

Approved: 3-28-01  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on March 12, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Harrington

Committee staff present: Ms. Emalene Correll, Legislative Research Department  
Mr. Norman Furse, Revisor of Statutes  
Ms. Lisa Montgomery, Revisor of Statutes  
Ms. Rebecca Zapick, Intern for Senator Barnett  
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Mr. Mike Oxford, Executive director, Topeka Independent Living Resource Center  
Ms. Teresa Groupil, Editor/Advocate, Topeka Independent Living Resource Center  
Ms. Sharon Huffman, Legislative Liaison, Kansas Commission on Disabilities Concern  
Ms. Gina McDonald, Kansas Association of Centers for Independent Living, Salina, Kansas  
Ms. Lou Ann Kibbee, systems Change Coordinator, Living Independently in Northwest Kansas  
Ms. Linda Lubensky, Executive Director, Kansas Home Care Association

Others attending: See attached guest list.

**Distribution of handouts**

Upon calling the meeting to order, Chairperson Wagle referred the Committee to the one handout before them, which was a National Conference of State Legislatures notebook on health care matters and a survey response form that they were welcome to keep and read.

**Hearing on SB 319 - exacting the Kansas freedom of choice in long term care, service & support act.**

With that business aside, she then announced the Committee would have a hearing on SB 319 and would also be working some bills.

Chairperson Wagle first asked staff to give a brief overview of the bill. Ms. Emalene Correll, Legislative Research Department stated that the bill would create a new law relating to choices in long-term care services and that the persons described in Section one of the bill would be given a chance to receive appropriate home community-based services in lieu of admittance to one of the other institutions. She does have some concern with the definition and terminology in the bill's description of the facilities with the "adult care home" being the over-arching term. She assumes that Section B is primarily aimed at the medicaid program, so this might need clarification as it makes no mention of persons who depend in part on public

Chairperson Wagle then introduced the first proponent conferee to testify, Mr. Mike Oxford, Executive Director, Topeka Independent Living Resource Center. The highlights of Mr. Oxford's testimony included the National Governor's Association (NGA) policy position on long-term care and the United States Supreme Court's "Olmstead" decision interpreting the Americans with Disabilities Act requirements governing long-term. A copy of his written testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference.

The second proponent conferee recognized by the Chairperson was Ms. Tessa Groupil, Editor/Advocate, Topeka Independent Living Resource Center who gave testimony on how she is on the Physical Disabilities Waiver and chooses to live at home, but is concerned because waivers are optional. If she were put on a waiting list, she would have to enter a nursing home. A copy of her written testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference.

The next proponent conferee was Ms. Sharon Huffman, Legislative Liaison, Kansas Commission on Disabilities Concern shared the views of Mr. Oxford and added that employment rate for the disabled is a 75%, but the bill would allow more people more choices which would enable them to have a job. A copy of her written testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference.

Ms. Gina McDonald, President of the Kansas Association of Centers for Independent Living (KACIL) was the next proponent conferee who provided a brief history of KACIL, pointing out that it is less expensive to provide services in the community than it is to provide them in facilities. She touched on people with head-injuries having to face a 2 year waiting list, those who choose to go into a nursing home without an entitlement, and with our state aging in population, KACIL is looking at a visionary concept. A copy of her written testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference.

Next to testify as a proponent was Ms. Lou Ann Kibbee, Systems Change Coordinator, Living Independently in Northwest Kansas (LINK) who stated she has used Personal Care Attendants for more than 20 years. She also informed the Committee of what she would not have had (ex. A college education) if she did not have this choice. She still requires this assistance, but because of the choice, she is able to private pay, but is concerned for those who just want the opportunity to be able to choose. A copy of her written testimony is (Attachment #5) attached hereto and incorporated into the Minutes by reference.

The last proponent conferee to testify was Ms. Linda Lubensky, Executive Director, Kansas Home Care Association who stated problems the State and its citizens face regarding long-term care system (ex. With changes in federal medicare programs providers have seen their revenues cut and services reduced) and staffing shortages. A copy of her written testimony is (Attachment #6) attached hereto and incorporated into the Minutes as referenced.

Written proponent testimony was also provided by the following: Mr. Tom Laing, Lobbyist, Interhab; Ms. Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities; Ms. Terry Roberts, Executive Director, Kansas State Nurses Association; and Ms. Shannon Jones, Executive Director of the Statewide Independent Living Council of Kansas. A copy of their testimonies are (Attachments #7, 8, 9, and 10) attached hereto and incorporated into the Minutes by reference.

As there was no opponent or neutral testimony, Chairperson Wagle asked for questions or comments from the Committee. A lengthy discussion ensued between Senators Salmans, Wagle, Haley, Barnett and Praeger with Mr. Mike Oxford ranging from what is the "Omsburg Act", why is this issues being tested by law in legislation as opposed to administration, are waivers given according to need or essentially a first come first serve, to do we have an emergency mechanism for the waivers.

#### **Action on HB 2313 - State Board of Nursing approval of schools and programs.**

With no further discussion, the next order of business was working of **HB 2313**. Chairperson Wagle again requested Mr. Furse give a brief overview even though there was a hearing last week. Mr. Furse touched briefly on the policy regarding registered nurses performing IV therapy and practices in the State of Kansas that are exempt. Chairperson Wagle then recognized questions and comments from Senators Brungardt and Barnett and Ms. Correll for Ms. Blubaugh concerning "accredited" versus "approved" giving more latitude and forcing people to take the test. The Committee was concerned that the dollars being requested probably would not be available. Senator Harrington offered alternatives, such as school programs. Further discussion among Committee members led some to voice that they were still not clear regarding the "24 months". Chairperson Wagle said they would discuss at the next meeting so that they could move on to other bills to be worked..

