Home at Winfield. However, the Department of Health and Environment's interpretation of KSA(Supp. 1996) 39-923(a)(1) - & (b) -- ('Adult care home'), KSA 39-923(a)(2) -- ('Nursing facility') and the passage last year of HB 2278, will greatly impact the operations budget of the Kansas Veterans' Home if SB 399 is not enacted (see attachment A). The Evaluation Committee fully intended for the Department of Corrections to be a full partner in providing whatever services it could to the new facility, especially through the use of inmate labor. The Request for Proposal (RFP) was constructed with this in mind. The City of Winfield was well aware of this as they prepared their own proposal. Passage of SB 399 is necessary to best utilize Kansas tax dollars.

Second, as Director of Public Affairs, I have been very involved in the closure of Winfield State Hospital, the start-up of the Kansas Veterans' Home, and anything else that effects either of these two tasks. As we explored Health and Environment's interpretation mentioned above, we discovered that the SRS State Mental Health Hospitals were also effected. The agency would require 28 new FTE's and approximately \$500,000 for Larned State Hospital and Osawatomie State Hospital to replace the inmate labor we currently use.

In all honesty, we have had an excellent relationship with the Department of Corrections over the years and we do not want to jeopardize it in any way. Therefore, we are proposing a balloon to SB 399 (Page 4 of Attachment B). Our balloon is structured identically to the Veterans' Home language.

I urge your support of SB 399 with the proposed balloon. Thank you for your time and I stand for questions.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

Arch

MEMORANDUM

DATE: September 24, 1997 SEP 24
TO: Linda Fund, General Counsel
FROM: Dennis Highberger *DH*
RE: Definition of "adult care home"; applicability of L. 1997, ch. 161, § 1 to Kansas Soldier's Home

Definition of "adult care home" in Kansas adult care home licensure statute

"Adult care home," as defined at KSA (Supp. 1996) 39-923(a)(1), means

any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility[.]

The term "adult day care" home does not include

*** institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices[.]

KSA 39-923(b) (emphasis added). The Kansas Commission on Veteran's Affairs has "full control" of the Kansas Soldier's Home, and the Kansas Soldier's Home is thus not excluded from the definition of "adult care home." KSA 76-1904(a).

Pat Maben of the Adult Care Home Program has informed me that the Kansas Soldier's Home is seeking licensure as a "nursing facility." "Nursing facility" is defined at KSA (Supp. 1996) 39-923(a)(2) as

any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third-degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

"Place or facility" is defined at KSA 39-923(a)(10) as

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a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

KAR 28-39-162a(a) specifies that the "units, areas, and rooms" of a nursing facility specified in KAR 28-39-162a(b) through (p) "shall be within a single building under one roof[.]" Required dietary areas are described at KAR 28-39-162a(m), and KAR 28-39-162a(m)(1)(C) requires that the dietary area include "food preparation facilities ... in a size appropriate to the type of food service system employed." A food service system may be either a "conventional food preparation system" or a "convenience food preparation system" which shall include "space and equipment for thawing portioning, cooking and baking." The requirement of KAR 28-39-162a that all of the required rooms of a facility be under one roof appears to be inconsistent with the provision in KSA 39-923(a)(10) that a "facility" may include multiple buildings.

"Site requirements" for a nursing facility are set out at KAR 28-39-162(b). This subsection provides that "[t]he location and development of a site upon which a facility is to be constructed, or an existing facility expanded, or an existing building converted for use as an adult care home" meet certain requirements, including the provision of an "unencumbered outdoor area" of at least 50 square feet per bed. KAR 28-39-162(b)(2)(E). The language of the regulation suggests that outdoor areas on the "site" are not included in the "facility."

