

Approved: 4/21/94
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Rochelle Chronister at 11:00 a.m. on March 29, 1994 in Room 514-S of the Capitol.

All members were present except: Rep. Gilbert Gregory, excused
Rep. Henry Helgersen, excused

Committee staff present: Alan Conroy, Legislative Research Department
Debra Duncan, Legislative Research Department
Kathy Porter, Legislative Research Department
Laura Howard, Legislative Research Department
Jim Wilson, Revisor of Statutes
Jerry Cole, Committee Secretary
Sharon Schwartz, Administrative Assistant

Conferees appearing before the committee:

Terry Larson, Kansas Alliance for the Mentally Ill
Chip Wheelen, Kansas Psychiatric Society
John Peterson, Glaxo
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Secretary Donna Whiteman, Department of Social and Rehabilitation Services
Steve Whitton, Program Director, Electronic Data Systems
Bob Williams, Kansas Pharmacist's Society
Nancy Echols, Director, Department of Administration, Division of Personnel Services
Roger Brazier, Department of Wildlife & Parks
Secretary Susan Seltsam, Department of Administration
Rick Robards, University of Kansas Medical Center
Superintendent Lonnie McCollum, Kansas Highway Patrol
Brad Avery, Public Employee Service Organization
Kelly Jennings, Kansas Association of Public Employees
Linda McGill, Kansas Troopers' Association

Others attending: See attached list

Chairman Chronister opened the hearing for **SB 786**. Terry Larson, Kansas Alliance for the Mentally Ill, was the first conferee appearing in support of its passage. (See Attachment 1). Chip Wheelen, Kansas Psychiatric Society, also appeared only supporting subsection C of the bill and recommending amendments. (See Attachment 2). John Peterson, Glaxo, appeared next and told the committee passage of the legislation would allow an on-line claims adjudication process and said pharmaceutical companies supported the measures. Harold Riehm, Kansas Association of Osteopathic Medicine, supported the bill offering testimony to that effect. (See Attachment 3). Secretary Donna Whiteman, Department of Social and Rehabilitation Services (SRS), appeared before the committee next in opposition to SB 786. (See Attachment 4 and 4a). Steve Whitton, Electronic Data Systems, also opposed the bill in its current form. (See Attachment 5). Bob Williams, Kansas Pharmacists Society, appeared saying that Kansas pharmacists were for judicious use of prior authorization with regards to dispensing medication. The hearing on the bill was then closed. Chairman Chronister referred the bill to the subcommittee on SRS chaired by Rep. Mead. She instructed the subcommittee to examine the legislation and bring a recommendation back to committee on 03/30/94.

Rep. Heinemann made a motion to place the Omnibus Kansas Public Employee Retirement System bill in a House substitute for SB 453. Rep. Teagarden seconded the motion and it carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S of the Capitol, at 11:00 a.m. on March 29, 1994.

The hearing on **SB 791** was opened. Nancy Echols, Division of Personnel Services, appeared as a proponent of the bill. (See Attachment 6). Testimony from the Kansas Bureau of Investigation was presented to committee members in support of the bill. (See Attachment 7). The hearing on the bill was then closed. Rep. Minor moved to pass and favorably recommend the bill. Rep. Lowther seconded the motion and it carried.

Rep. Teagarden addressed the committee for the hearing on **HB 3083** and asked Jim Wilson, Revisor of Statutes, to explain the bill's provisions to committee members. Wilson did so. Roger Brazier, Department of Wildlife & Parks, testified against the bill. (See Attachment 8). The hearing was closed.

Secretary Susan Seltsam, Department of Administration, was the first conferee to testify in support of **SB 778** for its scheduled hearing. (See Attachment 9). Rick Robards, University of Kansas Medical Center, testified in favor of the bill's passage. (See Attachment 10). Superintendent Lonnie McCollum, Kansas Highway Patrol, gave brief remarks to the committee in support of SB 778. (See Attachment 11). Testimony from the Kansas Bureau of Investigation was handed out to committee members supporting the bill, as well. (See Attachment 12). Brad Avery, Public Employee Service Organization, lead opposing testimony to the bill. (See Attachment 13). Kelly Jennings, Kansas Association of Public Employees, also voiced opposition. (See Attachment 14). Linda McGill, Pete McGill & Associates, presented testimony to the committee for Jeff Collier, Kansas Troopers Association. (See Attachment 15). The hearing on the bill was then closed.

Chairman Chronister requested the subcommittee on **Substitute for SB 531** to report on its recommendations. Jim Wilson, Revisor of Statutes, addressed the committee explaining the subcommittees recommended amendments to the bill. (See Attachment 16). Rep. Pottorff made a motion changing the balloon amendment on page two of the bill from 10 business days to 10 calendar days and adopting remaining amendments. Rep. Bradley seconded her motion and it carried. Rep. Pottorff moved for passage and favorable recommendation of the bill as it was amended. Rep. Teagarden seconded the motion and it was carried by the committee.

Rep. Teagarden told the committee the revisor had drafted amendments to **HB 3083** addressing the concerns of the Department on Wildlife & Parks. Jim Wilson, Revisor of Statutes, said changes could be made in the bill with regards to injuries to persons on private property. He said the department would only be liable for injuries sustained in conjunction with Rails-to-Trails. Rep. Teagarden made a motion to adopt the amendments from the revisor and to pass the bill favorably as amended. Rep. Jennison seconded the motion and it carried.

Chairman Chronister directed the Lowther subcommittee to examine **SB 778** and to bring a recommendation to the committee the following day. In addition, she said the committee would meet tomorrow for a hearing on **SB 736**. She then asked for a motion approving the minutes of March 21, 22, 23, 24 and 25 if there were no recommended additions or corrections. Rep. Teagarden so moved, seconded by Rep. Kline and carried. Chairman Chronister told the committee they would take up **SB 786, 400, 778 and 736** tomorrow.

No further business appearing before the committee, the meeting was adjourned at 1:20 p.m. The next meeting is scheduled for March 30, 1994.

1994 Appropriation Committee Guest List

1	NAME	ORGANIZATION
2	Bud Chazy	Public Employees Service Organization
3	Norm L. Whitman	SRS - Topeka
4	A Snow MD	KAFP
5	Rick Roberts	KU MEDICAL Center
6	Bob Wunsch	to UMC
7	Steve Whittle	EDS
8	LINDA McGill	PETE MCGILL & Assoc.
9	John Petersen	Glenn
10	Emily Learning	EDS
11	Sandra Hazlett	SRS
12	Harold Riehm	KHOM
13	Bud Smoot	BCBS
14	Nancy Eckel	DoA, Inter. Pers. Service
15	Chuck Khosrow	BC/BS of KS
16	Kelly Jennings	KAPE
17	E.E. Vogel	Div of Purchases
18	Jack R Shipman	Div of Purchases
19	Jerry Menneman	Division of Purchases
20	Don Pesmark	Kansas Highway Patrol
21	LARRY A. Fox	" " "
22	Tricia R. Sears	Kansas Auditor Council
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Tue, Mar 29, 1994



KANSAS ALLIANCE FOR THE MENTALLY ILL

112 S.W. 6th • P.O. Box 675
Topeka, Kansas 66601
913-233-0755 • FAX 913-233-4804
Testimony

March 29, 1994

To: House Appropriations Committee

From: Terry Larson, Executive Director, Kansas Alliance for the
Mentally Ill & Chair, Kansas Mental Health Coalition

RE: Senate Bill 786

I come before you representing Kansas AMI & KMHC in strong support of this bill. The electronic pharmacy claims management system makes total sense in assuring Medicaid clients the highest quality management of their drug utilization.

I especially want to express support for Section 1, subsection c, which eliminates prior authorization for Medicaid clients. It is not that prior authorization is necessarily bad if there is a true generic equivalent available. However, the newer anti-depressant medications (e.g. Prozac) have no such equivalents.

When SRS instituted prior authorization for antidepressants last fall, no one from the department asked a consumer for input regarding impact. I have been a consumer of Prozac for four years. From 1982-90 I was a consumer of amitriptyline, a tricyclic. While the latter did much to alleviate my illness, it does not compare to the quality of life I have attained using Prozac. I have a higher level of functioning and am able to earn a higher level of income (and pay more taxes) because I am symptom-free.

For many, the side effects of tricyclics discourage compliance. While amitriptyline may effectively reduce symptoms, the side effects are often very uncomfortable. They include sluggishness, dry mouth, constipation and a ravenous appetite which results in weight gain.

This committee previously recommended eliminating prior authorization for anti-depressants. However, the committee is also recommending that medications for certain other illnesses be subject to it. Included are medications for schizophrenia. Again, all of those quality of life issues relevant to depression such as level of functioning, undesirable side effects and medication non-compliance also pertain to schizophrenia.

For people with severe and persistent mental illnesses, the medication debate can be a life and death issue. We are not talking about aches and pains; we are talking about functioning as close to "normal" as possible in today's society.

Thank you.

Affiliated with the National Alliance for the Mentally Ill

ATTACHMENT 1



Kansas Psychiatric Society

a district branch of the American Psychiatric Association

623 S.W. 10th St. - Topeka, Kansas 66612-1615
(913) 232-5985 or (913) 235-3619

March 29, 1994

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Wichita, KS 67214-3124

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UKMC-Psychiatry
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Lobbyist
623 S.W. 10th St.
Topeka, KS 66612-1615
(913) 235-3619

To: House Appropriations Committee

From: Kansas Psychiatric Society

Subject: Senate Bill 786 as Passed by the Senate

The Kansas Psychiatric Society supports the provisions of subsection (c) of SB786 because of our recent experience with a medication prior approval program adopted by the Department of SRS. We cannot comment on the other provisions of the bill because we are not certain as to the availability of funding to implement subsections (a) and (b). We assume, however, that the bill is intended to apply to the Medical Assistance Program administered by the agency. The Committee may wish to adopt an amendment to clarify that indeed is the purpose of the legislation.

You may be aware that as of October 15, 1993, the Department of Social and Rehabilitation Services will no longer pay for the cost of selective serotonin reuptake inhibitor (SSRI) antidepressants prescribed for a Medical Assistance Program (Medicaid) patient. Exceptions can ostensibly be granted through a prior approval process which requires that the prescribing physician devote additional time to document why the patient cannot tolerate a less expensive tricyclic antidepressant or why the generic drug is contraindicated.

The new SRS policy regarding SSRI antidepressants was discussed extensively at the October 1993 meeting of the Kansas Psychiatric Society. At that time, there was no actual experience with the prior approval requirement, so the KPS attempted to cooperate with the agency by offering a very reasonable compromise. We simply requested that prior approval be automatically granted any time that the physician indicates that the generic tricyclic is contraindicated. Our request was not accommodated by the agency.