**Action on SCR - 1609 - memorializing Congress regarding the high cost of prescription drugs.**

The next bill to be worked was **SCR 1609**. Senator Barnett was asked by Chairperson Wagle to give a brief overview of some amendments and requests for some alterations of language. A discussion concerning the overview followed with Senators Barnett, Praeger, Steineger, and Brungardt, Ms. Correll and Ms. Montgomery ranging from whom in the industry have seen, 55 million Americans with no insurance for prescription drugs to strike "for" and add "of." Senator Brungardt moved to amend changes made on the balloon. Senator Harrington seconded the motion. The motion passed.

Chairperson Wagle then asked what the will of the Committee was for this bill. Discussion ensued with Senators Haley, Praeger and Barnett and Ms. Nancy Zogleman, Pfizer, Inc. regarding the percentages shown on line 38 (it was 16% now changing to 21%). The motion was made by Senator Praeger to strike "16%" and add "20%." Senator Barnett seconded the motion. Senator Barnett motioned to move the bill favorably as amended. Senator Brungardt seconded the motion. The motion passed.

**Action of HB 2497 - renaming the House Committee on Economic Development the Committee on New Economy.**

The final bill to be worked was **HB 2497** and placing **SB 336** into this bill dealing with all of the leadership requests on the other committees. Senator Jordan moved to amend the motion to put the contents of **SB 336** into **HB2497**. Senator Steineger seconded the motion. The motion carried. Senator Jordan motioned to move the bill favorably as amended. Senator Steineger seconded the motion. The motion passed.

**Adjournment**

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for March 13, 2001.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Monday, March 12

NAME	REPRESENTING
Sharon Huffmann	KDHR / KCDC
Dore M. Lynn	KSBW
Gail E. Walker	RCIL + K's ADAPT
Terri Roberts	Kansas State Nurses Assn.
Anthony A. Fadale	Kansas ADA coordinator - Admin
Kirk Lowry	Topeka Independent Living Ctr.
Brenda Eddes	Asst. Technology for Kansans
Helen Mitchell	KACI
Liana Lukensky	KS Home Care Assoc
Kerrie Rublman	KS Adult Care Home Executives
Carolyn Muddendorf	KS St Nurses Assn
Patricia Mahan	KDHE
Yung Lusk	SKIL
Baranne Deagle	SRB - HCP
Sheli Sweeney	KDOA
Jan Kups	KCP
Sharon Mahan	AARP
Michelle Peterson	PPAG
Miss Mitch	INTERHAB



3-12-9 cont'd

Nancy Blum

Bonnie Ray

Bea Burke

Janice Thostenberg

Anne Spiess

Jim Germer

Fellow Council

Center for Independent Living for Seniors

ALFA-KAN

Independent Living Resource Center

Alzheimer's Assn. - KS Chapters

KS Adv. + Prot. Serv. - Typist



Offices located in  
the Historic Crawford Building

# Topeka Independent Living Resource Center

785-233-4572 v/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207  
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

March 12, 2001

Senate Committee on Public Health and Welfare  
Senator Susan Wagle, Chairperson

Testimony in support  
of  
Senate Bill 319

Mike Oxford, Executive Director

Senate Bill 319 is good legislation for Kansas. It clearly sets forth the long term care, services and supports policy of our state and protects the preferences and rights of people with disabilities of all ages. This is why SB 319 and its basic concept "choice to receive appropriate services in the most integrated setting" is supported by so many statewide organizations.

The National Governor's Association (NGA) puts it very well in their recent policy position on long-term care published winter, 2001. The NGA states:

## "Eliminating the Institutional Bias"

"Beneficiaries generally prefer to live in their own homes and remain as independent as possible, yet current federal eligibility, coverage, and payment policies are biased toward institutional care. Also, existing distinctions between Medicare and Medicaid policies related to coverage of and eligibility for nursing facilities and home- and community-based care are particularly complicated.... The lack of responsible coordination and the cost-shifting is unacceptable for beneficiaries and the states."

"Federal policies should support states' efforts to address the *Olmstead* decision. Although institutional care must be available and affordable to those who need it, federal policies must be redesigned to eliminate the institutional bias of the Medicare and Medicaid programs. Federal policies should encourage the availability of a continuum of services, including additional home- and community-based long-term care options, with the goal of preventing or delaying admission into an institution for as long as possible. The independence of the individual must be maintained and enhanced to the maximum extent possible; family efforts to assist the individual must also be supported. Placement in a nursing home should be the exception and require significant justifications, rather than home- and community-based placement being the exception and requiring a waiver."

**Advocacy and services provided by and for people with disabilities.**

Senate Public Health & Welfare Committee  
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Attachment 1-1

A recent publication by HHS called "Understanding Home and Community Services: A Primer" underscores the ability and need to be creative in the area of choice of services in the most integrated setting as well as the need to align these services with ADA requirements:

"Regardless of an individual's age or condition, all persons with disabilities and their families share common goals—to choose how to live their lives and to have control over their daily activities in the most integrated settings."

"As states work toward the goal of integrating persons with disabilities into the community, they may need to go through a process of fundamentally rethinking how programs serving people with disabilities should be structured and how long term care resources should be allocated."

I was happy to help put this very important document together and commit to work with our state as I have with the federal government to see that progress is made and that this information doesn't just gather dust.

