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0561 Legislative Oversight Committee on State and Veterans Nursing Homes



Legislative Oversight Committee
on State and Veterans
Nursing Homes

Report to the
COLORADO
GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 561
December 2006

RECOMMENDATIONS FOR 2007

**LEGISLATIVE OVERSIGHT COMMITTEE ON
STATE AND VETERANS NURSING HOMES**

**Report to the
Colorado General Assembly**

**Research Publication No. 561
December 2006**

COLORADO GENERAL ASSEMBLY



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LEGISLATIVE COUNCIL

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December 2006

To Members of the Sixty-fifth General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee on State and Veterans Nursing Homes. This committee was created pursuant to Section 26-12-302, C.R.S. The purpose of this committee is to evaluate the quality of care provided to veterans at Colorado state and veterans nursing homes, to oversee the work of the State and Veterans Nursing Homes Commission created in Section 26-12-303, C.R.S.; and to make recommendations for legislation to be introduced during the 2007 legislative session.

At its meeting on October 16, 2006, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2007 session was approved.

Sincerely,

Representative Andrew Romanoff
Chair

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LEGISLATIVE OVERSIGHT COMMITTEE ON STATE AND VETERANS NURSING HOMES

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Senator Jack Taylor
Senator Ron Tupa

Representative David Balmer
Representative Mark Cloer
Representative Mary Hodge
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Legislative Council Staff

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Steve Miller
Senior Staff Attorney

Richard Sweetman
Staff Attorney

EXECUTIVE SUMMARY

Committee Charge

Pursuant to Section 26-12-302, C.R.S., the Legislative Oversight Committee on State and Veterans Nursing Homes was created to evaluate the quality of care provided to veterans at the state and veterans nursing homes located in Monte Vista, Florence, Trinidad, Rifle, and Aurora. The oversight committee is also charged to oversee the work of the State and Veterans Nursing Homes Commission created in Section 26-12-303, C.R.S., and to make recommendations for legislation to be introduced during the 2007 legislative session.

The State and Veterans Nursing Homes Commission is charged to examine the expertise, administration, and resources necessary to provide high-quality care at the veterans nursing homes, and to submit a final report to the oversight committee by June 30, 2006. The commission met regularly from the fall of 2005 through the spring of 2006 and presented its final report to the oversight committee on June 19, 2006.

Committee Activities

The Legislative Oversight Committee met three times in 2005, and twice in 2006. The committee heard testimony from representatives of departments of state government with oversight responsibility for the state and veterans nursing homes, the U.S. Department of Veterans Affairs, the Colorado Board of Veterans Affairs, and the Fitzsimons State Veterans Nursing Home Accountability Committee. The Legislative Oversight Committee also conducted a tour of the Fitzsimons State and Veterans Nursing Home. Testimony before the committee focused on administration and regulation of the state's veterans nursing homes as well as past operational problems at the Fitzsimons State Veterans Nursing Home.

At its final meeting on July 7, 2006, the oversight committee recommended two bills for introduction during the 2007 legislative session. The first bill creates a permanent Board of Commissioners of the State and Veterans Nursing Homes in the Colorado Department of Human Services. The second bill appropriates funds to the Central Fund for State Nursing Homes.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends two bills for introduction during the 2007 legislative session.

Bill A — Creation of the Board of Commissioners of State and Veterans Nursing Homes in the Department of Human Services. The Legislative Oversight Committee received testimony regarding the need to create a permanent, seven-member board of commissioners of State and Veterans Nursing Homes in the Colorado Department of Human Services. The State and Veterans Nursing Homes Commission recommended that this permanent Board of Commissioners be created to provide continuity, predictability, and stability in the operation of the nursing homes. The permanent commission would oversee the financial stability and quality of care at the nursing homes and would have oversight responsibilities for the Division of State and Veterans Nursing Homes.

Bill A creates a permanent seven-member Board of Commissioners of State and Veterans Nursing Homes in the Department of Human Services. The commission will be appointed by the governor and includes three veterans (including one representative of the Colorado Board of Veterans Affairs), three persons with specific expertise in nursing home operations, and a representative of the state Long-term Care Ombudsman's office. No more than four commission members may be from the same political party.

The commission will oversee the Division of State and Veterans Nursing Homes in the Department of Human Services as well as state and veterans nursing homes located in Homelake, Florence, Trinidad, Rifle, Aurora, and Walsenberg. The commission's charge is to:

- ✓ ensure that the highest quality of care is provided at the state and veterans nursing homes;
- ✓ ensure that the nursing homes are maintained on a sound financial footing;
- ✓ monitor the progress of capital construction projects at the nursing homes and monitor issues of resident care; and
- ✓ constitute a majority of members on any future panel charged with selecting consulting firms to operate the homes in order to ensure independence of the consultant from the division.

The commission must report annually to the governor and to the executive director of the Department of Human Services. An electronic version of the annual report must be transmitted annually to the House and Senate Health and Human Services Committees, the House and Senate State, Veterans, and Military Affairs Committees, and the Colorado Board of Veterans Affairs. The commission is repealed in July 2017.

Bill B — Appropriation of Funds to the Central Fund for State Nursing Homes.

The Legislative Oversight Committee heard testimony relating to the financial needs of Colorado's state and veterans nursing homes. The committee heard a specific recommendation that state General Fund moneys be made available to maintain the quality of facilities and staff at the nursing homes.