ATTACHMENT 2

p.2, House Appropriations Committee
March 29, 1994

In the meantime, we have received phone calls from disconcerted psychiatrists who contend that they have been denied prior approval for prescribed SSRI antidepressants when the medication is clinically indicated. These KPS members indicate that the patient is exposed to potential harm as a result of the SRS denial and, arguably, the physician is exposed to liability in the event of a bad medical outcome. The most feared outcome is successful suicide by overdose of a tricyclic antidepressant.

An article entitled "Practical Psychopharmacotherapy for the Non-Psychiatrist" by Donald B. Milligan, M.D. was published in the September 1993 issue of Kansas Medicine. Dr. Milligan states that, "One disadvantage of the tricyclic antidepressants is that they may cause significant and possibly disabling daytime sedation. Anticholinergic side effects may limit their use, especially in men. The tricyclics may limit the ability to pass urine, blur distance vision, delay gastric emptying, and cause constipation, lethargy, and dry mouth with altered taste and smell. Such side effects may make these drugs unacceptable. In addition, since self-harm or suicide is a significant risk in depression, the lethal effect of these drugs in overdose is a constant concern."

We are extremely cognizant of the pressures imposed on the Department of SRS to contain Medicaid expenditures. A great deal of pressure is applied by the Legislature, particularly when across the board percentage cuts are applied to State General Fund appropriations. When the SRS budget is arbitrarily reduced by several million dollars without any consideration of programmatic impact, the inevitable result consists of desperate attempts by the agency to reduce expenditures in order to demonstrate that the Department is responding to the Legislature's funding decisions. We respectfully submit that quality of care for the patient is thereby jeopardized.

We believe that Medical Assistance Program patients deserve the same quality of medical care that the rest of us do. We support the provisions of subsection (c) of SB786 because we believe that prior approval of SSRI antidepressants has demonstrated that such procedures are not in the best interests of Medicaid patients.

Thank you for considering our concerns about this important matter.

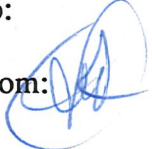
Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

March 29, 1994

To: Chairperson Chronister and Members, House Appropriations Committee

From:  Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine

TESTIMONY IN SUPPORT OF S.B. 786

Thank you for this opportunity to express our support for S.B. 786. In our testimony we address only Section 1 (c).

It is our understanding that this would preclude the use of the electronic pharmacy claims management system provider earlier in the Section, to provide a form of prior authorization, or a process by which a physician wishing to prescribe a specific drug for a Medicaid patient, when such a drug is on a list requiring "prior authorization" or is precluded from being prescribed by a physician.

It is our understanding that this would preclude the use of the electronic pharmacy claims management system provided earlier in Section 1, for those instances of prior authorization that would require that a recipient has utilized or failed with a drug usage or drug therapy prior to allowing that recipient to receive the product or therapy recommended by a physician.

KAOM has long questioned both the limitation prior authorization of certain drug therapies places upon a physician and the effects this has upon using a drug therapy the physician thinks is best suited for a particular patient, as well as the claims of the substantial savings that accrue to such a process.

Attached to this testimony is one case study which describes why physicians are concerned. We offer it not to suggest that such conditions occur with great frequency, but only because it serves to illustrate in specifics what we often testify to in general terms.

I will be pleased to respond to questions you may have.

ATTACHMENT 3

PHILLIPS COUNTY MEDICAL CLINIC

250 W. State 913-5211
Phillipsburg, KS 67661-0547

Mark Barber, D.O.
Daryl Callahan, D.O.
Cameron Knackstedt, D.O.
Joseph Roncskevitz, D.O.
Gene Wyse, D.O.
Genny Robben-Rahjes, ARNP

STOCKTON MEDICAL CLINIC

623 and 913-425-6791
Stockton, KS 67669

Daryl Callahan, D.O.
Richard Perry, D.O.
Genny Robben-Rahjes, ARNP

October 25, 1993

Harold Riehm
Kansas Association of Osteopathic Medicine
1260 S. W. Topeka Boulevard
Topeka, Kansas 66612

RE: MEDICAID PRIOR AUTHORIZATION FOR ANTI-DEPRESSANT MEDICATIONS

Dear Mr. Riehm:

I have recently had a most unusual exchange with Kansas Medicaid Prior Authorization Authorities in Topeka, Kansas via there phone number 1-800-285-4978. I do not clearly understand which legislative authority oversees the Prior Authorization Department of Medicaid, but I trust that you will.

A patient of mine, Q.N. Medicaid Number 001003402271, was admitted to a local nursing home, September 14, 1993 after an acute care of hospital stay. One of his diagnosis was cerebral vascular accident (stroke) and post stroke depression, confusion, and combativeness. An interesting part of his history is that his acute care hospital stay originated due to a side effect of anti-psychotic medication (Mellaril) causing heart block. This medication had been started for his combative behavior, confusion, and clearly he could not tolerate it. Since this patient had this intolerance to this medication, I chose to place him on a newer anti-depressant (Paxil) which has limited side effects when compared to the older anti-depressants.

Apparently, the Prior Authorization authorities would not allow approval of this anti-depressant pursuant to a new anti-depressant regulation. Since they would not pay for it the medicine was not supplied by the pharmacy to the patient and he subsequently began having increased confusion, combativeness, and depression. When he is in this state he is extremely difficult to manage in the nursing home setting and will frequently try to flee the facility.

I was notified by Witmer Rexall Pharmacy (Steve Schick, RPh) that he had tried unsuccessfully to get approval for Paxil for this patient. He had discussed it with the Prior Authorization authority and had informed them of the patient's previous history and side effects to Mellaril. They told him it would not be allowed. However, if I wanted to continue the patient on this medication that I would have to call the Prior Authorization office in Topeka.

On October 19, 1993, 3:20 p.m. I called 1-800-285-4978 and was promptly placed on hold and listened to Topeka radio music for 19 minutes awaiting my call to be taken in turn. I was subsequently cut off and had to re-dial 1-800-285-4978 and was placed on the line for another 10 minutes before my call was received by Jimmie Patty, RN. I discussed the case with her in detail and she informed me that there was no procedure to allow for this patient to be placed on Paxil inspite of his prior history to side effects from other anti-psychotic medication and his clear behavior problems when removed from the drug.

I questioned her at length and in detail as to what procedure could be taken to get this patient placed back on Paxil on an emergency basis, but I was informed that my only recourse was to call Gene Stephens, Director of Pharmacy Prior Authorization (913) 296-3981. I expresed my discontent with the phone delays and the impersonal decision making regarding this patient. Ms. Patty informed me that this was an on-going problem at Prior Authorization and that Mr. Stephens was aware of it and that I should express it to him.

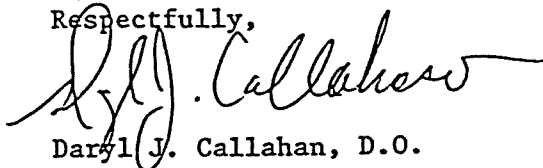
I promptly called Gene Stephens and discussed this case with him. He told me that he thought they had "everything worked out," and he agreed it was unacceptable to have had to hold for 40 minutes before talking with someone from Prior Authorization and that there are emergency procedures available to place patients on anti-depressants. He then told me that he would get back with me. At 5:00 p.m. the same day Mr. Stephens did return my call and relayed to me that mistakes have been made in dealing with this case and the patient would be placed back on Paxil.

Since this whole debacle occured during my busiest part of the day I had to stay at the clinic until nearly 7:00 p.m. to finish seeing patients. If this is the route that we can expect to see on all Medicaid prescriptions, especially medications that have clear advantages (the newer anti-depressants), then prior authorization should directly inform a physician before they remove a patient from a drug. Also, they should have a twenty-hour hotline that will be answered promptly and a staff that is educated on the regulations.

If we practiced medicine like they authorize pharmaceuticals we would have state regulators all over us.

I appreciate your assistance in relaying this to the proper legislative authority so that future regulations will take into account patients needs.

Respectfully,

A handwritten signature in cursive script, appearing to read "Daryl J. Callahan".

Daryl J. Callahan, D.O.

DJC/ag

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary**

**Committee on House Appropriations
Testimony for Senate Bill 786
Establishing The Electronic Pharmacy Claims
Management System
March 29, 1994**

The SRS Mission Statement:

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and orth, and by providing care, safety and support in collaboration with others.

Mr. Chairman, Members of the Committee, thank you for this opportunity to address you on Senate Bill 786. The Department has been working for sometime on establishing an electronic pharmacy claims management system. We plan to implement such a system, including prospective drug utilization review (DUR) on July 1, 1996, when the new fiscal agent Medicaid Management Information System (MMIS) is implemented.

The Kansas Department of Social and Rehabilitation Services (SRS) began the process of developing an electronic claims management system in FY92. SRS surveyed all Medicaid providers to obtain information regarding what electronic equipment was currently being used by providers and to determine what features providers wanted. The survey, analysis and planning process took nearly a year to complete. During this time SRS researched telecommunications issues to determine feasibility, and worked with various provider associations in sharing information, planning and designing this system.

By April 1992, the first system design was written and submitted to HCFA and the Department of Administration, Division of Information Systems and Communications (DISC) for approval. DISC approved the system, however HCFA responded with questions. Over the next several months attempts were made to respond to HCFA's concerns. HCFA indicated they could not recommend approving a project of this type at the cost involved, especially since we will be installing a new fiscal agent MMIS system in 1996. An electronic claims management system would be an "add-on" to the existing aged Kansas MMIS System. Other MMIS systems, like the one we will be acquiring thru the MMIS repurchase process, utilize newer technology, and are more cost effectively adapted to include electronic claims management and prospective DUR.

This entire planning and development process was conducted in good faith because SRS did not want to implement a system that was excessive in cost and did not meet the needs of Medicaid providers. Since SRS is proposing to obtain a new MMIS in 1996, plans to include electronic claims management and prospective DUR are in process. SRS believes providers and the state would be best served (financially and operationally) by waiting until the new MMIS repurchase to add this system.

ATTACHMENT 4

SB 786 is described as an act establishing the electronic claims management system for pharmacy. However, the prime purpose of this bill shows up in Section 1 (c).

For most medical conditions, there is no single best treatment. Certainly, there are effective treatments of widely varying costs which are available for many conditions. If Section 1 (c) becomes law, the major federally sanctioned method of cost containment in the Medicaid pharmacy program will be inactivated by making any type of drug prior authorization impossible to implement.

Elimination of the Drug Prior Authorization Program would increase SRS Medicaid expenditures by approximately \$1 million. Cost avoidance of \$833,753 was identified for five high volume drug groups (Anti-Depressants, Anti-Anxiety agents, Clozaril, Growth Hormones, Anti-Hemophilic products). With nearly 20 different drug groups currently under prior authorization an estimated fiscal impact of \$1 million is conservative.

For the above reasons SRS opposes Senate Bill 786.