Other definitions of "adult care home"

The statute regarding establishment by municipalities of "homes for the aged and the statute regarding reporting of abuse of adult care home residents both adopt the definition of "adult care home" found at KSA 39-923(a)(1). KSA 12-4901; KSA 39-1401. For the purpose of KSA 39-785(a), the statute regarding financial eligibility for medical assistance, "adult care home" means "a nursing facility licensed under the adult care home act." The Kansas adult care home facility administrator licensure statute uses a similar but somewhat more restrictive definition of "adult care home" than that found at KSA 39-923(a)(1).

The federal Social Security Act and veteran's benefit statutes do not use the term "adult care home." For the purpose of Title XIX of the Social Security Act (Medicaid), 42 USC § 1396 et seq., a "nursing facility" is "an institution (or a distinct part of an institution)" which provides skilled nursing care to residents. 42 USC § 1396r(a). The definition of "skilled nursing facility" in the Medicare statute uses identical language. 42 USC § 1395i-3(a).

Conclusion

L. 1997, ch. 161, § 1 (KSA 39-970) provides that on and after July 1, 1998, no person shall knowingly operate and adult care home if a person with a felony conviction under articles 34, 35, or 36 of KSA chapter 21 works in the home. As discussed above, adult care home regulations require that food service facilities be located within the facility. Under current Kansas laws and regulations are now written, it appears that inmates with any the above-specified felony convictions may not be employed in the food service areas of the Kansas Soldier's Home on or after July 1, 1998.

KSA 39-932a provides for licensure of an adult care home in less than entire building provided that the licensing agency "shall prescribe acceptable use and occupancy of the building, and shall prohibit those uses and occupancies which are deemed to be contrary to the public interest." It is arguable that the Secretary could authorize a food preparation area

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operated by inmates in one unlicensed wing of a building otherwise licensed as an adult care home provided that:

- 1) the inmates are not employed by the facility;
- 2) food is transferred from the preparation area to the facility by facility staff;
- 3) the portion of the building licensed as an adult care home has a room with appropriate equipment for receiving and distributing food prepared in such an on-site kitchen; and
- 4) adequate steps are taken to insure the safety of facility residents.

Because the outdoor areas of a facility site do not appear to be included in the definition of "nursing facility" under Kansas law, it is arguable that L. 1997, ch. 161, § 1 does not prohibit inmates from working on the grounds of the Kansas Soldier's Home, provided that they are not employed by the home and do not enter any licensed part of any building which is part of the home.

It should be noted that L. 1997, ch. 161, § 1 makes it impermissible for certain persons to "work in" or "volunteer in" an adult care home, so the crucial issue is whether such a person is present in the facility rather than whether the person is employed by the facility. However, it should be presumed that a reviewing court would find that any place where facility employees do their work is part of the "facility." Whether a person is employed by the facility would be relevant to whether a person worked in a "nursing facility" as that term is defined in the Social Security Act (*supra*).

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respetal language ??

Session of 1998

SENATE BILL No. 399

By Legislative Budget Committee

12-17

9 AN ACT concerning persons in the custody of the secretary of corrections
10 providing certain services to Kansas soldiers' home and Kansas veter-
11 ans' home; exemption from certain requirements; amending K.S.A.
12 1997 Supp. 39-970 and repealing the existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1997 Supp. 39-970 is hereby amended to read as
16 follows: 39-970. (a) On and after July 1, 1998, no person shall knowingly
17 operate an adult care home if, in the adult care home, there works any
18 person who:

19 (1) (A) Has a felony conviction for a crime which is described in
20 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and
21 acts amendatory thereof or supplemental thereto, except K.S.A. 21-3605
22 and amendments thereto, or a conviction of an attempt under K.S.A.
23 21-3301 and amendments thereto to commit any such act, or (B) has
24 been convicted of any act which is described in K.S.A. 21-4301 or 21-
25 4301a and amendments thereto or similar statutes of other states or the
26 federal government;

27 (2) has been adjudicated a juvenile offender because of having com-
28 mitted an act which if done by an adult would constitute the commission
29 of a felony and which is a crime against persons, is any act described in
30 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and
31 acts amendatory thereof or supplemental thereto except K.S.A. 21-3605
32 and amendments thereto, or is any act described in K.S.A. 21-4301 or
33 21-4301a and amendments thereto or similar statutes of other states or
34 the federal government;