Bill B requires an annual appropriation beginning with FY 2007-08 from the state's General Fund to the Central Fund for State Nursing Homes. Nursing home resident payments for care are deposited into the central fund which are used for the operation of, and capital improvements to, state and veterans nursing homes. Under the bill, the amount of the appropriation may not exceed 10 percent of the total gross revenue accrued by the central fund in the preceding fiscal year. A Division of State and Veterans Nursing Homes representative estimated the bill will result in a transfer of approximately \$4 million annually. The final report of the commission to the oversight committee points out that 37 states provide state support for their veterans nursing homes. The report notes that the buildings and grounds of the state and veterans nursing homes are owned by the state and should be properly maintained.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Legislative Oversight Committee on State and Veterans Nursing Homes. The Legislative Oversight Committee on State and Veterans Nursing Homes was created to continue and expand on the original oversight and review functions of the Fitzsimons State and Veterans Nursing Home Accountability Committee appointed by the Governor in 2004.

The Fitzsimons State Veterans Nursing Home was completed and licensed to operate in September 2002. In 2003, the Fitzsimons Nursing Home was cited by state and federal regulators for violations related to infection control practices and resident quality of care. The facility also suffered from problems relating to its census count, financial issues, hiring, and retention of employees. As a result of these violations Governor Bill Owens mandated that the facility be operated by a private company that would work toward correcting problems and concerns raised in compliance surveys of the facility. In December of 2003, Pinon Management, Inc., a private consulting firm assumed management responsibilities for the nursing home.

Operational problems at Fitzsimons motivated the Colorado State Board of Veterans Affairs to pursue further administrative review of the facility. In 2004, the board requested that the Governor appoint the Fitzsimons State and Veterans Nursing Home Accountability Committee. The Accountability Committee was created by the Governor's executive order in November of that year. The Accountability Committee, chaired by Lieutenant Governor Jane Norton, was charged to monitor the progress of the Department of Human Services and Pinon Management, Inc. in operating Fitzsimons, to ensure the safety of patients at Fitzsimons, and to monitor the financial viability of the home. The committee met over a seven-month period and made its final recommendations to the Governor in June 2005.

The Accountability Committee's final report included recommendations that:

- the State Personnel Board consider residency waivers for key administrative positions at Fitzsimons;
- a public/private partnership model should be instituted uniformly for all state veterans nursing homes;
- a salary survey of professional nurses should be commenced by the Colorado Department of Personnel and Administration and implemented as soon as possible;
- screening of job applicants at Fitzsimons should be expedited; and
- opportunities for enabling the state to loan or share state or local government employees to benefit the veterans nursing homes should be identified.

The Legislative Oversight Committee on State and Veterans Nursing Homes was created with the passage of House Bill 05-1336 in May 2005. The eight-member committee consists of two Senators appointed by the President of the Senate, two Senators appointed by the Senate Minority Leader, two members of the House appointed by the Speaker of the House, and two members of the House appointed by the House Minority Leader.

Section 26-12-302, C.R.S., charges the committee to evaluate the quality of care provided to veterans and their families at the state and veterans nursing homes located in Monte Vista, Florence, Trinidad, Rifle and Aurora, Colorado. Specifically, the bill requires the committee to:

- oversee the work of a State and Veterans Nursing Home Commission appointed by the Governor and to submit a final report to the General Assembly regarding the committee's findings and recommendations;
- study the expertise, accountability systems, and resources necessary to effectively manage the state and veterans nursing homes to assure the ongoing provision of a high quality of care;
- consider options for the administration of the veterans nursing homes, including which state agency is best equipped to assure the provision of a high quality of care;
- consider the suitability of creating an independent nursing home administrator or authority;
- consider the creation of an oversight board for all state and veterans nursing homes, as well as individual boards or councils for each local facility;
- identify ongoing responsibility for legislative oversight of state and veterans nursing homes;
- consider the potential for partnerships, consultative relationships, and contracting with the private sector, and
- address the affordability of care for veterans, the relationship between operations of individual nursing homes and the central enterprise fund, maintenance of facility certification, and funding and licensing agencies.

State and Veterans Nursing Home Commission. House Bill 05-1336 also created a State and Veterans Nursing Home Commission to evaluate the state and veterans nursing homes located in Monte Vista, Florence, Trinidad, Rifle, and Aurora. The 11-member commission was appointed by the Governor, and the bill specified that no more than six of its members may be from the same political party.

The commission consists of the following members:

- two members from the Colorado Board of Veterans Affairs, including the chairman of the Board of Veterans Affairs;
- two members of a statewide nonprofit coalition that represents veterans service organizations;

- two members of the families of two different veterans who have been residents at separate state and veteran nursing homes;
- two members of separate statewide organizations that represent proprietary and nonprofit nursing facilities; and
- three members who have special expertise and interest in the field of long-term nursing care, at least one of whom must be the state long-term care ombudsman or a local ombudsman.

Non-voting members of the commission include the executive directors (or designees) of: the Department of Human Services; the Department of Health Care Policy and Financing; the Division of Veterans Affairs; and the Department of Public Health and Environment.