Donna L. Whiteman
Secretary

Pharmacy Electronic Claims Management

The 1991 session of the Kansas Legislature appropriated \$100,000 State General Funds (SGF) (\$1 million Total Funds) for design, development and implementation of an Electronic Claims Management System. The purpose of this system is to allow Pharmacy providers to submit, and have adjudicated on-line, the Kansas Medicaid prescription claims. \$241,000 SGF (\$964,000 Total Funds) was also appropriated for the annual on-going operational costs of the system. The appropriation was based on preliminary estimates provided by Electronic Data Systems (EDS) of the costs to build and operate an electronic claims management system.

In late 1991 and the first part of 1992 SRS conducted surveys of pharmacies and other Medicaid providers, and had discussions with some provider associations, to ascertain the claims processing needs and desires of the providers throughout Kansas. As a result the decision was made that EDS would be asked to design and operate the electronic claims management system for pharmacies. We also added to this system the ability for all providers who have the necessary computer equipment, to correspond via electronic mail with EDS. This option is called Provider Plus. EDS then started the design of the system with input from SRS. By the first of April 1992, the first design produced by EDS, in the form of an advanced planning document (APD), was given to the Medical Services Staff. During the ensuing months the APD was reviewed and modified by SRS and EDS personnel and submitted to the Health Care Financing Administration (HCFA) and the Department of Administration, Division of Information Systems and Communication (DISC). DISC approved the APD in December at the estimated design cost of \$2,070,000 plus or minus 15%. HCFA responded with questions concerning specific points in the APD. SRS submitted its answers to HCFA together with a new APD after making some minor revisions in January 1993.

In June, 1993, Vince Cain of HCFA met with SRS and EDS personnel to discuss the APD. Mr. Cain was concerned about the cost of the proposal because other states have instituted pharmacy claims management systems at a much lower price. Through this and other conversations, Mr. Cain suggested that we look at other electronic claims management systems to see if we could transfer one that is already built. EDS looked at a system that is running in New York, decided that it could be used, and rewrote the APD to modify the New York System to meet Kansas needs. A full time Project Manager was also added to the APD. These changes, combined with the facts that 2 years had lapsed since the first APD was written and EDS has more accurate cost estimates resulting from their experiences in other states, resulted in a \$340,000 increase in the design, development and implementation costs. After further consultation Mr. Cain indicated that he could not recommend approving a project of this type at the cost involved, especially since we are installing a new Medicaid Management Information System (MMIS) in July 1996.

In response to the numerous Health Care Reform initiatives being developed and evaluated by EDS's Medicaid, Medicare and commercial insurance customers, EDS recently announced the development of a product that is to be available the second quarter of 1994 which will meet most of the requirements defined in our Pharmacy Claims Management and Provider Plus APD. This Electronic Commerce Management System (ECMS) is an EDS propriety product. The implementation cost

to Kansas would be for a Licensing fee, any customization of the product and to tie it into the MMIS system. Ongoing payments would be on a transaction basis. The transaction costs could be passed on to the provider.

Although this new EDS product is less expensive and could be operational by January 1995, it still is not in the best interest of the state to implement Pharmacy Claims Management so close to MMIS reprocurement. Below is an outline of some issues that were evaluated when we decided not to proceed with implementation of Electronic Claims Management prior to installing a new MMIS system.

Advantages of implementing now and not waiting for MMIS Reprocurement:

- o Fulfills Legislature intent for FY 91 appropriation.
- o Fulfills a commitment made to Pharmacists after OBRA 90 that we would provide them with an electronic claims management system.
- o Provides a platform from which to implement Electronic Prospective DUR, which may reduce the reliance on drug P.A.'s to contain pharmacy costs.
- o Reduces the number of Provider Assistance Unit telephone calls and Voice Response inquiries as providers utilize the electronic mail capabilities, thus freeing up these services for other providers to use.
- o Eases the pharmacist's burden of identifying other insurance prior to billing Medicaid.

Disadvantage of implementing now:

- o With the current plan to have a new MMIS system operational by July 1996, an Electronic Claims Management System would be operational for only 12 to 18 months under the current MMIS contract.
- o The Electronic Claims Management System now being developed by EDS would be a new and untested product. There may be advantages of waiting until the system is tested elsewhere before implementing in Kansas.
- o The new MMIS system design would need to be compatible with the Electronic Claims Management System, in order for the new MMIS system to take full advantage of the system's advancements.
- o Project costs would probably be higher if done independently of MMIS reprocurement.
- o Staff needed for implementation of Electronic Pharmacy Claims Management are the same staff that must dedicate their time to MMIS reprocurement.

Advantages of not implementing now and waiting for MMIS reprocurement:

- o There would be no risk of designing an MMIS system that is incompatible with the Electronic Claims Management system, or the potential electronic prospective Drug Utilization Review system.

- o There would be no risk of spending funds now for a system that could not be fully utilized with a new MMIS.
- o Money appropriated for the system's development and operation may be available to fund other needed projects.
- o Project cost will be less if done as part of MMIS reprocurement.

Disadvantages of not implementing now:

- o Legislative intent for the FY 91 appropriation would not be fulfilled.
- o Commitment to Pharmacists to provide an electronic claims management system would not be fulfilled.
- o There would be no implementation of an integrated statewide Electronic Prospective DUR system until a new MMIS system is installed.
- o There would be no reduction to the number of Provider Assistance Unit and Voice Response telephone calls.
- o Pharmacists will not have data as readily available to cost avoid claims with Third Party Liability (TPL).

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Income Support/Medical Services

M E M O R A N D U M

TO: Donna L. Whiteman

DATE: March 25, 1994

FROM: Robert L. Epps

SUBJECT: Pharmacy Claims Management
and Prospective DUR

In anticipation of the need for HCFA's opinion regarding the Pharmacy Claims Management and Prospective DUR (PCM/DUR) activities occurring in the legislature, the attached letter was sent to Vince Cain in the Regional Office. Vince responded to our questions promptly and his letter is also attached.

In summary HCFA would not approve a sole source contract with a vendor who is not the current fiscal agent and would advise us to not go forward with a PCM/DUR project at this time. HCFA recommends we wait for the MMIS reprourement. Vince also states that the average time for implementation of a PCM/DUR system has been 11 months. He also cautions that implementing PCM/DUR now would likely result in a delay in issuing the MMIS RFP which is scheduled for September 1994.

RLE: SCH:det



JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

March 11, 1994

Mr. Vince Cain, Chief Program Operations
Division of Medicaid
State Operations Branch
Room 227, Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

Dear Vince:

There is much activity in the legislature this year regarding an electronic pharmacy claims management (PCM) system with prospective DUR and the MMIS reprocurement. The House recommended in its Subcommittee report on SRS's appropriation that SRS implement an electronic pharmacy claims management system by October 1, 1994. A bill has been introduced in the Senate which would require implementation in FY95. SRS is opposing both of these measures as we believe that an advantage may be given to the PCM/DUR contractor on MMIS reprocurement and because the cost of PCM/DUR may be greater if not done in conjunction with the MMIS reprocurement. In addition we do not have the staff resources to manage implementation of electronic pharmacy claims management and MMIS reprocurement at the same time. It is our intention to make pharmacy claims management with prospective DUR, a part of the new MMIS system implemented in July 1996.

In order to respond to the legislature proposal sited above it would be helpful to have answers in writing from you to the following questions:

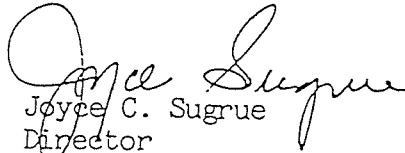
- 1) Would HCFA approve a sole source amendment to the current fiscal agent contract for electronic pharmacy claims management with prospective DUR, if the APD for this project met all requirements for functionality and cost?
- 2) Would HCFA approve implementation of an electronic pharmacy claims management system with a contract other than the fiscal agent, without the state going through the competitive bid process?
- 3) Would HCFA advise the state to move forward now, or wait for implementation of the new MMIS system, to acquire an electronic pharmacy claims management system with prospective DUR? Why? Assume that the cost of the pharmacy system would be around \$350,000 for DDI and \$16,000 monthly for licensing and on-going operation.

Mr. Vince Cain, Chief Program Operations
March 11, 1994
Page Two

- 4) In your experience how long, after state and federal approval of an electronic pharmacy claims management system is received, does it take a state to implement the system utilizing their current fiscal agent? How long if a contractor other than the fiscal agent is used?

We would appreciate receiving response to these questions as soon as possible.
Thank you for your help.

Sincerely,



Joyce C. Sugrue
Director
Division of Medical Services

JCS:dct

cc Sandra Hazlett



DEPARTMENT OF HEALTH & HUMAN SERVICES

a. [Signature]
cc [Signature]
Monte
Health Care Financing
Administration
REGIONAL SUPPORT
SERVICES
MAR 23 1994
RECEIVED

Refer to:
MOB:VC
A 2KS

MAR 22 1994

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64108

Joyce C. Sugrue, Director
Division of Medical Services
Department of Social and
Rehabilitation Services
Docking State Office Building
Topeka, Kansas 66612

Dear Joyce: -

In response to your letter of March 11, 1994, regarding electronic pharmacy claims management systems and automated prospective drug utilization review (EMC/DUR), I have researched information regarding these systems from projects that have been implemented and those currently undergoing development across the nation. It is my intent to provide you with as much information as possible to assist you in responding to the legislative proposals you may have.

I will provide a response to each of the areas presented in your letter in the order listed.

HCFA would approve a sole source amendment to the current fiscal agent contract if the APD and the project meets all the requirements not only of functionality and cost but the requirements of the CFR and SMM for sole source contracting for enhancements to a State's MMIS. I must stress that a project of this type will receive a detailed review, especially in light of the projects for ECM/DUR previously submitted by the State.

After reviewing the current market situation with regard to competitors in the ECM/DUR arena, it is my judgement that HCFA would not approve a contract without going through the competitive bid process. I do not believe that sufficient justification could be provided to support such a procurement.

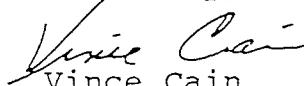
Based on the information I have reviewed from systems in place and in development across the nation, I would advise the State at this late date to include the entire project in the forthcoming MMIS reprourement effort. The average time for project completion has been 11 months and at an

Page 2 - Joyce C. Sugrue

average cost of 751,000 dollars, (I am not able to differentiate between fiscal agent and other contractor projects at this time). To procure an ECM/DUR system at this time would require the State to delay the reprocurement effort to include the requirements for operation of the new ECM/DUR system in the RFP's, etc. I would estimate a delay of 3 to 5 months and an additional cost to the State for the consultant services utilized to develop the RFP. (This project would also require an additional APD for an extension and possible added costs.)

I hope this information will assist you in your decision making process. If you have additional questions, or if you require clarification of any of the above information, please do not hesitate to contact me.