SB 319 is forward thinking from a cost and social perspective. Kansas needs to comply with the United States Supreme Court's "Olmstead" decision interpreting the Americans with Disabilities Act (ADA) requirements governing long-term care. The Supreme Court found that:

"Unjustified isolation...is properly regarded as discrimination based on disability" and that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life". "Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contracts, work options, economic independence, educational advancement, and cultural enrichment." (*Olmstead v. L.C.*, 119 S.Ct. 2176 [1999])

Currently our state has no mechanism for ensuring that all individuals are given information about home and community based alternatives to institutions at the discharge planning, post acute phase of hospitalization or other times when long term care is at issue. Likewise, there is no mechanism for follow-up information to be provided to those already in an institution and may want to exercise their right to choose home and community services. This is a needless waste of people's lives and of public dollars. Comprehensive strategies to get the word out about cost effective home and community services need to be implemented as part of a statewide quality assurance and cost avoidance system. People's preferences for institutional placement would be respected at all times.

In spite of significant growth of home and community programs over the years, there is still a huge institutional bias in our state. The current breakdown looks like this:

Nursing facilities are costing about \$77.00 dollars per day while HCBS FE is \$29.00 per day and HCBS PD is \$45.00 per day.

On the MR /DD side, the state MR hospitals cost \$330.00 per day and the private ICF MR cost \$145.00 per day while the HCBS DD costs \$90.00 per day.

From a cost perspective alone it makes the most sense to fund HCBS while rationing institutional services which people with disabilities of all ages and their families increasingly do not want.

Our state used to utilize controls on unnecessary growth of institutional services by using certificates of need and moratorium planning. Perhaps this concept needs to be revisited. As institutional occupancy rates decline, costs per resident will increase. Costs have got to be controlled on both sides of the equation. SB 319 is a necessary step toward meeting the long-term care needs of Kansans in the most effective, enlightened manner. Existing facilities have already begun retooling and should be given incentives to do so.

More recently states like Colorado and Oregon have initiated nursing home diversion programs which ensure that as many people as possible are served in the more cost effective home and community programs as long as possible and before entering a nursing facility.

The National Governor's Association has got this issue right. The problem of long term care services and how to fund them is best resolved at the state level. We have substantial new tools at our disposal to do so. Our state has a lot of flexibility in spite of the still existing entitlement to nursing homes. This flexibility needs to be harnessed for the purpose of rationalizing funding for all long-term care services whether institutional or home and community based. The key is to provide funding for people and to let the market drive budget allocations. Let people choose where to spend their governmentally supported long term care dollars instead of funding an "entitled industry", first, and then supporting "optional" programs, second, as the budget allows. We need one, unified, long term care system based on people's needs and preferences and which is the most cost effective to the tax payer.

If we consider programs to be for people, not industries and providers, and if we accept consumer choice as being consistent with quality, satisfaction and market driven philosophy, then we have no alternative but to pass SB 319. It is true that the more people who choose home and community over the institution, the more costs are avoided.

Please report SB 319 favorable for passage.

Thank you.

# Senate Bill 319

## Freedom of Choice in Long Term Care, Services and Supports Act

The following statewide organizations are very interested in this legislation and support a public discussion and Committee hearing this legislative session.

1. Kansas ADAPT
2. Kansas Home Care Association
3. Interhab
4. Statewide Independent Living Council of Kansas
5. Kansas Association of Centers for Independent Living
6. Kansas State Nurses Association
7. Kansas Planning Council on Developmental Disabilities
8. Kansas Commission on Disability Concerns
9. Kansas Advocacy and Protective Services
10. Kansas Disability Rights Action Coalition for Housing
11. Kansas AFL-CIO



**Freedom of Choice in Long-term Care**  
**SB 319**  
**Public Health and Welfare**  
**March 12, 2001**

*Testimony by Tessa L Goupil*  
*1917 SE Ohio Ave, Topeka KS*

Thank you for this opportunity to present testimony and share a look at my life with you.

Currently Kansans with disabilities eligible for nursing home care have the choice to decide where to receive their services, I am on the Physical Disabilities waiver and choose to live in my own home with attendant care. But every year I fear that something will happen to the waivers because they are optional. I was lucky to get on the waiver when I did, because now there is a four-month waiting list. There are over 400 people waiting for services. If I were in that situation, I would have to go to a nursing home because I couldn't wait even four days for help. Senate Bill 319 would take away the threat of losing my freedom by implementing the Supreme Court's Olmstead decision on the state level.

Let me tell you what my freedom has meant to me. Because of choosing services in my community, I was able to go to college and graduate with honors. I live in my own home with my husband and son. I have a full time job and pay my share of taxes. I am full of life and enjoy spending it with people I care about. I couldn't have accomplished any of those things on a waiting list. If I were to lose my civil right to choose where I receive my services it would be imprisonment for me, with disability as my only crime. I would literally die in the confines of some hospital bed, forgotten and discarded.

The morning that I wrote this testimony I told my son something, a mother's promise I intend to keep. He is three and very precocious. I was trying to coax him out of the bedroom to go eat breakfast. He is quite grumpy in the mornings. I started to leave the room and he threw a fit, screaming "No!" at the top of his lungs. He doesn't like it if you go somewhere without him, so I said, "Well, come on then." He came out, stomped his feet at me and said "I don't want you to leave me and that's truth." I told him "I'll never leave you Baby." He is not yet old enough to realize the seriousness of my reply or know how I meant it with all my heart, but it was an acceptable answer. He gave me a scolding look, climbed up on my chair and we went to breakfast. That is what true Freedom means to me, never having to leave my child.