Section 26-12-303, C.R.S., charges the commission to consider the following issues:

- the expertise and resources necessary to assure the ongoing provision of high-quality care at the homes;
- the appropriate state government agency to administer the nursing homes, as well as the authority and responsibilities of that agency;
- mechanisms for assuring ongoing oversight of quality of care and fiscal matters related to the operation of the homes;
- partnerships, consultative relationships, and other contractual relationships with the private nursing home sector;
- any issue that the Legislative Oversight Committee is authorized to study or that the committee authorizes the commission to study; and
- necessary legislative or budgetary actions to implement the commission's recommendations.

The bill required that the commission submit a *preliminary* report to the Legislative Oversight Committee on or before December 31, 2005, concerning:

- issues to be studied in upcoming commission meetings and a prioritization of those issues;
- findings, evaluations, and recommendations regarding issues of prior consideration by the commission; and
- preliminary legislative proposals of the commission that identify the policy issues involved, the agencies responsible for implementation of the changes, and the funding sources required for implementation of the changes.

House Bill 05-1336 required that the commission submit a *final* report including recommendations for legislation to the Legislative Oversight Committee on or before June 30, 2006.

COMMITTEE ACTIVITIES

In the fall of 2005 and during the 2006 interim, the Legislative Oversight Committee on State and Veterans Nursing Homes met on five occasions to examine a variety of issues relating to the management of Colorado's state and veterans nursing homes. Topics included the operation, capital needs, and census counts of the state's veterans nursing homes, staffing of the nursing home facilities, regulation of the nursing homes, and past operational problems at the Fitzsimons State Veterans Nursing Home.

At the meetings in 2005 the committee heard extensive testimony relating to the administration of the state veterans nursing homes and the care of residents. The two meetings in 2006 were devoted to consideration of proposals for legislation and the recommendation of draft legislation for introduction.

Overview of Legislative Oversight Committee Hearings

The Legislative Oversight Committee reviewed past operational problems at the Fitzsimons State Veterans Nursing Home. As noted above, within one year of opening the Fitzsimons State Veterans Nursing Home was cited for failure to comply with state and federal standards. The committee heard testimony relating to operational problems of the Fitzsimons facility including chronic staffing shortages, a viral infection resulting in the hospitalization of some residents, delays in hiring personnel due to inflexible state personnel system rules, and a lack of sufficient training of nursing home personnel.

In 2004, the Governor issued an executive order creating the Fitzsimons Veterans Nursing Home Accountability Committee. The Accountability Committee was appointed to monitor the progress of a private management company (Pinon Management, Inc.) hired to ensure patient safety and financial viability at the Fitzsimons home. On October 25, 2005, the Accountability Committee, chaired by Lieutenant Governor Norton, presented to the Legislative Oversight Committee its recommendations to the Governor addressing problems occurring at the Fitzsimons Home. On this same day the Legislative Oversight Committee also toured the facilities of the Fitzsimons State and Veterans Nursing Home.

In the course of its study, the Legislative Oversight Committee was briefed on the operational mission of the Division of State and Veterans Nursing Homes and was provided an overview of the veterans nursing home facilities. The committee heard testimony describing processes by which the state's veterans nursing homes are surveyed to ensure compliance with state and federal standards. Regulators identify the extent to which the nursing homes deviate from these state and federal standards, i.e., "deficiencies" at the nursing homes. The results of recent surveys at the veterans nursing homes were presented to the committee.

The committee learned of veterans nursing home admission requirements, capital needs, and reviewed census reports from the nursing homes. State departments described their regulatory roles relating to the state's veterans nursing homes, including licensure and certification of nursing home facilities.

The Legislative Oversight Committee received testimony from the Homelake State Veterans Home and the Fitzsimons Veterans Nursing Home Community Advisory Boards regarding care at Homelake and Fitzsimons and the role of the advisory boards. The committee received periodic updates on the progress of the State and Veterans Nursing Home Commission. Members of the commission visited each of the state veterans nursing homes.

The Legislative Oversight Committee heard testimony relating specifically to staff turnover at the nursing home facilities. The division provided comparisons of nursing salary and benefit packages at the homes relative to private home benefit packages. The Legislative Oversight Committee also considered the need for waivers from the state personnel system for nursing home employees

Final Report of the State and Veterans Nursing Home Commission

On June 19, 2006, the State and Veterans Nursing Home Commission presented its final report to the Legislative Oversight Committee. Recommendations were developed during monthly commission meetings beginning in September of 2005. In its final report the commission makes nine major recommendations for improving the management, funding and quality of care at the state and veterans nursing homes.

Staff experience. The Division of State and Veterans Nursing Homes should maintain a central staff team with a strong background and experience in the operation of nursing homes.

Create permanent oversight commission. A permanent Board of Commissioners of State and Veterans Nursing Homes with broad oversight responsibilities for the homes should be created. The Board of Commissioners will also serve in an advisory role to nursing home regulatory entities, have a rule review function, and provide stability and institutional memory in the administration of the nursing homes.

Continue administrative location in the Department of Human Services. After consideration of options for relocation of the Division of State and Veterans Nursing Homes in state government, the commission recommends that the division remain administratively located in the Colorado Department of Human Services. The commission determined that the Department of Human Services is the state department best equipped to administer the nursing homes.

Create community advisory boards. A statutory requirement for the creation of community advisory boards (CABs) at all state and veterans nursing homes should be adopted. Commissioners noted the advantage of having CABs in place at the homes to address concerns of nursing home residents and their families, to: monitor cash flow and census projections at the homes; ensure the safety of residents; and communicate concerns to the state oversight board. Area veterans, residents, family members of residents, and local business and health care professionals would serve as members of the CABs.