Sincerely,



Vince Cain
Chief, Medicaid Operations Branch
Division of Medicaid

**KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary**

**Senate Ways and Means Committee
Senate Bill 410
Elimination of SRS Drug Prior Authorization Program**

March 25, 1994

- SB 786 is described as an act establishing the electronic claims management system for pharmacy. However, the prime purpose of this bill shows up in Section 1 (c). If this section were to become law by amending it into Senate Bill 410 it would make any type of drug prior authorization, drug formulary (as allowed under federal statutes,) impossible to implement.
- For most medical conditions, there is no single best treatment. Certainly, there are effective treatments of widely varying costs which are available for many conditions. If section 1 (c) becomes law, the major federally sanctioned method of cost containment in the Medicaid pharmacy program will be inactivated.

Ibuprofen, and related drugs are all effective anti-inflammatory drugs, used for arthritis and controlling mild to moderate pain. A days dosage of ibuprofen will have a federal upper limit (FUL) reimbursement level of about \$0.20. For fenoprofen, the FUL would be nearer \$1.00. Naproxen in the same chemical class will cost at least double this amount. Diclofenac in still another chemical class will cost \$1.50 to \$2.00 a day.

Antihistamines are another class with widely varying costs, but which can frequently be interchanged by the prescriber. Hismanal and Seldane have daily costs of between \$1.50 and 2.00, whereas several other antihistamines can cost less than \$0.10 a day.

The purpose of these examples is to demonstrate that section 1 (c) of SB 786 would preempt the states federally allowed prerogatives in reducing the cost of the Medicaid pharmacy program, where this can be done without reducing the quality of care.

- Elimination of the Drug Prior Authorization Program would increase SRS Medicaid expenditures by approximately \$1 million. Cost avoidance of \$833,753 was identified for five high volume drug groups (Anti-Depressants, Anti-Anxiety agents, Clozaril, Growth Hormones, Anti-Hemophilic products). With nearly 20 different drug groups currently under prior authorization an estimated fiscal impact of \$1 million is conservative.

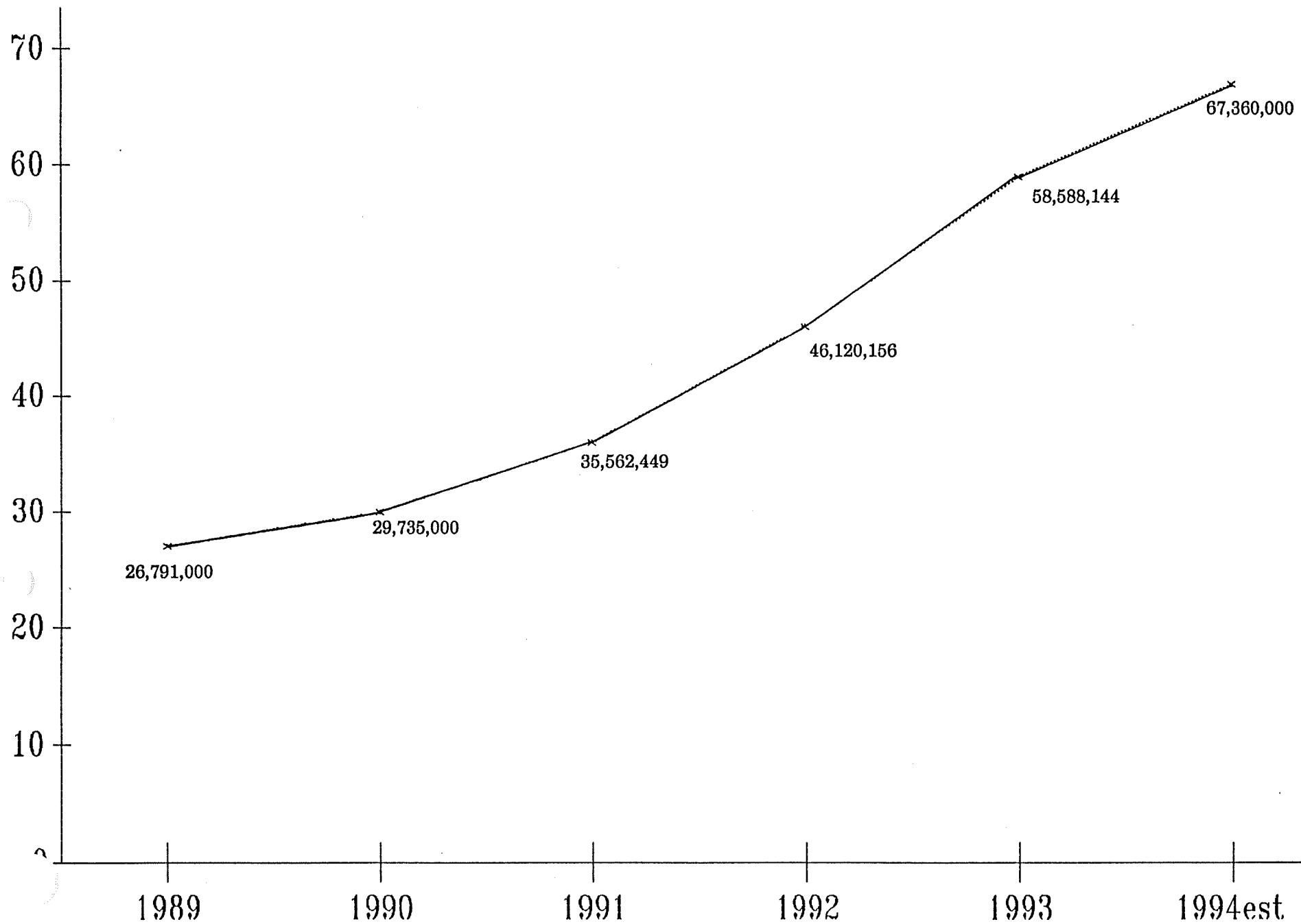
POTENTIAL ANNUAL FISCAL IMPACT OF REMOVING CERTAIN DRUGS FROM PRIOR AUTHORIZATION

	Estimated Annual Cost of Drug with PA	Estimated Annual Cost of Drug without PA	Increased Medicaid Drug Costs
Anitdepressants	2,550,000	3,000,000	450,000
Antianxiety agents (Xanax, Tranxene, Valrelease)	425,000	500,000	75,000
Clozaril	770,000	905,882	135,882
Human growth hormone	279,600	328,941	49,341
Antihemophilic products	700,000	823,529	123,529
	\$4,724,600	\$5,558,353	\$833,753

Note: Use of certain low volume products which are on PA but are not on this list would rise rapidly once removed from PA. Persantine, currently authorized for use after cardiac surgery, could be used inappropriately for angina. Lactulose, which we currently approve for treatment of liver or kidney disease, could be used as a laxative, because it removes nitrogenous wastes from the body. Use of decubitus products for bedsores could increase when in fact appropriate nursing care is the preferred treatment.

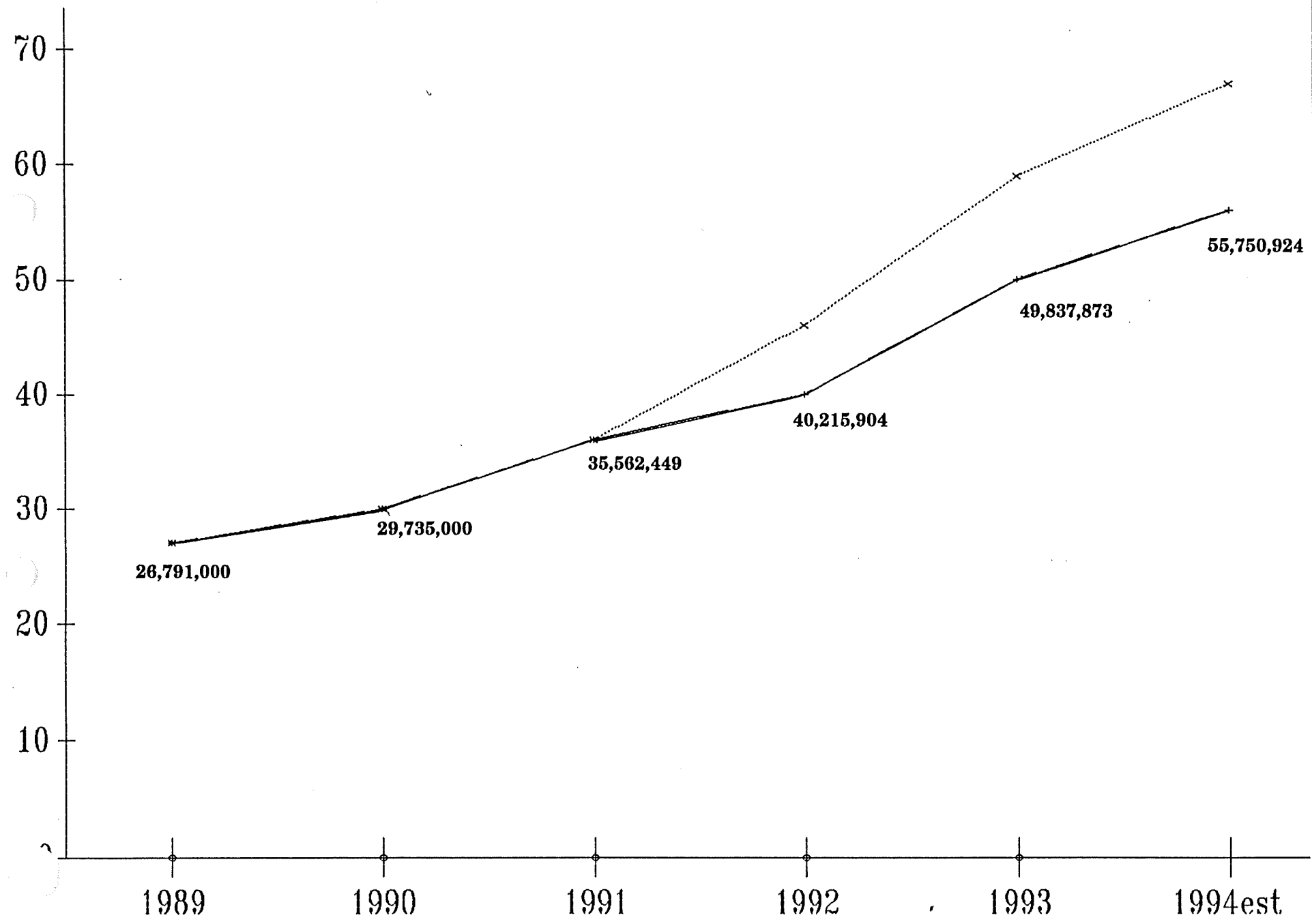
C:\BDGT9495\DRUG_PA.WK3 3/25/94

Pharmacy Expenditures



<u>FY</u>	<u>Expenditures</u>	<u>Rebates</u>	<u>Net Expenditures</u>
89	26,791,000	-0-	26,791,000
90	29,735,000	-0-	29,735,000
91	35,562,449	-0-	35,562,449
92	46,120,156	5,904,252	40,215,904
93	58,588,144	8,750,271	49,837,873
94 est	67,360,000	11,609,076	55,750,924
95 GBR	74,877,874		

Net Pharmacy Expenditures -- after rebate





Testimony

Senate Bill 786

Presented To The

House Appropriations Committee

Madam Chairman and Members of the Appropriations Committee my name is Steve Whitton and I am with Electronic Data Systems (EDS). EDS is under contract with the Department of Social and Rehabilitation Services (SRS) to administer the state Medicaid program. We have served the state in this capacity for the past 15 years. My current position is Program Director, responsible for this contract and other EDS state and local government business in Kansas. Throughout the country, we administer Medicaid programs in 18 other states. EDS is the largest supplier of information technology and health care administration services in both the public and private sectors of the US.