I ask that you pass Senate Bill 319 so that Kansans won't have to wait for services they are eligible for and that will keep their lives on track. You can ensure that our right to choose where we live and receive our services won't be lost. Then families won't have to be separated just to survive.

Thank you for your time.

*Senate Public Health & Welfare Committee*  
*Meeting Date March 12, 2001*  
*Attachment 2-1*



# KANSAS

Bill Graves  
Governor

DEPARTMENT OF HUMAN RESOURCES  
*Kansas Commission on Disability Concerns*

Richard E. Beyer  
Secretary

## TESTIMONY TO SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

### SB 319

Sharon Huffman, Legislative Liaison

March 12, 2001

Thank you for the opportunity to testify regarding SB 319. The Kansas Commission on Disability Concerns (KCDC) is an advisory commission that provides information and education to the legislature and governor on issues of importance to Kansans with disabilities. The mission statement of KCDC is: The Kansas Commission on Disability Concerns believes that all people with disabilities are entitled to be equal citizens and equal partners in Kansas society. The purpose of the Kansas Commission on Disability Concerns is to involve all segments of the Kansas community through legislative advocacy, education and resource networking to ensure full and equal citizenship for all Kansans with disabilities.

SB 319 would guarantee more choices for Kansans faced with institutionalization due to disability. It would require the state to provide services in the most integrated setting, a requirement of the Americans with Disabilities Act. Although choice has been available in Kansas since 1989, there has not been legal assurance that individuals with disabilities would be given a choice to receive home and community based services as an alternative to institutional placement.

KCDC has undertaken a lofty goal to make Kansas the number one state in the nation for employment of people with disabilities. If an individual is forced to reside in an institution rather than with proper supports in the community of their choice, they will not have the freedom to accept employment. We believe that SB 319 will help ensure choice for those at risk of institutionalization and will help decrease the unemployment rate of people with disabilities in Kansas.

Please support passage of this bill. Thank you.





**Gina McDonald**  
President/CEO

**Member Agencies:**

**Center for Independent Living for Southwest Kansas**  
Garden City, KS  
316/276-1900 Voice

**Coalition for Independence**  
Kansas City, KS  
913/287-0999 Voice/TT

**ILC of Northeast Kansas**  
Atchison, KS  
913/367-1830 Voice

**ILC of Southcentral Kansas**  
Wichita, KS  
316/942-6300 Voice/TT

**Independence, Inc.**  
Lawrence, KS  
785/841-0333 Voice  
785/841-1046 TT

**Independent Connection**  
Salina, KS  
785/827-9383 Voice/TT

**LINK, Inc.**  
Hays, KS  
785/625-6942 Voice/TT

**Prairie Independent Living Resource Center**  
Hutchinson, KS  
316/663-3989 Voice

**Resource Center for Independent Living, Inc.**  
Osage City, KS  
785/528-3105 Voice

**Southeast Kansas Independent Living, Inc.**  
Parsons, KS  
316/421-5502 Voice  
316/421-6551 TT

**The Whole Person, Inc.**  
Kansas City, MO  
816/561-0304 Voice  
816/531-7749 TT

**Three Rivers ILC**  
Wamego, KS  
785/456-9915 Voice

**Topeka Independent Living Resource Center**  
Topeka, KS  
785/233-4572 Voice/TT

Testimony to  
Senate Public Health and Welfare  
Senate Bill 319  
March 12<sup>th</sup>, 2001

Thank you for the opportunity to testify in favor of SB 319. My name is Gina McDonald and I am the President of the Kansas Association of Centers for Independent Living (KACIL). KACIL represents the 13 Centers for Independent Living around the state. Our mission is to coordinate efforts within Kansas, the United States, and internationally to the extent that these efforts will further independent living for all. KACIL will advocate for the civil rights of Kansans with disabilities, regardless of age.

Back in the early 1980's, the cost of care in Nursing Facilities grew at such a rapid rate that the legislature required that Social and Rehabilitation Services begin to create alternatives that would be less expensive. The state had a Home and Community Based Services Waiver, but more efforts were put into identifying alternatives for people to be able to remain in their own home.

As a result of many program initiatives, the community based side of the budget increased dramatically and there was a shift in the concern of legislators to the HCBS Budget. As people realized that they could remain in their own homes while they aged or experienced disabilities, that is the choice they made.

Advocacy organizations such as KACIL pointed out that even though the budget was increasing, it was less expensive to provide services in the community than it was to provide them in facilities. But the legislature deals with budgets one year at a time. The concept of cost avoidance does not balance a budget today. However, in the long term it does matter.

Currently the federal government requires a state that accepts Medicaid funding to provide an entitlement to institutional services. It does not require the same for community-based services. However with the Olmstead decision, the Supreme Court brought us closer to entitlement services in the community.

SB 319 would give Kansans a real choice of where they want to receive their services. It would allow individuals to stay in their own homes and get needed services without having to wait, while their condition deteriorates. By the time they get the services needed, they require more services than they would have if they didn't have to wait 17 weeks.

The legislature and the Governor contends that it is not less expensive to create an entitlement to community based services because people with disabilities who are eligible for Nursing Facility services would not go there, therefore we are not saving money.

As the Kansas population, including people with disabilities grow older; people will no longer have the option to choose to remain at home with no services. They will be forced into facilities. And the cost to the state will increase dramatically. As of March 2nd, there were 433 people waiting for services on the PD Waiver. Today, if every one of those people chose to go to a facility, the cost would be an additional \$ 1.4 million dollars per month. That is an additional \$16.8 million per year. That does not include the costs for people waiting for services on the Head Injury or the MR/DD Waivers.