35 (3) has committed an act of physical, mental or emotional abuse or
36 neglect or sexual abuse as validated by the department of social and re-
37 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto
38 and (A) the person has failed to successfully complete a corrective action
39 plan which had been deemed appropriate and approved by the depart-
40 ment of social and rehabilitation services, or (B) the record has not been
41 expunged pursuant to rules and regulations adopted by the secretary of
42 social and rehabilitation services;

43 (4) has had a child declared in a court order in this or any other state

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1 to be deprived or a child in need of care based on an allegation of physical,
2 mental or emotional abuse or neglect or sexual abuse;

3 (5) has had parental rights terminated pursuant to the Kansas juvenile
4 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a
5 similar statute of other states;

6 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*
7 *seq.*, and amendments thereto, or pursuant to K.S.A. 38-1635 and amend-
8 ments thereto involving a charge of child abuse or a sexual offense;

9 (7) has been found by the department of health and environment or
10 the department of social and rehabilitation services under K.S.A. 39-1401
11 *et seq.* and amendments thereto to have committed an act of abuse, ne-
12 glect or exploitation of a resident; or

13 (8) has been found by the department of social and rehabilitation
14 services under K.S.A. 39-1430 *et seq.* and amendments thereto to have
15 committed an act of abuse, neglect or exploitation of an adult.

16 (b) No person shall operate an adult care home if such person has
17 been found to be a disabled person in need of a guardian or conservator,
18 or both.

19 (c) In accordance with the provisions of this subsection (c), the sec-
20 retary of health and environment shall have access to any criminal history
21 record information in the possession of the Kansas bureau of investigation
22 and any report of investigations as authorized by subsection (e) of K.S.A.
23 38-1523 and amendments thereto in the possession of the department of
24 social and rehabilitation services, or any reports of investigations, findings
25 or assessments as provided in K.S.A. 39-1402 and amendments thereto,
26 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-
27 1433 and amendments thereto and 39-1434 and amendments thereto, in
28 the possession of the department of health and environment or the de-
29 partment of social and rehabilitation services concerning persons working
30 in an adult care home. The secretary shall have access to these records
31 for the purpose of determining whether or not the adult care home meets
32 the requirements of this section. The Kansas bureau of investigation may
33 charge to the department of health and environment a reasonable fee for
34 providing criminal history record information under this subsection.

35 (d) For the purpose of complying with this section, the operator of
36 an adult care home shall request from the department of health and
37 environment information obtained by the secretary of health and envi-
38 ronment under subsection (c) and information available under subsection
39 (c)(4) of K.S.A. 39-936 and amendments thereto, if any, which relates to
40 a person who works in the adult care home, or is being considered for
41 employment by the adult care home, for the purpose of determining
42 whether such person is subject to the provision of this section. For the
43 purpose of complying with this section, the operator of an adult care home

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1 shall receive from any employment agency which provides employees to
 2 work in the adult care home written certification that such employees are
 3 not prohibited from working in the adult care home under this section.
 4 For the purpose of complying with this section, information relating to
 5 convictions and adjudications by the federal government or to convictions
 6 and adjudications in states other than Kansas shall not be required until
 7 such time as the secretary of health and environment determines the
 8 search for such information could reasonably be performed and the in-
 9 formation obtained within a two-week period. For the purpose of com-
 10 plying with this section, a person who operates an adult care home may
 11 hire an applicant for employment on a conditional basis pending the re-
 12 sults from the department of health and environment of a request for
 13 information under this subsection. No adult care home, the operator or
 14 employees of an adult care home or an employment agency, or the op-
 15 erator or employees of an employment agency, shall be liable for civil
 16 damages resulting from any decision to employ, to refuse to employ or
 17 to discharge from employment any person based on such adult care
 18 home's compliance with the provisions of this section if such adult care
 19 home or employment agency acts in good faith to comply with this sec-
 20 tion.