My comments before you today pertain to the provisions of SB 786. As the largest supplier of claims processing systems and administrative services to state Medicaid programs, EDS is uniquely qualified to provide pharmacy claims management systems and prospective Drug Utilization Review (DUR) for Kansas. In fact, we currently administer or are in the process of installing pharmacy claims management systems in 9 different states. The requirements of SB 786, however, mandate a change in pharmacy claims processing at a time, and with an approach, that is not in the best interests of Kansas. The following points support our position on the bill:

- SRS plans to include requirements for pharmacy claims management and prospective DUR along with a new Medicaid Management Information System (MMIS) in the fiscal agent RFP scheduled for release in September, 1994. A separate procurement for these services would duplicate the administrative costs involved in publishing the RFP, reviewing and awarding any contracts resulting from the bill.
- SB 786 would result in two contracts, with potentially two separate vendors, performing basically the same service - Medicaid claims processing. Fragmentation of these services will result in additional administrative costs to the State for extra contract monitoring and oversight staff.
- Due to the data reporting requirements, change management and control issues, and fiscal advantages, the State of Kansas would be better served by having one vendor responsible for the fiscal agent/claims processing responsibilities of the Medicaid program.

The last element of the bill prohibits SRS from utilizing prior authorizations as a means to assist with cost control of the Medicaid program. For the following reasons, we support SRS in their opposition to the bill:

4123 Gage Center Drive
Topeka, Kansas 66604
(913) 273-5704

ATTACHMENT 5

- Today the Medicaid program covers some very expensive drugs that are not always the most appropriate initial course of treatment. Other, less expensive drugs are often therapeutically successful at less cost to the patient and the program. If the less expensive drugs are not effective, other drugs should then be prescribed. Without a prior authorization program, the State's ability to control drug costs is reduced.
- The State could be forced back into a restricted formulary if drug costs are not reduced or controlled. A restricted formulary would create further barriers to access of needed services by our Medicaid recipients and may impact related medical and inpatient expenditures.

For these reasons, our experience strongly suggest that SB 786, in its current form, is not in the best interests of the State of Kansas. Thank you for your time. I will be happy to stand for questions. If you need additional information, please feel free to contact me at 273-5707 or Linda McGill of Pete McGill and Associates Inc. at 233-4512.

**Testimony To The
HOUSE APPROPRIATIONS COMMITTEE**

**By
Nancy M. Echols
Division of Personnel Services
Department of Administration**

**Tuesday, March 29, 1994
RE: Senate Bill 791**

Ms. Chairperson, members of the committee, I appreciate the opportunity to appear before you in support of Senate Bill 791.

Senate Bill 791 changes the "Rule of Five" applicant selection criteria. Currently, the Director of Personnel Services certifies from a list of eligible persons the top five names on the list and all eligible persons who have a score equal to that of the fifth eligible person. The legislation would allow the Director to certify from the list of eligible persons the names of all eligible persons who hold the top five scores on the list. This list could include more names than the top five name list if several people received the same score.

The bill also gives the Secretary of Administration the discretion to establish alternative procedures for the certification of names from an eligible list if it provides more qualified candidates.

The Legislative Post Audit Division conducted a K-Goal Audit of the Division of Personnel Services which was presented to the Legislature January 1994. The proposed changes reflect recommendations from the Post Audit report and represents interim improvements to the certification process pending further study. Flexibility would make it simpler to accommodate additional improvements.

Existing language limiting the number of persons certified from a list to the top five names can be restrictive. When agencies have particular needs for a certain position, it can be difficult selecting a person who meets the special criteria when the list is limited to five names. For example, a specific position within a class of positions may benefit from a person who has exceptional writing skills, while another position in that same class of positions may benefit from someone who has exceptional analytical skills.

Finding a person that meets special needs is difficult because when scores on eligible lists are the same or very close, differences between applicants are almost imperceptible. If the certified list is expanded to include more names, agencies have a larger pool of applicants to consider for a vacancy. As an example of how the list would change for an Office Assistant II in Shawnee County, an agency would get 9 names instead of 5 names when using the top five scores instead of the top five names.

ATTACHMENT 6

While this may result in additional administrative costs due to the increased number of applicants to consider, it would enable agencies to filter out applicants who do not meet the special needs for a particular position. It could also make it easier for agencies to meet affirmative action goals.

The benefit to applicants is that they may be placed on more certified lists which gives them a greater opportunity to be hired.

The Department of Administration would appreciate your support for passage of this bill. I would be happy to answer any questions you may have.



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

March 28, 1994

Rochelle Chronister, Chairperson
House Appropriations Committee
State Capitol Building, Rm. 514-S
Topeka, Kansas 66612

Dear Representative Chronister and Committee Members:

The KBI would like the Committee to consider the following information concerning **Senate Bill 791**. The KBI strongly supports this change and believes that it would help agencies select the type of employees which will be a benefit to state service. We also believe this could help agencies achieve a culturally diverse workforce, by broadening the pool of applicants thus potentially allowing agencies to hire additional qualified minorities.

For example, the KBI used a certified roster to hire four Special Agent II employees in 1993. Pursuant to KAR 1-6-21 (b)(1)(A), for four vacancies, the KBI could hire from the top eight applicants who expressed an interest in the position. This enabled the KBI to consider only eight applicants for the four vacancies. However, if the KBI could have considered from the top five scores as specified in SB 791, we would have been able to consider ten applicants due to several tied scores.

In another example, the KBI used a certified roster to hire two Special Agent I employees in 1993. Pursuant to KAR 1-6-21 (b)(1)(A), for three vacancies, the KBI could hire from the top seven applicants who expressed an interest in the position. This enabled the KBI to consider only eight applicants for the three vacancies, since the last two names on the list had tie scores. However, if the KBI could have considered from the top five scores as specified in SB 791, we would have been able to consider eleven applicants. Admittedly, these are not major increases, nevertheless, broadening the applicant pool allows the potential for more females and minorities to be considered as well as giving the agency a few more applicants from which to choose quality employees.

The need for change was strongly indicated by the KBI as well as personnel officers in many agencies in an audit conducted by Legislative Post Audit. The KBI supports this bill and believes it would be a positive step for the Kansas Civil Service and state agencies, in allowing Agencies to find the best employees to service the public.

If you have questions concerning this or other matters, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Davenport".

Robert B. Davenport
Director

RBD/CAB

cc: Nancy Echols, Director, Division of Personnel Services

ATTACHMENT 7

STATE OF KANSAS



Joan Finney
Governor

DEPARTMENT OF WILDLIFE & PARKS

Theodore D. Ensley
Secretary

OFFICE OF THE SECRETARY

900 SW Jackson St., Suite 502 / Topeka, Kansas 66612 - 1233
(913) 296-2281 / FAX (913) 296-6953

H.B. 3083

Testimony Presented To: House Appropriations Committee
Provided by: Kansas Department of Wildlife and Parks
March 29, 1994

New Section 1 of HB 3083 provides that subject to provisions of the Kansas tort claims act (KTCA) KDWP shall be liable for injuries to individuals, which injuries occur on private property adjacent to the Ottawa-to-Iola Prairie Spirit Rail Trail.

Section 2 of HB 3083 amends K.S.A. 1993 Supp. 75-6104(o) of the KTCA to provide that any claim for injuries resulting from use of the Ottawa-to-Iola Trail, or for injuries occurring on private property adjacent to the trail, KDWP or any employees of KDWP will be immune from liability unless such injury results from gross and wanton negligence proximately causing such injury.

Whereas the statutory duty which would be owed by KDWP to a person injured on private property adjacent to the trail would appear to be the same as that owed to a trespasser (see, Frazee v. St. Louis - San Francisco Rly. Co., 219 Kan. 661, 666-67 (1976) ("only duty owed to ... a trespasser, was the negative duty to refrain from willfully, wantonly or recklessly injuring him")), or a licensee (see, Lemon v. Busey, 204 Kan. 119, 122 (1969)), the fact of the matter remains that HB 3083, if it becomes law, will create a cause of action against KDWP where one did not exist before.

ATTACHMENT 8

Concerns Regarding H.B. 3083

1. HB 3083 does not limit claims only to trail users who stray onto adjacent farm land, but creates a cause of action against KDWP for any injury to any person occurring on any private property adjacent to the trail. For example, an adjoining landowner's guest could be injured while on the landowner's property, regardless of whether the guest had ever visited the trail; under § 1 of HB 3083, subject to the KTCA, KDWP "shall be liable." Liability might also apply to a person injured while shopping at an adjoining business in Garnett which actually caters to trail users.

2. HB 3083 represents bad precedent: The same extension of liability may be sought for future projects for road or park development.

3. HB 3083 will extend liability to KDWP for injuries occurring on private property, the condition over which KDWP has no control, and of which KDWP will likely have no knowledge.

Finally, HB 3083 does not relieve adjoining landowners of potential liability to trail users who may come upon their property; it merely seeks to extend liability to KDWP.

Testimony To The
HOUSE APPROPRIATIONS COMMITTEE

By
Susan M Seltsam, Secretary
Department of Administration

March 29, 1994
Re: SB 778

Mr. Chairperson, members of the committee, thank you for the opportunity to appear before you today in support of Senate Bill 778. The proposed legislation requires that the state only consider hours actually worked in determining if the employee receives overtime. This would result in a reduction of the state's overtime liability by eliminating a provision in our pay practices that is not required by federal law.

The federal Fair Labor Standards Act (FLSA) requires that non-exempt employees be compensated at an overtime rate of one and one half times their regular rate of pay for any hours worked in excess of 40 hours in a workweek. Currently, the state calculates overtime based on all hours in-pay-status, not just the hours worked. Time an employee spends taking compensatory time or annual, sick or any other paid leave, is considered as in-pay-status and is currently counted in determining overtime due and the amount due.