SB 319 is visionary. In the short term it will require more funding, but in the long term, it will pay off. It is the choice of most Kansans to remain in their community and home. Is it the function of this legislature to carry out the will of the people? Will you take the first step toward providing real choice?

Thank you for your attention, I would be happy to stand for questions.



## Living Independently in Northwest Kansas

2401 E. 13th Street  
(785) 625-6942(V/TT)

Hays, KS 67601  
(785) 625-2334 (FAX)

**Testimony to  
Senate Public Health and Welfare Committee  
Senator Susan Wagle  
SB319  
Freedom of Choice in Long Term Care Services and Supports Act  
By  
Lou Ann Kibbee  
March 12, 2001**

My name is Lou Ann Kibbee and I am the Systems Change Coordinator for LINK, Inc. (Living Independently in Northwest Kansas). I have used Personal Care Attendants for over twenty years. By being given the choice of using personal care attendants in my own home all these years ago, the State of Kansas afforded me the choice to make a real life for myself. If I would not have been given the choice of where to receive services, there is no doubt in my mind that I would be in a nursing home today. My parents are 80 and 85 years old and would not have been able to assist me with my personal care for the last twenty years. If I would be in a nursing home today the results would be that I would not have had the opportunity to obtain a college education; I would not have had the opportunity to get married and have a life with my husband and four children; I would not have had the opportunity to enjoy the relationships I have with my large extended family; I would not have had the opportunity go to work; I would not have had the opportunity to work my way completely off of government assistance; I would not have had the opportunity to pay income tax every year; I would not have had the opportunity to do all the little things most people take for granted like driving my own vehicle, going to the grocery store, going on vacation with my family; I would not have had the opportunity to contribute to society like everyone else; and most importantly I would not have had the opportunity to come here today to ask that you support SB319, so that all individuals with disabilities are guaranteed the choice of where to receive services so they can have the opportunities that I have been so fortunate to be given.

I still use personal care assistance today and will for the rest of my life. The difference today is that I private pay since I am no longer eligible for government assistance. Another difference is for people who private pay is that I have total control over my personal care assistance. I do not have to be concerned about the threat of a program being changed or funding cuts that would jeopardize my freedom to live in the community, take me away from my husband and family, make me quit my job, and lose



LINK, Inc. also has offices in Hill City, Colby, Osborne and Great Bend

*Senate Public Health & Welfare Comm.  
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Attachment 5-1*



all the opportunities I spoke of previously. Although I was given the choice to live in the community when I was receiving government assistance, there was always that fear that my services would be jeopardized. I do not have to worry about this fear for myself today, but I still have this fear for so many of my brothers and sisters; other Kansans with disabilities who just want the same opportunities that I have been given.

LINK is a Center for Independent Living, we believe people with disabilities should be given the opportunity to live in the community of their choice and have the freedom to become productive citizens just as people without disabilities do. I ask that you pass SB319, so Kansans with disabilities will be guaranteed the freedom to live in the community if they choose and contribute to society just like myself, but live without the fear of possibly losing their services.

Thank you for the opportunity to speak to you today. I would be glad to answer any questions. I can be contacted at LINK 785-625-6942.



Kansas Home Care Association • 1000 Monterey Way, E2 • Lawrence, Kansas 66049 • (785) 841-8611  
Fax (785) 749-5414

To: Senate Public Health and Welfare Committee  
From: Linda Lubensky, Executive Director  
Kansas Home Care Association  
Date: March 12, 2001  
Re: S.B. 319, Kansas Freedom of Choice in LTC

The Kansas Home Care Association supports the passage of S.B. 319. Although, for many years now, our state has worked to reverse its institutional bias, statute language does not include this commitment toward that goal.

Our long-term care system has a lot of problems that will effect our state and its citizens for years to come. All elements of the health care system are facing significant staffing shortages. Due to changes in the federal Medicare program, all providers have seen their revenues cut and services reduced. In home care alone, we have lost a third of our Medicare providers and are seeing access issues develop in many parts of the state. Nevertheless, the demand for LTC services is increasing and will continue to do so, placing further burden on limited financial resources.

These factors could be instrumental in pushing Kansas back to its original dependence on costly institutional care. It will require real commitment to stabilize our system and make sure that community based choices are available in the future. The passage of S.B. 319 is a good first step toward achieving that principle.

Since the issuance of the Olmstead Decision, all states have been working to prove good faith effort and compliance. In our opinion, the passage of S.B. 319 is a very important action that this legislature can take toward that effort. On a human level, we all value the availability of choice. Equally important, it allows us to see that individuals receive care in the most cost-effective and appropriate setting. That flexibility is vital to our long-term ability to meet the needs of all Kansans and encourage their independence and self-determination.

We appreciate your consideration and hope that you will support this legislation.

*Senate Public Health & Welfare Committee  
Meeting Date March 12, 2001  
Attachment 6-1*



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March 12, 2001

## **Testimony to the Senate Committee on Federal and State Affairs Regarding: Senate Bill 319**

Tom Laing, Executive Director

Thank you Madame Chair and Members of the Committee for the time you have allowed today for this important bill.

Senate Bill 319 proposes that it be the law of the State of Kansas that home and community based services be an equally viable option for persons with disabilities needing services or supports.

InterHab supports:

- The adoption of home and community based principles embodied in SB 319

The adoption of the principles in SB 319 would be consistent with what we, as a society, have learned about the needs and rights of persons with disabilities.