21 (e) For the purpose of subsection (a)(3), an act of abuse or neglect
 22 shall not be considered to have been validated by the department of social
 23 and rehabilitation services unless the alleged perpetrator has: (1) Had an
 24 opportunity to be interviewed and present information during the inves-
 25 tigation of the alleged act of abuse or neglect; and (2) been given notice
 26 of the agency decision and an opportunity to appeal such decision to the
 27 secretary and to the courts pursuant to the act for judicial review and civil
 28 enforcement of agency actions.

29 (f) The secretary of health and environment shall charge each person
 30 requesting information under this section a fee equal to cost, not to ex-
 31 ceed \$10, for each name about which an information request has been
 32 submitted to the department under this section.

33 (g) No person who works for an adult care home and who is currently
 34 licensed or registered by an agency of this state to provide professional
 35 services in the state and who provides such services as part of the work
 36 which such person performs for the adult care home shall be subject to
 37 the provisions of this section.

38 (h) A person who volunteers in an adult care home shall not be sub-
 39 ject to the provisions of this section because of such volunteer activity.

40 (i) No person who has been employed by the same adult care home
 41 for five consecutive years immediately prior to the effective date of this
 42 act shall be subject to the provisions of this section while employed by
 43 such adult care home

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1 (j) No person who is in the custody of the secretary of corrections and
2 who provides services in nonpatient areas or on the grounds of the Kansas
3 soldiers' home or the Kansas veterans' home shall be subject to the pro-
4 visions of this section while providing such services.

5 ~~(j)~~ ~~(k)~~ The operator of an adult care home shall not be required under
6 this section to conduct a background check on an applicant for employ-
7 ment with the adult care home if the applicant has been the subject of a
8 background check under this act within one year prior to the application
9 for employment with the adult care home.

10 ~~(k)~~ ~~(i)~~ This section shall be part of and supplemental to the adult care
11 home licensure act.

12 Sec. 2. K.S.A. 1997 Supp. 39-970 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.

(k) No person who is in the custody of the secretary of corrections and who provides services in nonpatient areas or on the grounds of any institution operated by the secretary of social and rehabilitation services shall be subject to the provisions of this section while providing services.

(l)

(m)

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1/15/98
S WFM

GRETA H. GOODWIN
SENATOR, 32ND DISTRICT
COWLEY AND SUMNER COUNTIES

STATE CAPITOL BUILDING
ROOM 403-N
TOPEKA, KANSAS 66612-1504
(913) 296-7381
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TOPEKA

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER JUDICIARY
MEMBER ASSESSMENT AND TAXATION
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND TOURISM
JOINT COMMITTEE ON HEALTH CARE
REFORM LEGISLATIVE OVERSIGHT
JOINT COMMITTEE ON STATE BUILDING
CONSTRUCTION
HEALTH CARE STABILIZATION FUND
OVERSIGHT
KANSAS SENTENCING COMMISSION

SENATE CHAMBER
TESTIMONY
BEFORE THE SENATE WAYS AND MEANS COMMITTEE
SENATE BILL NO. 399
January 15, 1998

Chairman Kerr and Members of the Ways and Means Committee:

I appreciate the opportunity to appear before you today to testify in support of SB 399.

During the 1997 legislative session, legislation was passed which placed restrictions upon any person who operates an adult care home should there be person(s) employed by the operator who has certain felony conviction(s), committed an act of physical, mental or emotional abuse or neglect or sexual abuse validated by SRS, among having other types of criminal history.

The Kansas Veterans' Home is currently in the development process of establishing a veterans' home on the campus of the soon to be closed Winfield State Hospital and Training Center (WSHTC). The above mentioned legislation has raised a red flag as to whether the beneficial use of inmate labor used by WSHTC can be continued by the Kansas Veterans' Home. To support the change proposed in SB 399, I offer the following historical information of the continued use of inmate labor given to the Winfield State Hospital by the Winfield Correctional Facility on the WSHTC grounds since 1987. I want to point out a major benefit to the state and the Veterans' Facility if this labor arrangement is allowed to continue, as well as address the concern of safety of the residents and employees.