Continue use of consulting contractors. The state should continue to use consulting contractors in the management of nursing homes, when necessary. Commissioners noted the advantage of the objectivity of consulting contractors in addressing problems at the homes and recommending future strategies for the operation of the homes.

Appropriate moneys to the Central Fund. The General Assembly should appropriate operational and capital improvement funds to the Central Fund for State Nursing Homes to the extent permitted under state law, without jeopardizing the enterprise status of the fund. This additional funding, estimated at approximately \$4 million per year, would accelerate maintenance, renovation, and new construction at the facilities as well as providing additional resources for operation of the homes. Commissioners noted that the state should properly maintain these state-owned facilities and that the state's veteran residents deserve to receive care in attractive and functional nursing home settings.

Seek federal matching funds. The state should aggressively seek federal matching funds for capital improvements at the nursing homes. Under the Veterans Administration's State Home Construction Grant Program, up to 65 percent of the cost of capital improvements at the nursing homes may be financed with federal moneys. To the extent that federal funding of these capital projects can be secured moneys would be made available in the Central Fund for nursing home operating improvements.

Seek Medicaid certification. The Division of State and Veterans Nursing Homes should strive to attain Medicaid eligibility certification for the veterans nursing homes. Achieving certification for the homes could result in the acquisition of additional Medicaid resources for the veterans nursing homes.

Seek flexibility under personnel rules. Alternatives should be explored which would give flexibility under state personnel rules to the Fitzsimons State Veterans Home. Members of the commission noted that competition for nursing staff, particularly in urban areas, is intense. Commissioners pointed out that state personnel system requirements have hindered the recruitment of nurses and nursing home administrators to fill vacant positions.

Background

Colorado's state and veterans nursing homes. There are six state and veterans nursing homes operating in Colorado, five of which are specifically for veterans. The homes are located in Aurora, Florence, Monte Vista, Rifle, Trinidad, and Walsenburg. The Trinidad State Home is not a state veterans home and is therefore available to all eligible Colorado residents. Currently, Colorado's state and veterans nursing homes have a capacity of 665 beds.

Eligibility for admission to state and veterans nursing homes. Residents are admitted to the Colorado state veterans nursing homes at Fitzsimons, Florence, Homelake, Rifle, and Walsenburg in the following order of priority:

- (1) Colorado resident veterans;
- (2) Nonresident veterans; and
- (3) Colorado resident spouses of veterans, surviving spouses of veterans, parents of veterans all of whose children died while serving in the U.S. armed forces. Up to 25 percent of the residents may fall in this category.

The Colorado State Nursing Home at Trinidad has open admission, but gives preference to Colorado residents.

Regulation of Colorado State and Veterans Nursing Homes. All six facilities previously discussed are licensed by the Colorado Department of Public Health and Environment. The Department of Human Services, Division of State and Veterans Nursing Homes, is responsible for overseeing the operation of the homes. The State Board of Human Services adopts rules for the management, control, and supervision of all state and veterans nursing homes.

Pursuant to Section 26-12-112, C.R.S., the Colorado Department of Human Services is authorized to:

- establish, construct, operate, maintain, and improve nursing home facilities;
- regulate record-keeping by each state nursing home and identify records that must be submitted to the department;
- allocate funding for the payment of anticipation warrants issued for the construction or improvement of nursing home facilities; and
- accept grants from federal agencies, as well as gifts to be used for state nursing homes.

The U.S. Department of Veterans Affairs (VA) participates in two grant programs for state veterans nursing homes: the state home construction grant program, and a per-diem grant program. The VA provides up to 65 percent of the cost of construction or acquisition of state veterans nursing homes, domiciliaries, and renovation of existing state homes. The VA also provides per-diem payments to states to care for eligible veterans in state homes. There are currently 119 state veterans nursing homes in 47 states and Puerto Rico. In addition, the VA conducts annual inspections, and audits to assure that VA standards of care are met.

Oversight of Colorado's State and Veterans Nursing Homes

The Legislative Oversight Committee heard testimony from members of the existing State and Veterans Nursing Home Commission regarding the creation in statute of a permanent Board of Commissioners of the Colorado State and Veterans Nursing Homes. The permanent commission would be granted broad oversight responsibilities for the Colorado Division of State and Veterans Nursing Homes, and for the state's veterans nursing homes. The permanent commission would be comprised of veterans, persons with experience in nursing home operations, and the State Nursing Home Ombudsman (or designee.)

The existing State and Veterans Nursing Home Commission recommended the creation of this permanent commission to provide continuity, predictability, and stability in the operation of the homes. The State and Veterans Nursing Homes Commission noted that, in light of traditionally high turnover rates of personnel in the nursing home industry, the institutional memory provided by a permanent commission would over time benefit the administration of the state and veterans nursing homes.

The permanent commission would monitor:

- the quality of care in the veterans nursing homes;
- the financial stability of the nursing homes;
- the capital needs of the nursing homes; and
- the progress of capital improvement projects at the nursing homes.

Members of the permanent commission would serve as a majority on any panels charged with selecting a consulting firm to administer a state and veterans nursing home. This majority would assure the independence of the consulting firm from the Division of State and Veterans Nursing Homes.