According to a 1993 survey of overtime practices, Kansas is the only state of the eight surrounding states that includes all hours in-pay-status when determining whether overtime is due and the amount due to an employee. The Department of Labor's strict interpretation of FLSA exemptions from overtime eligibility has made many positions within government overtime eligible, including many high paying professional positions. In fact, nearly 90% of all state positions in Kansas have been determined to be eligible for overtime compensation.

Using data for CY 1993 for classified executive branch employees excluding Regents, the Division of Personnel Services estimated that the effect of the proposed legislation could be to reduce the state's overtime costs by approximately \$2.9 million a year. KU Medical Center who also supports the bill, felt it would provide for substantial cost savings for their agency as well.

When the issue of in-pay-status and overtime was among the recommendations put forth by Legislative Post Audit in a K-GOAL audit of the Department of Administration, I was concerned that this policy change would have an inordinate effect on lower paid state employees. However, when only employees who earn less than

the median salary of all classified employees (\$22,212 per year) are analyzed, we found that only about 24% of the dollars spent for overtime are being paid to these employees and that less than 35% of the total overtime dollars attributable to the in-pay-status policy are benefiting the lower paid workforce.

It is my belief that the policy of calculating overtime based on hours an employee spends in-pay status is inconsistent with the philosophy of overtime compensation. Employees who work more than the maximum number of hours set for their work period should be compensated accordingly. However, overtime should not apply to an employee who works less than the maximum number of hours set for their work period.

Senate Bill 778 will save the state valuable resources, it will not have a significant impact on the majority of state employees, and it will serve to clarify the state's overtime philosophy. I encourage your favorable consideration of this bill.

TESTIMONY OF
RICK ROBARDS - DIRECTOR OF HUMAN RESOURCES
UNIVERSITY OF KANSAS MEDICAL CENTER
BEFORE THE
HOUSE APPROPRIATIONS COMMITTEE
CONCERNING SENATE BILL NO. 778
MARCH 29, 1994

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE, MY NAME IS RICK ROBARDS, AND I AM THE DIRECTOR OF HUMAN RESOURCES AT THE UNIVERSITY OF KANSAS MEDICAL CENTER, IN KANSAS CITY. I WANT TO THANK YOU FOR THE OPPORTUNITY OF PROVIDING OUR AGENCY'S PERSPECTIVE REGARDING THE IMPACT OF SENATE BILL NO. 778.

THE FAIR LABOR STANDARDS ACT (FLSA), IS FEDERAL LEGISLATION GOVERNING MINIMUM WAGE, OVERTIME PAY, CHILD LABOR AND EQUAL PAY. THE (FLSA) REQUIRES EMPLOYERS TO COMPENSATE "NON-EXEMPT" EMPLOYEES FOR "OVERTIME" ON THE BASIS OF ALL HOURS ACTUALLY WORKED IN EXCESS OF 40 IN EACH APPLICABLE WORK WEEK. JUST AS BONA FIDE MEAL PERIODS ARE NOT CONSIDERED WORKTIME AND NEED NOT BE COMPENSATED, THE (FLSA) DOES NOT REQUIRE AN EMPLOYER TO COMPENSATE EMPLOYEES FOR OTHER "PAID TIME" NOT ACTUALLY WORKED.

THE STATE OF KANSAS HOWEVER, CURRENTLY EMPLOYS A MORE GENEROUS STANDARD WITH RESPECT TO HOURS INCLUDED IN DETERMINING "OVERTIME". THE STATE COMPENSATES "NON -EXEMPT" EMPLOYEES FOR OVERTIME BASED UPON ALL HOURS "IN PAY STATUS". THE KANSAS METHOD DIFFERS FROM THAT REQUIRED BY FEDERAL LAW IN THAT THE STATE PERMITS EMPLOYEES' PAID VACATION, HOLIDAY, JURY DUTY, SICK LEAVE, AND OTHER TYPES OF PAID TIME TO BE INCLUDED WHEN DETERMINING WHETHER OR NOT OVERTIME COMPENSATION IS REQUIRED.

ACTUAL OVERTIME IN FY93 AT THE UNIVERSITY OF KANSAS MEDICAL CENTER, WAS \$1.4 MILLION IN PAY PERIODS WHEN OTHER TYPES OF PAID LEAVE WERE ALSO USED. A MAJORITY OF THE OVERTIME WORKED OCCURRED IN THE ACUTE CARE HOSPITAL, AND WAS DUE TO FLUCTUATING PATIENT CENSUS, BECAUSE OF OUR 24-HOUR/365 DAY OPERATION, AND PURSUANT TO THE NEED TO FILL STAFF SLOTS RESULTING FROM ABSENTEEISM AND VACANT POSITIONS. ALTHOUGH WE HAVE NOT BEEN ABLE TO PRECISELY DETERMINE THE FISCAL IMPACT, WE ESTIMATE THAT BY ADOPTING THE METHOD PROPOSED IN SENATE BILL NO. 778, WHICH IS CONSISTENT WITH FEDERAL LAW, THE MEDICAL CENTER WOULD EXPERIENCE SUBSTANTIAL SAVINGS.

IN A MANAGED CARE ENVIRONMENT, HOSPITALS MUST PRICE THEIR SERVICES COMPETITIVELY. IN ORDER TO BE SUCCESSFUL AND INCREASE THEIR PATIENT BASE, HOSPITALS MUST CONSTANTLY SEEK TO CONTAIN COSTS AND AVOID UNNECESSARY EXPENSES. A RECENT SURVEY OF HOSPITALS IN THE TOPEKA, WICHITA, AND KANSAS CITY AREAS REVEALS THAT NEARLY ALL OTHER HEALTH CARE INSTITUTIONS IN KANSAS AND KANSAS CITY, MISSOURI ARE CALCULATING OVERTIME ON THE BASIS OF HOURS WORKED RATHER THAN HOURS PAID. SALARIES AND BENEFITS REPRESENT ALMOST 2/3 OF THE MEDICAL CENTER'S OPERATING BUDGET, AND OVERTIME EXPENSES REPRESENT ADDITIONAL OVERHEAD. WE BELIEVE THAT THE CHANGES PROPOSED BY SENATE BILL NO. 778 WOULD REMOVE AN OBSTACLE WHICH HINDERS THE UNIVERSITY OF KANSAS MEDICAL CENTER'S ABILITY TO SUCCESSFULLY COMPETE IN A DYNAMIC AND CHALLENGING MARKETPLACE.

WE WELCOME THE PASSAGE OF SENATE BILL NO. 778 AND ANY OTHER LEGISLATION WHICH WILL SUPPORT THE AGENCY'S COMPETITIVE POSTURE AND FURTHER ENHANCE THE MEDICAL CENTER'S POSITION AS ONE OF THE LEADING HEALTH CARE INSTITUTIONS IN THE MIDWEST. THANK YOU FOR YOUR PATIENT ATTENTION AND INTEREST. I WILL BE PLEASED TO STAND FOR ANY QUESTIONS YOU MAY HAVE.

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Joan Finney
Governor



Col. Lonnie R. McCollum
Superintendent

March 15, 1994

Representative Chronister
Statehouse, Room 514 S
Topeka, KS 66612

Representative Chronister:

SB 778, as passed by the Senate, would have a fiscal impact on the Kansas Highway Patrol budget. In FY 1993, employees of the Patrol worked an estimated 11,657 hours of overtime. The agency paid \$312,528 (including \$223,048 from the State General Fund) for these hours. Had the Patrol calculated FY 1993 overtime based on the provisions of SB 778, an estimated 5,164 hours of overtime would have been incurred, with the remaining 6,493 hours being compensated at the straight-time rate. Not paying the overtime premium for 6,493 hours would have saved the agency an estimated \$58,026 (including \$41,413 from the State General Fund) in FY 1993.

For FY 1994 to date, 13,525 hours of overtime have been incurred and the Patrol has paid an estimated \$352,213 (including \$315,599 from the State General Fund) in overtime payments. Under the provisions of SB 778, the Patrol would have incurred only 6,156 hours of overtime, with the other 7,369 hours being compensated at straight-time. The overtime premium for these 7,369 hours totals an estimated \$63,967 (including \$57,317 from the State General Fund).

I believe that the method of calculating overtime in SB 778 is equitable and, quite simply, makes good "business sense." From a fiscal standpoint, the bill would result in significant, recurring State General Fund savings in the budget of the Kansas Highway Patrol. For these reasons, I strongly support the passage of SB 778.

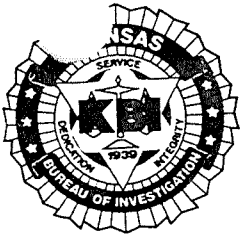
Sincerely,

A handwritten signature in dark ink, appearing to read "Lonnie R. McCollum", is written over a horizontal line.

Lonnie R. McCollum,
SUPERINTENDENT, Kansas Highway Patrol

122 SW SEVENTH STREET
TOPEKA, KANSAS 66603-3847
(913) 296-6800 FAX (913) 296-5956

ATTACHMENT 11



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

March 28, 1994

Rochelle Chronister, Chairperson
House Appropriations Committee
State Capitol Building, Rm. 514-S
Topeka, Kansas 66612

RE: SB 778

Dear Representative Chronister and Committee Members:

The KBI would like the Committee to consider the following information concerning Senate Bill 778. The KBI is faced with a different situation than most agencies because overtime is not figured on work weeks but work periods of 28 days. Also, because of the nature of law enforcement work, overtime cannot be easily controlled and can accumulate rapidly.

Pursuant to KAR 1-5-24 (f)(2)(B), KBI Special Agents can accumulate a maximum accrual of 240 hours of overtime. Our history has shown many Agents accruing 240 or more hours of compensatory time. While accrued hours above 240 are paid off in dollars, the rest is either used as days off for FLSA compensatory time, a tremendous time liability for the KBI, or paid by the KBI when an Agent leaves employment, a tremendous financial liability for the KBI.

Agency policy is to try to keep the accumulated hours at or below a balance of 50 hours, to allow for overtime accumulation when necessary, yet hopefully remain below the 240 hours requiring cash compensation. This means that Agents frequently are required to take compensatory time off, which limits their availability for investigations. Even with these restrictions, KBI agents eligible for overtime (73 of the total 84 agents) have an accrued balance of 3722 hours, approximately the equivalent of one and one half agents for a year.

The average Agent's availability for investigatory work is further lessened since he/she has over the maximum accrual for annual leave. Because Agents take so much compensatory time off, they do not use annual leave like many other state employees. Once each Agent is over the maximum accrual he/she must use the average 144 hours of leave earned annually or lose the benefit. For those 73 Agents, this equates to over 7000 hours used per year or lost, which approximately equates to another three Agents for a year. Thus, the KBI loses close to the equivalent of five Agents from an already backlogged workforce through the use of FLSA compensatory time off and the use of earned leave which can not be accrued and would be lost if not taken.