Beginning in 1987 inmates were used consistently to augment the grounds maintenance work force at WSHTC. After the initial arrangement, additional assignments were added. In April, 1995 a formal Memorandum of Understanding was made between WSHTC and the Winfield Correctional Facility. The agreement included work on grounds, buildings, and equipment upkeep and general repair. I have attached to my testimony a list of the activities inmates have provided to WSHTC, together with the annual savings based on lowest skills qualification. The estimated annual savings calculations of \$716,763 are conservative estimates based on minimum qualification classifications. From a tax payer perspective, I personally find the savings to be advantageous in managing state government with cost saving measures and maximizing the use of inmate labor.

On a more recent undertaking, the Winfield Correctional Facility, along with the Aramark Food Service Company, will be moving their kitchen operations from the Winfield Correctional Facility to the WSHTC and will begin providing meals to our

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remaining hospital residents and the inmates on Saturday, January 17, 1998. All inmates will be cooking and preparing the food under close supervision. Approximately 12 inmates will be working along side the WSHTC food service staff till Friday, January 30, 1998, when the remainder of the WSHTC food service workers will be laid off. Estimated cost savings on this undertaking are \$249,036.

In relation to the concerns of safety of residents which prompted the 1997 legislation, according to the administration of the WSHTC, there has never been any major incidents involving inmates from the Winfield Correctional Facility in all the years that inmates have been on their grounds. There have been no physical attacks, verbal attacks, rapes, or any other kind of human transgression on any employee or resident by an inmate. The inmates are highly supervised and the supervisors are trained to diffuse any situation quickly and remove an inmate from the area should that have ever been necessary. The statement made by WSHTC administration is "that the working relationship between this facility and the Winfield Correctional Facility can only be described as excellent." I expect nothing less should inmate labor be allowed on the grounds of the future Kansas Veterans Home.

I appreciate the opportunity to speak in support of SB 399 and ask for your favorable consideration of this bill. I will be glad to stand for questions.

Grounds Maintenance (8 inmates) (\$136,520 annual savings based on lowest skills qualification)

Mowing grass with riding and push type lawn mowers

Operating weed eaters

Trash collecting and hauling to Cowley County Landfill

Painting curbing

Maintenance of WSH&TC Cemetery

Cleaning of Sewer Treatment Plant

Cleaning of steam tunnels

Cleaning out buildings

Paint Shop (4 inmates) (\$68,000 annual savings based on lowest skills qualification)

Painting the outside of buildings

Refinishing and staining furniture

Woodworking/Cabinet Shop (6 inmates) (\$102,390 annual savings based on lowest skills qualification)

Designing and building picture frames, cabinets, and bookcases

Automotive Shop (3 inmates) (\$51,000 annual savings based on lowest skills qualification)

Washing and cleaning of vehicles

Engine repair and preventive maintenance

Warehouse (4 inmates) (\$68,272 annual savings based on lowest skills qualification)

Unload delivery trucks

Dilute chemicals

Perform custodial work

Stock shelves

Assist with deliveries

Assist with inventory

Fill orders

Electrical Shop (4 inmates) (\$68,272 annual savings based on lowest skills qualification)

Assist with replacing light bulbs

Perform electrical repairs and maintenance

Air conditioning and refrigeration repairs

Street light replacement and repairs

Laundry Building (7 Inmates) (\$119,455 annual savings based on lowest skills qualification)

Operate a variety of laundry equipment to wash clothing, linens, and towels

Sort clothing

Fold clothing

Pick up and delivery of soiled and clean items

Plumbing Shop (3 inmates) (\$51,195 annual savings based on lowest skills qualification)

Clean sewer lines

Repair sinks and toilets

Water and sewer line maintenance