

M I N U T E S

HEALTH CARE PROVIDER MALPRACTICE STUDY COMMISSION

May 18, 1977

Room 519 - State House

Members Present

Senator Wesley H. Sowers, Chairman
Senator Elwaine Pomeroy
Representative Marvin Littlejohn
Representative Loren Hohman, II
James E. Eaton, D.C.
David H. Fisher
Judith C. Runnels
Patrick G. Hanlon
John D. Corpolongo, D.O.
Daniel K. Roberts, M.D.

Staff Present

Emalene Correll, Kansas Legislative Research Department
Bill Wolff, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes Office

Others Present

O.J. Schmezel, Kansas Pharmaceutical Association, Topeka, Kansas
E. Marie Wyckoff, State Board of Pharmacy, Anthony, Kansas
J. A. Shalinsky, State Board of Pharmacy, Kansas City, Kansas
Dr. James E. Hill, State Board of Healing Arts, Arkansas City, Kansas
Elizabeth Carlson, State Board of Healing Arts, Topeka, Kansas
Norbert Stigge, O.D., Board of Optometry, Manhattan, Kansas
Pat Chmidling, Kansas Optometric Association, Topeka, Kansas
Carl Schmitthenner, Kansas State Dental Association, Topeka, Kansas
Arnold E. Levenson, D.P.O., Kansas Podiatry Association, Manhattan, Kansas
Wayne Probasco, Kansas Podiatry Association, Topeka, Kansas
Jerry Slaughter, Kansas Medical Society, Topeka, Kansas
Paul E. Fleener, Kansas Farm Bureau, Manhattan, Kansas
Terry Whelan, Kansas Association of Osteopathic Medicine, Topeka, Kansas
Frank Gentry, Kansas Hospital Association, Topeka, Kansas
Robert Kugel, M.D., Kansas University Medical Center, Kansas City, Kansas
T. C. Anderson, Kansas Bar Association, Topeka, Kansas
Glen Hanson, Kansas Chiropractic Association, Topeka, Kansas
Judy Perrine, Kansas Chiropractic Association, Topeka, Kansas
Jim Ketcherside, Kansas Health Care Provider Insurance Availability Fund

The meeting was called to order by the Chairman, Senator Wesley H. Sowers, who reviewed the statute creating the Health Care Provider Malpractice Study Commission noting especially the responsibilities of the Commission. The Chairman then introduced the staff to the Commission and asked members of the Commission to introduce themselves.

Jim Ketcherside, Chairman, Kansas Health Care Provider Insurance Availability Fund, reviewed the background of the Fund and listed the members of the Governing Board and the area represented by each. He referred to the Board's December 31, 1976 report submitted to the Insurance Commissioner's Office (Attachment A). He noted this program is generally referred to as the Plan.

Homer H. Cowan, Jr., Assistant Vice-President, Western Casualty and Surety Company, the servicing carrier for the Plan, presented a written statement, (Attachment B). Mr. Cowan pointed out the signs of optimism and the low loss ratio. He noted his belief that the latter was due to the fact that claims-made coverage is like starting a new company and the fact that some attorneys may be waiting until the pending court case is decided before filing cases. He believes the cases probably are out there.

The Honorable Robert F. Bennett, Governor of Kansas, expressed appreciation to the Insurance Commissioner's Office, the Legislature and the Commission for their interest in the area of medical malpractice. He noted that during the question and answer period following a speech he had made at the University of Kansas Medical Center, residents (post-graduate medical students) had expressed great concern over the fact they are required to have malpractice insurance but the state does not provide it nor does the state pay a sufficient stipend to the resident to purchase it for himself. The Governor asked the Commission to include this problem in its considerations.

The Governor stated that he and his staff are available to help the Commission in any way they can.

By consensus, someone representing the Medical School residents is to be asked to appear before the Commission at its next meeting. Discussion of the problem raised by the Governor revealed that recommendations to provide malpractice coverage for residents made in the last two sessions of the Legislature did not pass.