ATTACHMENT 12

This situation is created, in part, by the State's practice of paying overtime on all hours in pay status (hours worked as well as hours paid by annual leave, sick leave, holiday leave, FLSA compensatory leave, Jury duty leave, etc.), rather than only on hours worked as stipulated in the Fair Labor Standards Act. While overtime would still be accrued by KBI Special Agents under SB 778, it would not accrue as rapidly as under the present system.

To explain how the **current practice** impacts the KBI, suppose a Special Agent is off work for three weeks, using 120 hours of previously accrued FLSA compensatory time. However, in the fourth week of the 28 day work period, a major homicide occurs and the Agent works 60 hours in the week, thus completing his/her 28 day work period. In this situation, the agent is in pay status 180 hours, (120 hours of FLSA compensatory time and 60 hours of work). Although the Agent only worked 60 hours in four weeks, he/she accumulated nine hours of overtime (hours in pay status over 171 in 28 days). This nine hours must be compensated for at the time and one half rate, earning the Agent 13.5 hours of overtime although he/she only worked 60 hours in 28 days.

To differentiate, **under the method provided by SB 778**, which allows overtime to be earned only on hours worked, this hypothetical agent would not receive any overtime. The Agent would receive a full paycheck because using FLSA compensatory time is paid leave. Nonetheless, since the Agent only worked 60 hours in 28 days, the Agent would not be eligible for overtime compensation. If this proposed legislation passes, overtime compensation would require working over 171 hours in 28 days.

Anything that can be done to help this situation, enabling the KBI to provide more service to the citizens of Kansas while maintaining compliance with federal law, would be a positive step. Therefore, the KBI supports Senate Bill 778.

If you have questions concerning this or other matters, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Davenport", with a stylized flourish at the end.

Robert B. Davenport
Director

RBD/CAB

cc: Nancy Echols, Director, Division of Personnel Services

*TESTIMONY OF
BRAD E. AVERY
PUBLIC EMPLOYEES SERVICE ORGANIZATION
ON SB 778*

SB 778 is flawed in several respects and should not be passed from this committee. Its faults are as follows:

1) It attempts to amend a regulation, specifically K.A.R. 1-5-24(e), which states that for purposes of accrual of overtime hours, "all time in pay status shall be submitted as time worked." "In pay status" is defined by K.A.R. 1-5-5(c) as "time worked, and time off work but for which the employee is compensated because of a holiday, because of the use of any kind of leave with pay, or because of use of compensatory time credits."

The Kansas Supreme Court has held that the Legislature violates the separation of powers doctrine when it attempts to amend regulations.

2) The Department of Administration has full authority to amend its own regulations. One can only speculate as to why it has chosen to

(2)

ask the Legislature to make the amendments, but I would guess that the Department wishes to avoid the obligation to meet and confer with various represented bargaining units throughout the state. Before D.O.A. can make an unilateral change in conditions of employment, it is required to consult with the organizations which are recognized as representing a particular bargaining unit.

The exception is if the changes are induced by statute. If this is the case, it would set a bad precedent for the Legislature to assist the Department in avoiding this obligation.

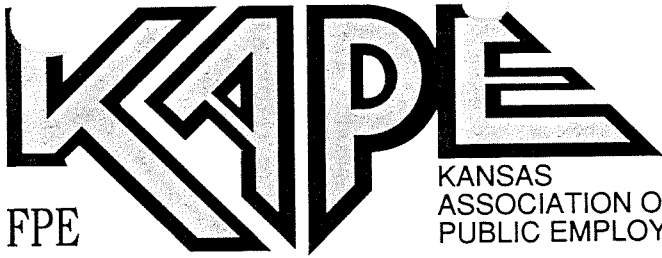
3) It would deprive state employees of a substantial benefit without justification. The suggestion for changing the overtime regulation came from a Legislative Post Audit Study of the Department of Administration's personnel regulations. This particular recommendation was made without the benefit of any input from state employees or the organizations that represent them.

While it is true that the state currently provides a more liberal overtime policy than is required by the FLSA in measuring time worked, this policy is one of long duration and the benefits derived from its elimination should be measured against the deterioration in morale.

(3)

The savings resulting from the change has been overstated. According to the Post Audit Study, the actual amount is more likely to be \$.5 million in general fund revenues and not the \$1.4 million alleged by the fiscal note.

Because of the tremendous uncertainties regarding both the legalities of this bill and the benefits that will result, PESO would urge this committee to defeat SB 778.



KANSAS
ASSOCIATION OF
PUBLIC EMPLOYEES

1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

Testimony of Kelly Jennings
Field Representative
The Kansas Association of Public Employees
In Opposition to Senate Bill 778

Members of the committee, good morning. I appreciate the opportunity to appear before you today on behalf of KAPE to speak in opposition to Senate Bill 778.

While KAPE has several reasons for being opposed to this bill, perhaps the best place to begin is with an example of how this bill would impact state employees. Under current Department of Administration regulations and the Federal Fair Labor Standards Act, the state can require employees to work any number of hours in any given work day without incurring any liability for the payment of overtime. The state need only make sure that the employee does not work in excess of 40 hours in the established work week. For example, the standard 8 hour employee could be required to stay home Monday and Tuesday, and then be required to work 14 hours Wednesday, 12 hours Thursday, and 14 hours Friday without having earned one penny in overtime pay. As stated earlier, that situation can happen currently and Senate Bill 778, whether passed or not will have no impact on that situation. This bill if passed, however, will have an even greater negative impact on state employees.



Assume in my earlier example that the employee was on vacation or sick leave on Monday and Tuesday, and when they returned were required to work 14 hours on Wednesday, 12 hours on Thursday, and 14 hours on Friday. Again in this example, and despite the fact that the employee has 56 hours of accountable time on the books for the week, they would again not be entitled to one penny of overtime pay under this bill.

To date, KAPE has not taken issue with agency administrators over their need to periodically adjust the work day to respond to special circumstances. A portion of this posture is directly attributable to the state's liberal application of the Fair Labor Standards Act as contained in the current regulations which this bill would effectively abolish. Certain of our members believe that our past cooperative efforts on this issue may now be paying negative dividends.

In addition, there are other concerns which KAPE has over this bill. As the certified employee bargaining representative of approximately 15,000 state employees, KAPE is concerned about the impact of this bill on the employment contracts currently in effect between KAPE and the state of Kansas regarding those employees. To the extent that those contracts adopt by reference the provisions of the current regulations, it appears that the bill, at lines 22, 23, and 24, would serve to set aside those negotiated agreements. KAPE would view this as a circumvention of the rights it acquired under the provisions of the Kansas Public Employer Employee

Relations Act. (K.S.A. 75-4321 et seq.)

Finally, KAPE is of the belief that the Fair Labor Standards Act requires all employers under its jurisdiction to pay for overtime worked in the form of real dollars rather than by compensatory time except under limited circumstances. Those circumstances require the existence of a pre-employment agreement between the employer and the employee wherein the employee is made aware that the employer has a policy of paying for overtime through the use of compensatory time rather than by financial compensation. That requirement is then tempered by language acknowledging the fact that employees may be represented by a labor organization, and if so represented, the only acceptable agreement is one entered into between the employer and the employee representative.

To my knowledge, no such agreement is currently in existence, and with passage of Senate Bill 778, it would become very difficult for our membership to approve of such an agreement. The result being that in accordance with the rights granted to them under the FLSA they could demand cash payment rather than compensatory time payment for any overtime required of them. Violations of those rights have been, and would continue to be, the subject of costly law suits which threaten the financial stability of the state. Very obviously, such a condition would constrict administrators in their assignment of overtime duties, and further strain on the state's financial picture serves no one's interests. If the employees chose to exercise that right there would be very little that KAPE or the legislature could do to remedy those mutually

undesirable ends.

It appears to KAPE that the best solution to this problem would include; (1) the retention of the current regulations governing the payment of overtime compensation, (2) application of the regulations in a manner which does not violate the Federal Fair Labor Standards Act and, (3) the improvement of the relationship between the state and the employee's elected union representation. KAPE, as the largest such union, recognizes the need to work cooperatively with state administration to remedy these problems in an atmosphere of mutual respect. While bilateral problem solving, quality circles, win-win bargaining, and shared governance are becoming the norm internationally, they are virtually non-existent in Kansas state employment. If we are not included in the fashioning of solutions, we are placed in the posture of reacting to unilateral decisions negatively when those decisions negatively affect our members.

KAPE desires not to be an adversary, but a partner with the state in the resolution of the complex problems facing state government and its employees. Passage of Senate Bill 778 would be a destructive step backward in the development of such a relationship.

I appreciate the opportunity to share these concerns with the committee and I would be happy to attempt to answer any questions you may have.

KANSAS STATE TROOPERS ASSOCIATION

TESTIMONY

SENATE BILL 778

PRESENTED TO THE

HOUSE APPROPRIATIONS COMMITTEE

MARCH 29, 1994

Good afternoon. I am Jeff Collier, President of the Kansas State Troopers Association. I am here today to oppose Senate Bill 778 on behalf of Kansas State Troopers .

Specifically, this bill represents a drastic change to the current methods employed in computing overtime for state employees. Currently, all hours of annual leave, sick leave, compensatory time leave, holiday leave, and discretionary holiday leave are computed together with the employee's regular hours of work for the purposes of overtime.

Although this policy is more liberal then what is required in the Fair Labor Standards Act of 1938, as amended, we feel this policy provides both a deserved benefit, and a safeguard against working excessive hours.

Law enforcement employees are already at an economic disadvantage when it comes to overtime. All other non-exempt employees, within and outside state government, except law enforcement and fire prevention employees, are entitled to receive overtime compensation after forty hours per week, but the state has elected to take advantage of an option available only to government employers of law enforcement and fire prevention employees under 29 United States Code, Section 207(k). This provision allows government employers to delay payment of overtime compensation until law enforcement

employees have worked 171 hours in a 28 day work period, which is the equivalent of forty-three (43) hours in a seven (7) day work period. Therefore, in a 28 day work period, most employees would only have to work 160 hours (which is 4 weeks times 40 hours per week) before receiving overtime pay, whereas, law enforcement employees have to work another eleven (11) hours, up to 171 hours, before being eligible to receive overtime.

State employees, including troopers, are also subject to another disadvantage regarding overtime. Employees of non-governmental employers must be paid overtime, whereas government employers have the option of awarding compensatory time credits rather than paying for the overtime hours worked.

Troopers are subject to another disadvantage regarding pay, a disadvantage which would be compounded if this Bill were to pass. Troopers are not paid for approximately 12 hours that they work each month. Most State employees work an average of 173.33 hours per month (2,080 divided by 12) while most Troopers are required to work 185.67 hours per month [(171 times 13.03 work periods = 2,228.13 per year) divided by 12]. That is a difference of 12.34 hours per month. The State currently pays all other State employees who are on the same Range and Step of the pay Plan as I am, the same monthly amount for working 173 hours as they pay me for working 185 hours.