The permanent commission would review proposed Department of Human Services rules relating to the governance of the state and veterans nursing homes and would advise the director of the Colorado Department of Human Services and the State Board of Human Services in regard to the operation of the homes. The permanent commission would have direct access to independent reports from consulting contractors hired by the Department of Human Services to administer the state and veterans nursing homes.

The State and Veterans Nursing Homes Commission also recommended that, in the interim period prior to creation of a permanent commission in statute, the existing commission continue its oversight functions. Although the bill which created the State and Veterans Nursing Home Commission (House Bill 05-1336) did not specify a date for the commission's repeal, the bill includes a provision which repeals all of HB 05-1336 on July 1, 2007.

Committee Recommendations. Bill A creates a permanent seven-member Board of Commissioners of State and Veterans Nursing Homes in the Department of Human Services. The commission will be appointed by the governor and includes veterans, persons with expertise in nursing home operations, and a representative of the state Long-term Care Ombudsman's office. No more than four of the members may be from the same political party.

The commission will oversee the state and veterans nursing homes and the Division of State and Veterans Nursing Homes in the Colorado Department of Human Services. The commission is charged to ensure high quality of care at the nursing homes, ensure the financial stability of the homes, monitor capital construction at the homes, and play a key role in selecting any consulting firms to operate the homes in the future. The commission will report annually to the governor, the Department of Human Services, members of the General Assembly, and the Colorado Board of Veterans Affairs.

Financial Needs of Colorado's State and Veterans Nursing Homes

Payments for the care of residents of the state and veterans nursing homes are deposited in the Central Fund for State Nursing Homes. Rates for care at the nursing homes are set to equal the cost of operation and maintenance of the nursing homes to the extent possible. Moneys deposited in the central fund may be used by the Department of Human Services for the operation and administration of the state nursing homes and for capital construction at the homes. Any requests for capital construction projects related to the nursing homes are submitted to the Capital Development Committee.

In presenting its final report to the Legislative Oversight Committee the State and Veterans Nursing Home Commission noted that 37 states provide state support for their veterans nursing homes. The commission expressed concern that sufficient resources would not be available from the central fund to meet future needs for facility improvements and contingencies at the nursing homes, and to maintain affordable care at the homes for the state's veterans and their families. Commission members pointed out that the state and

veterans nursing home facilities are state property that should be properly maintained. Further, commission members noted that veteran residents of the homes have the right to receive nursing home care in attractive and functional facilities where they can receive care and live in dignity.

The State and Veterans Nursing Home Commission recommended that the state consider appropriating operating and capital improvement funding of up to 10 percent of the balance in the central fund consistent with statutory limits for enterprise funds. Under Colorado law no more than 10 percent of funds deposited in the Central Fund for State Nursing Homes may come from state General Fund moneys if the Central Fund is to retain its enterprise fund status.

Committee Recommendations. Bill B requires an annual appropriation from the state's General Fund to the Central Fund for State Nursing Homes. Under the bill, the amount of the appropriation may not exceed 10 percent of the total gross revenue accrued by the central fund in the preceding fiscal year.

SUMMARY OF RECOMMENDATIONS

As a result of the activities of the Legislative Oversight Committee on State and Veterans Nursing Homes, the following bills are recommended to the Colorado General Assembly.

Bill A — Concerning the Creation of the Board of Commissioners of State and Veterans Nursing Homes in the Department of Human Services

Bill A creates a permanent seven-member Board of Commissioners of State and Veterans Nursing Homes in the Department of Human Services. The commission will be appointed by the governor and include three veterans (including one representative of the Colorado Board of Veterans Affairs), three persons with specific expertise in nursing home operations, and a representative of the state Long-term Care Ombudsman's office. No more than four members may be from the same political party.

The commission will oversee the Division of State and Veterans Nursing Homes in the Department of Human Services as well as state and veterans nursing homes located in Homelake, Florence, Trinidad, Rifle, Aurora, and Walsenberg. The commission's charge is to:

- ensure that the highest quality of care is provided at the state and veterans nursing homes;
- ensure that the nursing homes are maintained on a sound financial footing;
- monitor the progress of capital construction projects at the nursing homes and monitor issues of resident care; and
- constitute a majority of members on any future panel charged with selecting consulting firms to operate the homes in order to ensure independence of the consultant from the division.

The commission must report annually to the governor and to the executive director of the Department of Human Services. An electronic version of the annual report must be transmitted annually to the House and Senate Health and Human Services Committees, the House and Senate State, Veterans, and Military Affairs Committees, and the Colorado Board of Veterans Affairs. The commission is repealed in July 2017.

Bill B — Concerning the Appropriation of Funds to the Central Fund for State Nursing Homes

Bill B requires an annual appropriation, beginning with FY 2007-08, from the state's General Fund to the Central Fund for State Nursing Homes. Nursing home resident payments for care are deposited into the central fund which is used for the operation of, and capital improvements to, state and veterans nursing homes. Under the bill, the amount of the appropriation may not exceed 10 percent of the total gross revenue accrued by the central fund in the preceding fiscal year. A Division of State and Veterans Nursing Homes representative estimated the bill will result in an annual transfer of approximately \$4 million. The final report of the commission to the oversight committee points out that 37 states provide state support for their veterans nursing homes.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303- 866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/2006/06interim.htm

Meeting Summaries

Topics Discussed

September 15, 2005

Perspectives of the Colorado Board of Veterans Affairs and the United Veterans Committee of Colorado on Colorado's state and veterans nursing homes; regulatory role of the United States Department of Veterans Affairs; overview of Colorado's state and veterans nursing homes; overview of capital improvement needs; regulatory role of the Colorado Department of Human Services; regulatory role of the Colorado Department of Public Health and Environment; results of facility surveys by the Colorado Department of Public Health and Environment; perspectives of the state and veterans nursing homes community advisory boards; perspectives of state and veterans nursing home facility directors.