- The implementation of home and community based services as the "first choice" service for the State

The implementation of the program directions of this bill would be consistent with what we have learned to be sensible and economic options for state service provision – i.e. that home and community based services, in the aggregate, are a bargain for taxpayers when compared with institutional service.

- The adequate and reasonable financing necessary to make it work.

The successful adoption and implementation of SB 319 principles and program directions can only happen if the State makes home and community based care its first choice – i.e. by making home and community options the state's budget preference, and by financing it at a level that sustains it successfully.

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Attachment 7-1*

Let me illustrate the point with a current example:

We are currently witnessing an erosion of quality care in the DD community service sector because the State has not put its resources where its principles are for home and community based options for persons with developmental disabilities. The State continues to finance its institutional services at a far more generous rate than the supposedly favored option ... i.e. home and community based options.

In the fifteen years since the beginning of the serious move to the community option, two state DD hospitals and most of the large private institutions have been closed. The principle financing source that allowed that to happen has been the federal government's Medicaid Waiver funding, which pays 60% of the costs of consumer care for home and community services. It is a system designed to allow States to keep quality high, without having to pay even half the cost of institutional services – but the State has not met that challenge.

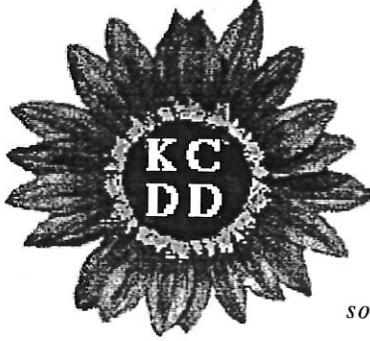
For community direct care staff pay, the State has only allowed a 7% increase in 8 years. The resulting harm in the community is staggering.

**For SB 319 to succeed, there must be an acceptance of the responsibilities that accompany statutory principles. For community options to become the true “first choice” for Kansans in need, we must “budget our money where our principles are”, to keep the system healthy, and in so doing better meet the needs of those whose lives we claim to value.**

As you continue to consider to work this bill in the coming weeks, we will offer additional testimony on the details that must be addressed for this effort to succeed. In particular, we will work with all stakeholders to assure that the principles embodied in SB 319 interface coherently with similarly stated principles in other statutes, namely the DD Reform Act.

Thank you for your consideration of this bill.





# ***Kansas Council on Developmental Disabilities***

BILL GRAVES, Governor  
DAVE HEDEKSTEDT, Chairperson  
JANE RHYS, Ph. D., Executive Director

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Phone (785) 296-2608, FAX (785) 296-2861

*"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"*

## **PUBLIC HEALTH AND WELFARE**

**March 12, 2001**

Testimony in Regard to SB 319 An Act relating to the enactment of the Kansas freedom of choice in long-term care service and support.

Madame Chairman, Members of the Committee, I am appearing via written testimony on behalf of the Kansas Council on Developmental Disabilities regarding SB 319.

The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor, include representatives of the major agencies who provide services for individuals with developmental disabilities, and at least half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life about where they wish to live, work, and the leisure activities in which they wish to participate among others.

The Council supports Senate Bill 319 which would ensure that "Any person eligible for admission to a nursing facility, adult care home, intermediate care facility, nursing home for the mentally ill or state institution for the mentally ill or any other publicly-funded institution shall be afforded the choice to receive appropriate services in home and community in the most integrated setting which is appropriate for the needs of such person."

Cost effectiveness of this provision is ensured by requiring "that home and community services for persons with disabilities, in the aggregate, shall cost less than if those same persons were served in a publicly-funded institution.

As always, we greatly appreciate the opportunity of providing our testimony and would be happy to answer any questions you may have if you wish to contact us at the address below.

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*Senate Public Health & Welfare Committee  
Meeting Date March 12, 2001  
Attachment 8-1*





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the Voice of Nursing in Kansas

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For More Information Contact  
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*March 12, 2001*

## S.B. 319 Kansas Freedom of Choice in Long Term Care WRITTEN TESTIMONY

Senator Wagle and members of the Senate Public Health and Welfare Committee, the KANSAS STATE NURSES ASSOCIATION (KSNA), the professional organization for registered nurses is very interested in supporting a statewide policy that provides greater choices for individuals needing assistance in activities of daily living.

This bill would provide direction as disabled and elderly Kansans make choices about their day to day living arrangements. Since 1989 the home and community-based services program has permitted Kansans with disabilities who are eligible for institutional placement to make a choice regarding staying in their home with home services. This bill would provide an assurance that these choices will continue to exist in the future.

We are pleased with the provision that states that the decision must be cost-effective and will not place an unreasonable burden on home care providers to maintain a level of service that would be more cost efficient to deliver in an institutional setting.

The main issue from a public policy perspective is the delicate balance for providing and paying for services needed for these individuals. What is in their best interest, what are their desires, and what should/can be provided within defined resources are the three issues that come to mind in considering this proposal.

We support assuring Kansans that equal considerations guaranteed the provision of services in community based settings where appropriate and available. We also want to be a part of the dialogue for implementation and monitoring, to assure that the spirit and intent of this policy are maintained.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

Constituent of The American Nurses Association

*Senate Public Health & Welfare Committee  
Meeting Date March 12, 2001  
Attachment A-1*

**Testimony to  
Senate Public Health and Welfare Committee  
on  
Senate Bill 319**

**March 12, 2001**

My name is Shannon Jones and I am the executive director of the Statewide Independent Living Council of Kansas (SILCK). The SILCK is mandated by the federal Rehabilitation Act as amended in 1998 to examine programs and policies at the state level and determine what changes, modifications and innovations may be necessary to remove barriers faced by people with disabilities and to make recommendations for such changes so that independent living and economic self sufficiency is possible for all Kansans. To accomplish this mission we work closely with Centers for Independent Living and Kansans with disabilities of all ages.