Translated to a 4 week work cycle, which is the work cycle for most law enforcement employees, Troopers must work 171 hours in a four week period, whereas all other state employees work 160 hours in the same four week period (4 weeks times 40 hours per week). The difference is eleven (11) hours. Other State employees would receive overtime after 160 hours, whereas Troopers would not get overtime until 171 hours, and

under the State's current practice, Troopers would receive the same pay whether they work 160 hours or 171 hours.

This inequity in the State's current practice would be compounded by the passage of this bill because it would eliminate the use of paid leave to satisfy a portion of the eleven uncompensated hours between 160 and 171 for the purpose of reaching the overtime threshold. If we are not allowed to count paid leave towards the overtime threshold, then we will have to work even more uncompensated hours before being eligible for overtime, and often it would mean that we would work uncompensated hours without even the reward of reaching the overtime threshold. **For example**, in a 28 day work cycle, I have three (3) days of annual leave, and one (1) day of sick leave. This would total thirty-six (36) hours away from work based on the Patrol's nine hour work day. With this 36 hours added in as the current practice, I would only be liable for an additional one hundred and thirty-five (135) hours or fifteen more work days in the work period to total my 171 hours. If you remove the 36 hours, I could be required to work an additional four (4) days with no additional compensation to reach the 171 hours threshold. So in that 28 day cycle, I could have two hundred and seven (207) hours, or in the pay period I could have two hundred and twenty-one (221) hours, and still not receive any additional compensation from my normal 171 hours in the work period or 185 hours in the pay period. And, if I did reach the overtime threshold, my hourly rate would be reduced and my overtime rate would also decrease from \$24.84 per hour to \$19.49 per hour.

With consideration of the foregoing, on behalf of Kansas State Troopers, I respectfully request that this Committee find that the provisions of Senate Bill 778 are not in the best interest of neither the State of Kansas as an employer, nor Kansas State Employees.

I thank you for the opportunity to address this Committee, and thank you for your consideration of the Kansas State Troopers' position on this legislation.

I will be happy to answer any questions Members of the Committee may have.

Respectfully submitted.

[As Amended by Senate on Final Action]

[As Amended by Senate Committee of the Whole]

Session of 1994

Substitute for SENATE BILL No. 531

By Committee on Ways and Means

3-9

12 AN ACT concerning state agencies; procurement of goods and serv-
13 ices; amending K.S.A. 75-3739 and repealing the existing [section].
14

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

16 [Section 1.] K.S.A. 75-3739 is hereby amended to read as follows:
17 75-3739. In the manner as provided in this act and rules and reg-
18 ulations established thereunder:

19 (a) All contracts for construction and repairs, and all purchases
20 of and contracts for supplies, materials, equipment and contractual
21 services to be acquired for state agencies shall be based on com-
22 petitive bids, except that competitive bids need not be required: (1)
23 For contractual services when, in the judgment of the director of
24 purchases, no competition exists; or (2) when, in the judgment of
25 the director of purchases, chemicals and other material or equipment
26 for use in laboratories or experimental studies by state agencies are
27 best purchased without competition, or where rates are fixed by law
28 or ordinance; or (3) when, in the judgment of the director of pur-
29 chases, an agency emergency requires immediate delivery of sup-
30 plies, materials or equipment, or immediate performance of services;
31 or (4) when any statute authorizes another procedure or provides an
32 exemption from the provisions of this section.

33 The director of purchases shall make a detailed report at least
34 once in each calendar quarter to the legislative coordinating council
35 and the chairpersons of the senate committee on ways and means
36 and the house of representatives committee on appropriations of all
37 contracts for goods, supplies, materials, equipment or contractual
38 services entered into without competitive bids under subsections
39 (a)(1), (a)(2), (a)(3) or (g).

40 (b) If the amount of the purchase is estimated to exceed ap-
proximately \$10,000 ~~[or, in the case of a purchase by the~~
~~University of Kansas medical center, if the purchase is estimated to~~
43 ~~exceed approximately]~~ \$25,000, sealed bids shall be solicited by no-

75-3738 and

sections

Sec. 2.

And by renumbering
sections accordingly;

DRAFT OF AMENDMENTS TO Sub for SB 531 (Am S FA)

For Consideration By House Appropriations Committee
(3-29-94)

Section 1. K.S.A. 75-3738 is hereby amended to read as follows:
75-3738. The director of purchases shall:

(a) Purchase, rent or otherwise provide for the furnishing of sup-
plies, materials, equipment or contractual services for all state agen-
cies.

(b) Have power to authorize any state agency to purchase directly
certain specified supplies, materials, equipment or contractual serv-
ices under prescribed conditions and procedures and to require agen-
cies to provide justification for the procurement in appropriate cir-
cumstances as determined by the director.

(c) Prescribe the manner in which supplies, materials and equip-
ment shall be purchased, delivered and distributed.

(d) Prescribe the time, manner and authentication of making req-
uisitions for supplies, materials, equipment and contractual services.

(e) Establish standards of quality and quantity and develop stan-
dard specifications in consultation with the several state agencies.

(f) Prescribe the manner of making chemical and physical tests
of samples submitted with bids and samples of deliveries to deter-
mine compliance with specifications and the manner in which state
agencies shall inspect all deliveries of supplies, materials and equip-
ment.

(g) Prescribe the amounts and form of, accounting for and dis-
position of any deposit or bond required to be submitted with a bid
or a contract and the amount of any such deposit or bond to be
given for the faithful performance of a contract.

(h) Require reports by state agencies of stocks of supplies, ma-
terials and equipment on hand and prescribe the form of such reports
and deliver copies of such reports to the director of purchases and
the director of accounts and reports.

ATTACHMENT 16

1 ~~notice published once in the Kansas register not less than 10 days~~
 2 ~~before the date stated therein for the opening of such bids. The~~
 3 ~~director of purchases may waive this publication of notice require-~~
 4 ~~ment when the director determines that a more timely procurement~~
 5 ~~is in the best interest of the state. The director of purchases also~~
 6 ~~may designate a trade journal for such publication. The director of~~
 7 ~~purchases also shall solicit such bids by sending notices~~ by mail to
 8 prospective bidders. All bids shall be sealed when received and shall
 9 be opened in public at the hour stated in the notice. ~~The director~~
 10 ~~of purchases shall make a detailed report at least once in each~~
 11 ~~calendar quarter to the legislative coordinating council and the chair-~~
 12 ~~persons of the senate committee on ways and means and the house~~
 13 ~~of representatives committee on appropriations of all cases when the~~
 14 ~~publication of notice of bid solicitations in the Kansas register have~~
 15 ~~been waived under this subsection.~~

16 (c) All purchases estimated to exceed approximately \$5,000 but
 17 not more than ~~\$10,000~~ *(\$10,000 or, in the case of purchases by the*
 18 *university of Kansas medical center, all purchases estimated to exceed*
 19 *approximately \$5,000 but not more than) \$25,000,* shall be made
 20 after receipt of sealed bids following at least three days' notice posted
 21 on a public bulletin board in the office of the director of purchases.
 22 The director of purchases also may solicit sealed bids by mail ~~for~~
 23 ~~telefacsimile~~ in such cases in like manner as provided in subsection
 24 (b).

25 ~~(d)~~ All purchases estimated to be less than ~~\$5,000~~ may be made
 26 after the receipt of three or more bid solicitations by telephone ~~for~~
 27 ~~telefacsimile~~ ~~and~~ after receipt of sealed bids following at least three
 28 days' notice posted on a public bulletin board in the office of the
 29 director of purchases. Such bids shall be recorded as provided in
 30 subsection (e) of K.S.A. 75-3740 and amendments thereto. ~~With the~~
 31 ~~approval of the secretary of administration, the director of purchases~~
 32 ~~may delegate authority to any state agency to make purchases of~~
 33 ~~less than \$10,000~~ *(\$10,000 or, in the case of a delegation of authority*
 34 *to the university of Kansas medical center, of less than) \$25,000[,]*
 35 either on the open market or under certain prescribed conditions
 36 and procedures *[established by the director of purchases with the*
 37 *approval of the secretary of administration]*. The director of pur-
 38 chases shall make a report at least once in each calendar quarter to
 39 the legislative coordinating council and the chairpersons of the senate
 40 committee on ways and means and the house of representatives
 41 committee on appropriations of all current and existing delegations
 42 of authority under this subsection to state agencies. ~~In addition,~~
 43 the director of purchases is authorized to perform audits at any

or telefacsimile

and the purchase made be made after receipt of bids following at least 10 business days' notice posted on a public bulletin board in the office of the director of purchases before the date stated therein for the opening of such bids. The director of purchases also may designate a trade journal for publication of a notice of the solicitation of bids for any such purchase

(c)

\$25,000

or

business

(d)

[inserted and commencing a paragraph]

Each state agency, which has received delegate authority in any amount authorized under this subsection, shall make a report at least once in each calendar quarter to the director of purchases of all contracts for goods, supplies, materials, equipment or contracted services entered into without competitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).

16-2

1 *state agency to determine such agency's compliance with the con-*
2 *ditions and procedures for delegated authority under this subsection*
3 *and the director of purchases shall report the findings of such an*
4 *audit to the legislative coordinating council and the chairperson of*
5 *the senate committee on ways and means and the chairperson of the*
6 *house committee on appropriations.]*

7 (e) Subject to the provisions of subsection (d), contracts and pur-
8 chases shall be based on specifications approved by the director of
9 purchases. When deemed applicable and feasible by the director of
10 purchases, such specifications shall include either energy efficiency
11 standards or appropriate life cycle cost formulas, or both, for all
12 supplies, materials, equipment and contractual services to be pur-
13 chased by the state. The director of purchases may reject a contract
14 or purchase on the basis that a product is manufactured or assembled
15 outside the United States. No such specifications shall be fixed in
16 a manner to effectively exclude any responsible bidder offering com-
17 parable supplies, materials, equipment or contractual services.

18 (f) Notwithstanding anything herein to the contrary, all contracts
19 with independent construction concerns for the construction, im-
20 provement, reconstruction and maintenance of the state highway
21 system and the acquisition of rights-of-way for state highway purposes
22 shall be advertised and let as now or hereafter provided by law.

23 (g) The director of purchases may authorize state agencies to
24 contract for services and materials with other state agencies, or with
25 federal agencies, political subdivisions of Kansas, agencies of other
26 states or subdivisions thereof, or private nonprofit educational in-
27 stitutions, without competitive bids.

28 (h) Except as otherwise specifically provided by law, no state
29 agency shall enter into any lease of real property without the prior
30 approval of the secretary of administration. Such state agency shall
31 submit to the secretary of administration such information relating
32 to any such proposed lease as the secretary may require. The sec-
33 retary of administration shall either approve, modify and approve or
34 reject any such proposed lease.

35 Sec. 2. K.S.A. ~~75-3739~~ is hereby repealed.

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

75-3738 and 75-3739 are