October 25, 2005

Recommendations of the Fitzsimons State Veterans Nursing Home Accountability Committee; activities of the State and Veterans Nursing Home Commission; implementation of Fitzsimons State Veterans Nursing Home Accountability Committee recommendations by the Colorado Department of Human Services; staffing of the state and veterans nursing homes; financial operations of the state and veterans nursing homes; committee tour of the Fitzsimons State Veterans Nursing Home.

December 14, 2005 Preliminary report from the State and Veterans Nursing Homes Commission; nursing salary and benefit packages relative to the private sector; potential for improvement of salary and nursing benefit packages; programmatic and facility overview of the Homelake Domiciliary Unit; legislation related to sharing of state employees by state agencies.

June 19, 2006 Final report of the State and Veterans Nursing Home Commission; Legislative Oversight Committee discussion of commission recommendations and potential legislation.

July 7, 2006 Committee review and adoption of draft legislation.

Staff Memoranda

Background Material on Colorado's State and Veterans Nursing Homes; memorandum prepared by the Legislative Council Staff, August 29, 2005.

Reports

Final Report of the Fitzsimons State Veterans Nursing Home Accountability Committee, submitted to Governor Bill Owens, June 29, 2005

State and Veterans Nursing Homes Facility Staffing and Financial Operations, Division of State and Veterans Nursing Homes, Colorado Department of Human Services

Division of State and Veterans Nursing Homes Resources Flow Chart, Dr. John Johnson, Director

Comparison of Hourly Salaries for Nursing Staff, Colorado Health Care Association

State and Veterans Nursing Home Average Nursing Salaries and Benefits Compared to Other Nursing Homes in Colorado, Colorado Department of Human Services, December 14, 2005

Preliminary Report of the State and Veterans Nursing Homes Commission to the Legislative Oversight Committee, December 14, 2005

Final Report of the State and Veterans Nursing Homes Commission to the Legislative Oversight Committee, June 19, 2006.

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

Bill A

LLS NO. 07-0026.01 Steve Miller

HOUSE BILL

HOUSE SPONSORSHIP

Cloer, Balmer, Hodge, and Jahn

SENATE SPONSORSHIP

Tochtrop, Entz, and Taylor

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE BOARD OF COMMISSIONERS OF**
102 **STATE AND VETERANS NURSING HOMES IN THE DEPARTMENT OF**
103 **HUMAN SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Legislative Oversight Committee on State and Veterans Nursing Homes. Creates the board of commissioners of state and veterans nursing homes in the department of human services ("board").

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Specifies the functions and membership of the board and how members are appointed. Specifies the powers and duties of the board.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 12 of title 26, Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW PART to read:

4 **PART 4**

5 **BOARD OF COMMISSIONERS OF STATE**

6 **AND VETERANS NURSING HOMES**

7 **26-12-401. Definitions.** AS USED IN THIS PART 4, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "BOARD OF COMMISSIONERS" MEANS THE BOARD OF
10 COMMISSIONERS OF STATE AND VETERANS NURSING HOMES CREATED IN
11 SECTION 26-12-402.

12 (2) "DIVISION" MEANS THE DIVISION OF STATE AND VETERANS
13 NURSING HOMES, OR ITS SUCCESSOR AGENCY, IN THE STATE DEPARTMENT.

14 **26-12-402. Board of commissioners of state and veterans**
15 **nursing homes - creation - powers and duties.** (1) THERE IS HEREBY
16 CREATED THE BOARD OF COMMISSIONERS OF STATE AND VETERANS
17 NURSING HOMES WITHIN THE STATE DEPARTMENT. THE BOARD OF
18 COMMISSIONERS SHALL EXERCISE ITS POWERS, DUTIES, AND FUNCTIONS
19 UNDER THE STATE DEPARTMENT AS IF IT WERE TRANSFERRED TO THE
20 STATE DEPARTMENT BY A **TYPE 2** TRANSFER UNDER THE PROVISIONS OF
21 THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE
22 24, C.R.S.

23 (2) THE FUNCTIONS OF THE BOARD OF COMMISSIONERS ARE TO:

24 (a) PROVIDE OVERSIGHT FOR THE DIVISION, THE STATE NURSING
25 HOME LOCATED IN TRINIDAD, AND THE VETERANS NURSING HOMES

1 LOCATED IN HOMELAKE, FLORENCE, RIFLE, AURORA, AND WALSENBERG,
2 COLORADO;

3 (b) PROVIDE CONTINUITY, PREDICTABILITY, AND STABILITY IN THE
4 OPERATION OF THE STATE AND VETERANS NURSING HOMES; AND

5 (c) PROVIDE GUIDANCE TO FUTURE ADMINISTRATORS AT THE
6 STATE AND VETERANS NURSING HOMES BASED ON THE COLLECTIVE
7 INSTITUTIONAL MEMORY OF THE BOARD OF COMMISSIONERS.