The SILCK supports SB 319 and believes this bill is the approach the Supreme Court has recommended in its Olmstead decision. The Court decision requires states to develop a 'comprehensive, effectively working plan' that evenhandedly distribute funding for long term care. When the long-term care system is viewed as a whole, it becomes very clear that there is a funding bias towards institutional care. Yet this is in direct conflict to what most Kansas citizens want; most people would rather have their services delivered in their own homes.

This preference is substantiated when looking at nursing home residency rates. The chart attached is taken from Health Care Finance Administration (HCFA) data. The number of folks receiving services in nursing homes peaked in 1993 at 25,496, occupancy rate was at 87%. By the end of 1997 the total number of residents was down to 20,820, a drop of 4,676 and occupancy rates were down to 81%. In 1998, the total number of residents dropped to 17,817. And once again in 1999, residency in nursing homes dropped to 17,234.

The number of people utilizing nursing homes dropped by 8,262 over this seven-year period. The alarming part of this equation is that basically, while people residing in nursing facilities has decreased dramatically, the total cost of nursing homes has increased steadily and substantially over this time frame. In 1993, the total expenditures for nursing facilities was & \$176,758,000. In 1999, the total expenditure was \$263,011,000. This is an increase of \$86,253,000.

**In other words, the State spent over \$86 million dollars to serve 8,000 fewer people!**

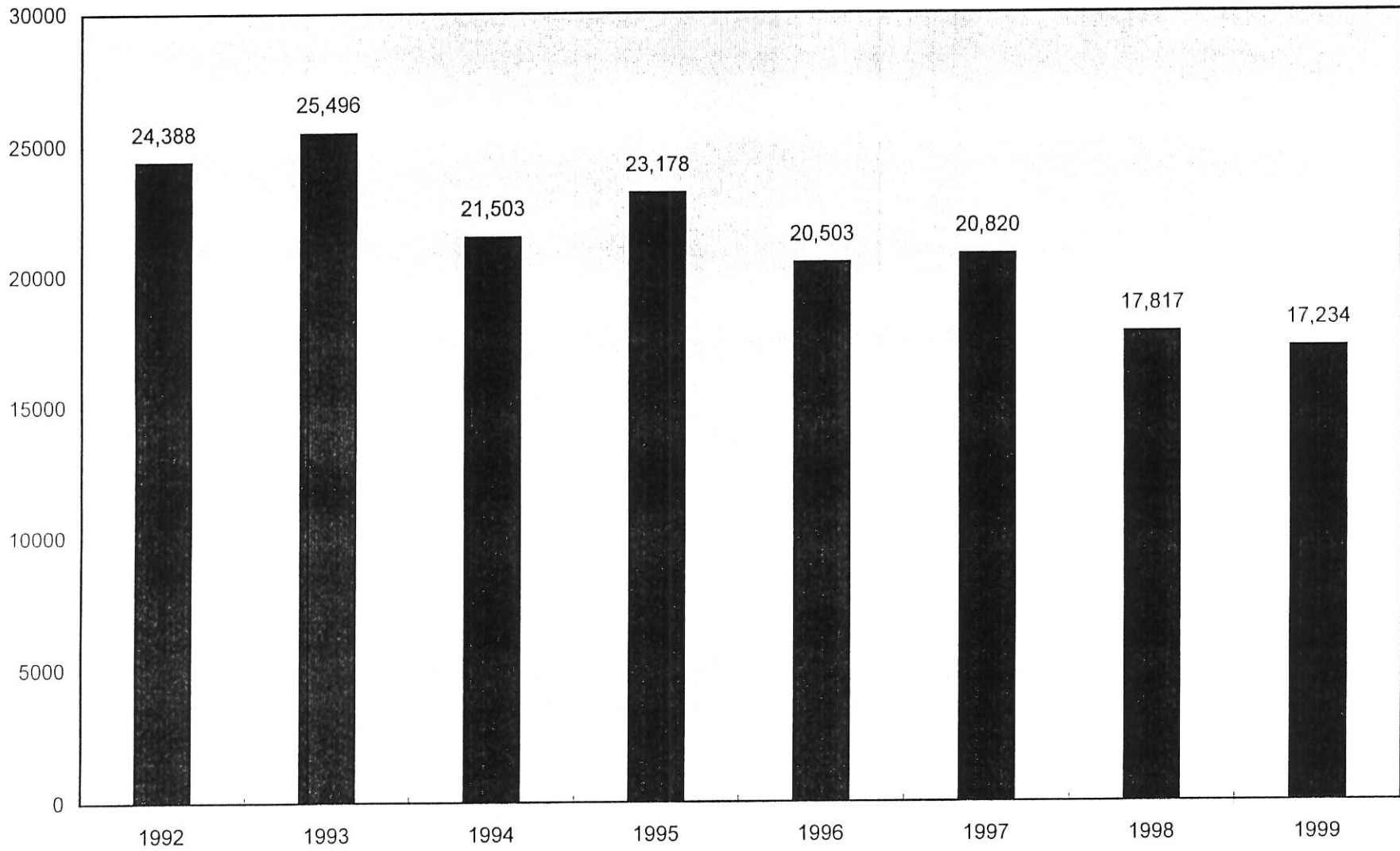
*Senate Public Health & Welfare Committee  
Meeting Date March 12, 2001  
Attachment 10-1*

The growth and the cost of the home and community based (HCBS) program, on the other hand is completely reversed. The utilization and cost have gone up together as opposed to utilization going down while cost goes up. A disproportionate amount of our long-term care service dollars are still going to nursing facilities.