8 (3) (a) THE BOARD OF COMMISSIONERS SHALL CONSIST OF SEVEN
9 MEMBERS, NO MORE THAN FOUR OF WHOM ARE MEMBERS OF THE SAME
10 POLITICAL PARTY, AND ALL OF WHOM SHALL BE SUBJECT TO
11 CONFIRMATION BY THE SENATE.

12 (b) THE GOVERNOR SHALL APPOINT THE SEVEN MEMBERS OF THE
13 BOARD OF COMMISSIONERS AS FOLLOWS:

14 (I) THREE VETERANS, ONE OF WHOM SHALL BE EITHER A MEMBER
15 OF THE STATE BOARD OF VETERANS AFFAIRS OR THAT BOARD'S DESIGNEE;

16 (II) THREE PERSONS WITH EXPERTISE IN NURSING HOME
17 OPERATIONS, INCLUDING:

18 (A) A PERSON WHO IS A NURSING HOME ADMINISTRATOR AT THE
19 TIME OF APPOINTMENT AND WHO IS EXPERIENCED IN THE FINANCIAL
20 OPERATIONS OF NURSING HOMES;

21 (B) A PERSON WHO HAS PRACTICING CLINICAL EXPERIENCE IN
22 NURSING HOMES; AND

23 (C) A PERSON WHO HAS EXPERIENCE IN MULTI-FACILITY
24 MANAGEMENT OF NURSING HOMES; AND

25 (III) THE STATE LONG-TERM CARE OMBUDSMAN, AS DEFINED IN
26 SECTION 26-11.5-103 (7), OR A LOCAL OMBUDSMAN, AS DEFINED IN
27 SECTION 26-11.5-103 (2), THAT IS RECOMMENDED TO THE GOVERNOR BY

1 THE STATE LONG-TERM CARE OMBUDSMAN.

2 (c) THE APPOINTED MEMBERS OF THE BOARD OF COMMISSIONERS
3 SHALL SERVE TERMS OF FOUR YEARS; EXCEPT THAT, OF THE MEMBERS
4 FIRST APPOINTED, THE GOVERNOR SHALL SELECT THREE MEMBERS WHO
5 SHALL SERVE TERMS OF TWO YEARS. NO APPOINTED MEMBER SHALL
6 SERVE MORE THAN TWO CONSECUTIVE FOUR-YEAR TERMS.

7 (4) AN APPOINTED MEMBER MAY BE REMOVED FOR CAUSE AT ANY
8 TIME DURING THE MEMBER'S TERM BY THE GOVERNOR. VACANCIES ON
9 THE BOARD OF COMMISSIONERS SHALL BE FILLED BY APPOINTMENT BY THE
10 GOVERNOR WITH THE CONSENT OF THE SENATE FOR THE UNEXPIRED TERMS
11 IN THE MANNER DESCRIBED IN SUBSECTION (3) OF THIS SECTION.

12 (5) MEMBERS OF THE BOARD OF COMMISSIONERS SHALL SERVE
13 WITHOUT PAY BUT SHALL BE REIMBURSED FOR REASONABLE AND
14 NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

15 (6) ALL MEMBERS OF THE BOARD OF COMMISSIONERS SHALL BE
16 VOTING MEMBERS. THE MEMBERS OF THE BOARD OF COMMISSIONERS
17 SHALL ELECT A CHAIR, A VICE-CHAIR, AND A SECRETARY FROM AMONG
18 THE MEMBERSHIP OF THE BOARD. BOARD ACTION SHALL REQUIRE THE
19 AFFIRMATIVE VOTE OF A MAJORITY OF A QUORUM OF THE BOARD OF
20 COMMISSIONERS.

21 (7) THE BOARD OF COMMISSIONERS SHALL:

22 (a) ENDEAVOR TO ENSURE THAT THE HIGHEST QUALITY OF CARE
23 IS BEING PROVIDED AT THE STATE AND VETERANS NURSING HOMES AND
24 THAT THE FINANCIAL STATUS OF THE HOMES IS MAINTAINED ON A SOUND
25 BASIS;

26 (b) OBTAIN INFORMATION CONCERNING THE FOLLOWING:

27 (1) THE STATUS OF THE CENTRAL FUND, AS DESCRIBED IN SECTION

1 26-12-108, AND THE PROGRESS OF CAPITAL CONSTRUCTION PROJECTS
2 THAT ARE PROPOSED OR UNDERWAY; AND

3 (II) ISSUES OF RESIDENT CARE ARISING FROM SOURCES,
4 INCLUDING BUT NOT LIMITED TO DEPARTMENT OF PUBLIC HEALTH AND
5 ENVIRONMENT SURVEYS, VETERANS ADMINISTRATION SURVEYS,
6 CONSULTANT CONTRACTOR REPORTS, PLANS OF CORRECTION TO BOTH
7 SURVEYS AND CONSULTANT REPORTS, VACANT POSITION REPORTS, AND
8 REPORTS FROM THE DIVISION;

9 (c) HAVE DIRECT ACCESS TO ANY CONSULTING CONTRACTOR
10 WORKING WITH THE STATE AND VETERANS NURSING HOMES AND OBTAIN
11 WRITTEN AND ORAL REPORTS THEREFROM WITHOUT THE NECESSITY OF
12 GOING THROUGH THE DIVISION OR THE STATE DEPARTMENT;

13 (d) HAVE DIRECT ACCESS TO THE EXECUTIVE DIRECTOR OF THE
14 STATE DEPARTMENT AND THE STATE BOARD FOR THE PURPOSES OF
15 ALERTING STATE DEPARTMENT POLICYMAKERS OF POTENTIAL PROBLEMS
16 IN STATE AND VETERANS NURSING HOMES AND ESTABLISHING EFFECTIVE
17 WORKING RELATIONSHIPS AND LINES OF COMMUNICATION WITH THE STATE
18 DEPARTMENT AND STATE BOARD AT ALL LEVELS;

19 (e) HAVE OVERSIGHT OF AND THE AUTHORITY TO VISIT AND
20 REVIEW THE OPERATION OF THE STATE AND VETERANS NURSING HOMES;

21 (f) CONSTITUTE A MAJORITY OF THE MEMBERS ON THE REQUEST
22 FOR PROPOSALS PANEL THAT SELECTS CONSULTING FIRMS FOR THE STATE
23 AND VETERANS NURSING HOMES IN ORDER TO ENSURE INDEPENDENCE OF
24 THE CONSULTANT FROM THE DIVISION;

25 (g) HAVE AUTHORITY TO REVIEW AND COMMENT ON RULES
26 PROMULGATED BY THE STATE DEPARTMENT AND THE STATE BOARD
27 CONCERNING THE STATE AND VETERANS NURSING HOMES BEFORE THE

1 RULES ARE SUBMITTED FOR PUBLIC COMMENT;

2 (h) MEET AS OFTEN AS NECESSARY BUT NOT LESS THAN THREE
3 TIMES PER YEAR; AND

4 (i) (I) ON OR BEFORE JANUARY 1, 2008, AND ON OR BEFORE EACH
5 JANUARY 1 THEREAFTER, MAKE AN ANNUAL REPORT OF ISSUES AND
6 RECOMMENDATIONS DEVELOPED BY THE BOARD OF COMMISSIONERS TO
7 THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT AND THE
8 GOVERNOR; AND

9 (II) TRANSMIT ELECTRONIC VERSIONS OF EACH ANNUAL REPORT
10 TO:

11 (A) THE MEMBERS OF THE GENERAL ASSEMBLY WHO SIT ON THE
12 HEALTH AND HUMAN SERVICES COMMITTEES AND THE STATE, VETERANS,
13 AND MILITARY AFFAIRS COMMITTEES OF THE SENATE AND THE HOUSE OF
14 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES; AND

15 (B) THE MEMBERS OF THE STATE BOARD OF VETERANS AFFAIRS.

16 **26-12-403. Repeal of part.** (1) THIS PART 4 IS REPEALED,
17 EFFECTIVE JULY 1, 2017.

18 (2) PRIOR TO REPEAL, THE BOARD OF COMMISSIONERS APPOINTED
19 PURSUANT TO THIS PART SHALL BE REVIEWED AS PROVIDED IN SECTION
20 2-3-1203, C.R.S.

21 **SECTION 2.** 24-1-120 (5), Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23 **24-1-120. Department of human services - creation - repeal.**

24 (5) The department of human services shall include the following:

25 (k) THE BOARD OF COMMISSIONERS OF STATE AND VETERANS
26 NURSING HOMES, CREATED IN SECTION 26-12-402, C.R.S. SAID BOARD
27 AND ITS POWERS, DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE**

1 **2** TRANSFER TO THE DEPARTMENT OF HUMAN SERVICES.

2 **SECTION 3.** 2-3-1203 (3), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **2-3-1203. Sunset review of advisory committees.** (3) The
5 following dates are the dates for which the statutory authorization for the
6 designated advisory committees is scheduled for repeal:

7 (cc) JULY 1, 2017: THE BOARD OF COMMISSIONERS OF STATE AND
8 VETERANS NURSING HOMES, CREATED IN SECTION 26-12-402, C.R.S.

9 **SECTION 4. Effective date.** This act shall take effect July 1,
10 2007.

11 **SECTION 5. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

Bill B

LLS NO. 07-0025.01 Richard Sweetman

SENATE BILL

SENATE SPONSORSHIP

Entz, Taylor, and Tochtrop

HOUSE SPONSORSHIP

Balmer, Cloer, Hodge, and Jahn

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE APPROPRIATION OF FUNDS TO THE CENTRAL FUND
102 FOR STATE NURSING HOMES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Legislative Oversight Committee on State and Veterans

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

DRAFT

Nursing Homes. Appropriates funds to the central fund for state nursing homes.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 26-12-108 (1), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **26-12-108. Payments for care - funds - annual report -**
5 **collections for charges - central fund for state nursing homes created.**

6 (1) (a.5) FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, AND FOR EACH
7 FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY SHALL APPROPRIATE
8 FROM THE GENERAL FUND TO THE CENTRAL FUND AN AMOUNT NOT
9 EXCEEDING TEN PERCENT OF THE TOTAL GROSS REVENUE ACCRUED BY THE
10 CENTRAL FUND DURING THE PRECEDING FISCAL YEAR. THE STATE
11 DEPARTMENT SHALL USE THESE FUNDS TO PAY OPERATIONAL EXPENSES
12 OF, AND MAKE CAPITAL IMPROVEMENTS TO, THE STATE NURSING HOMES.

13 **SECTION 2. Effective date.** This act shall take effect July 1,
14 2007.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.