The SILCK recommends favorable passage SB 319, so the state of Kansas can begin to modernize our thinking about long-term care. The SILCK also recommends an Olmstead Planning Commission or Life Planning Commission to identify, study and make recommendations related to ALL populations regarding long term care. This commission could look at private insurance as well as state funded programs, the number of insurance plans with caps or limits, tax credits for people who purchase long term care insurance and to study best practice insurance plans that ensure funding is there for life care.

Bottom line, it's up to all of us to work together. The SILCK believes that every one of us, legislators, state officials, nursing home administrators, older Kansans and folks with disabilities, can work together to come up with dignified solutions that the state can provide their constituency with cost effective solutions.

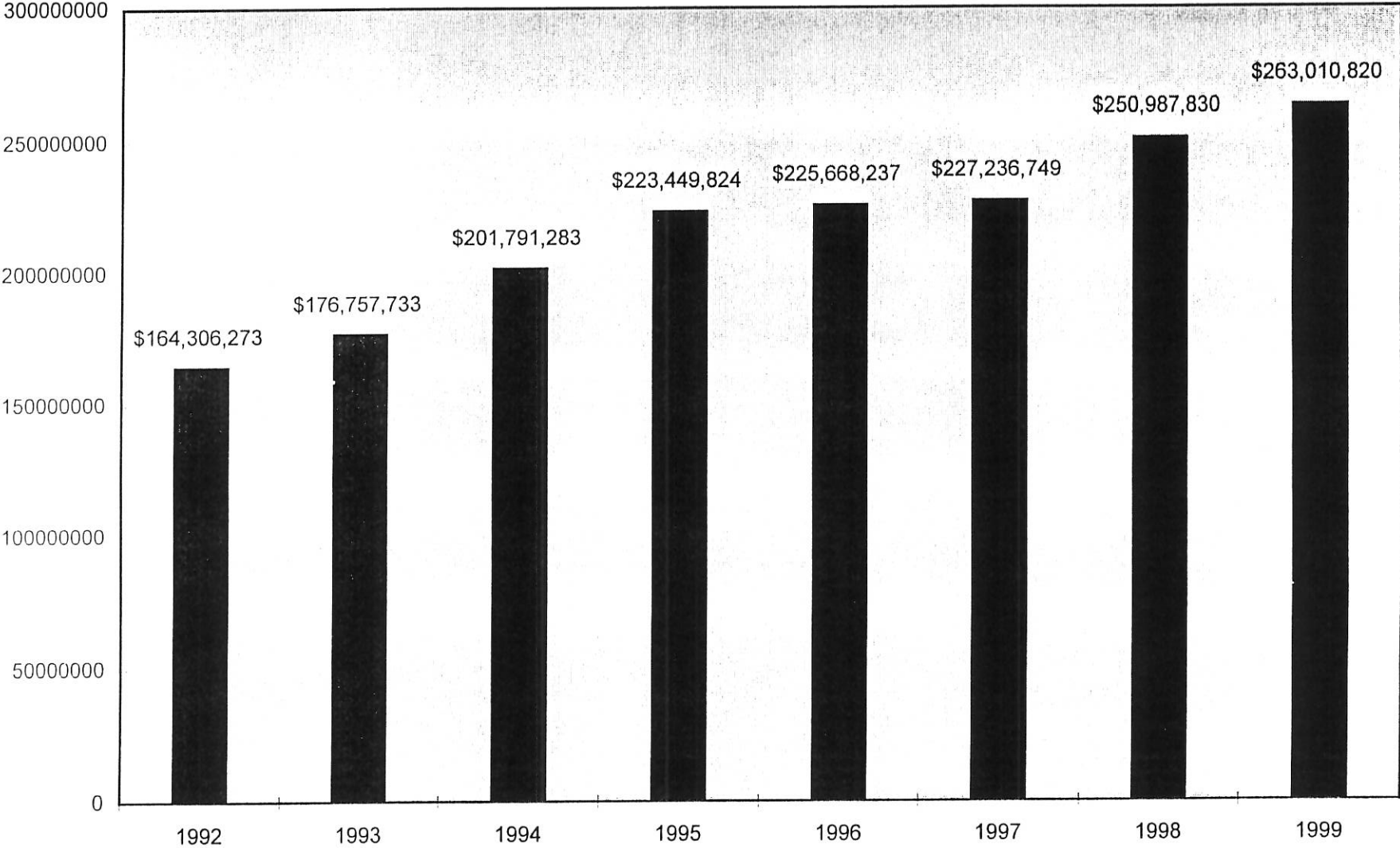
### Total Number of Residents For Nursing Facilities



Attachment 10.3

Source: Health Care Finance Administration ( HCFA)

### Nursing Facilities Expenditures



Attachment 10.4



**TABLE 1**

**TOTAL NUMBER OF RESIDENTS FOR CERTIFIED NURSING FACILITIES**

<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
24,388	25,496	21,503	23,178	20,503	20,820	17,817	17,234

**TABLE 2**

**NURSING FACILITIES EXPENDITURES**

<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
\$164,306,273	\$176,757,733	\$201,791,283	\$223,449,824	\$225,668,237	\$227,236,749	\$250,987,830	\$263,010,820