In answer to questions, Mr. Cowan stated that the Plan's rate is set by adding five percent to the ISO rates (rates established by the Insurance Service Organization, a rating organization that develops rates for the entire country) in order not to be competitive. Not all companies use ISO rates so in some instances, such as that of the Kansas chiropractors, the Plan's rates are lower. The Plan is writing coverage for almost all chiropractors who were previously covered by a non-admitted company. James E. Eaton, D.C., stated he felt chiropractors had found a source in the private sector which would soon be competitive with the Plan.

In answer to a question, Mr. Cowan stated that as carrier for the Plan they have always tried to get persons applying to them for coverage to go to two or three other carriers first. Since they found many of the early declinations were coming from carriers not in the medical malpractice market, they now require that all declinations be from carriers in this market.

Mr. Cowan, in answer to a question, stated he did not know how many persons now required by law to carry insurance were not previously covered. However, 150 uninsured risks applied to come into the Plan.

Answering a question, Mr. Cowan stated that at this point they feel the current 1980 expiration date for the Plan is a realistic one. He noted they encourage persons to go back to the private market. They will be taking a closer look at this on July 1, the renewal date for policies now included in the Plan.

Mr. Cowan noted that one problem is that there is no incentive for an agent to search the private market. The law requires Western, as servicing carrier, to pay agents commissions at the same rate as the private market. If they could pay less commission to the agent, an incentive would be provided.

The Chairman introduced Robert Kugel, M.D., Executive Vice-Chancellor of the University of Kansas School of Medicine, who stated he wanted to underscore the problem noted by the Governor. The take-home pay of residents based in Kansas City has decreased in spite of the increased stipend paid by the state because the malpractice insurance premium which they must now pay has gone up. Residents have stated that having the state pay this premium would be helpful in creating a climate conducive to their staying in Kansas. Approximately \$300,000 to cover the premiums for present residents is included in the budget request for the next fiscal year which is going to the Board of Regents.

In answer to questions, Dr. Kugel stated residents in 1977 will receive \$11,500 which is \$500 more than in 1976. Comparison figures, as of July 1, 1977, for the other Big Eight schools should be available within a month. Indications are that Kansas pays about \$1,000 less than the surrounding states.

Dr. Kugel noted the situation for residents in Wichita is different. Seventy-four receive some state stipend. However, this is augmented by the hospitals to which they are assigned. These hospitals pay malpractice premiums. When the request goes to the Board of Regents, it will probably include premiums for the residents in Wichita and other outreach locations.

Dr. Arnold Levenson, Kansas Podiatry Association, stated that 30 days after the present law went into effect, podiatrists received word the company providing their coverage was cancelling malpractice policies. They are now covered by the Plan and have been well satisfied.

In answer to questions, Dr. Levenson stated he did not know if the list of potential members for screening panels had been submitted to the Board of Healing Arts. If it had not been, he would have it by the weekend. Other than what Mr. Cowan said earlier, the podiatrists have had no indication that private companies might be coming back into the market with coverage for them.

James E. Hill, M.D., Secretary, State Board of Healing Arts, stated their problems are in determining who must be covered, getting lists for the screening panels and other housekeeping problems. Each month they receive a printout from the Insurance Commissioner's Office listing all those who are insured. This is checked against the list of those licensed to determine those not covered. A letter is sent to those not insured to determine the problem. From these answers, the Board determines whether the case should be referred to the Insurance Commissioner's Office or the Attorney General's Office. A list of those not covered has been developed but it is being held waiting for a decision in the Barton County case. In answer to a question, Dr. Hill stated the Board has been advised by their attorney, who is an Assistant Attorney General, to hold the list. Dr. Hill noted that there was a communications lag between insurance carriers and the Insurance Commissioner's Office. Of the 1,689 licensees listed as not covered on the first printout, 1,274 replies have been received. Some licensees have said they would not tell the Board whether or not they are covered. The Board will determine at its next meeting what action is to be taken in these cases.

Dr. Hill listed the following specific problems:

1. Semi-retirement: These people do not see why they have to be covered. It was noted that in some areas such as surgery the doctor doing only one or two procedures a year is a greater risk.
2. Federal government employees: Persons at Veteran Administration hospitals say they cannot be sued for malpractice and therefore do not need the insurance. However, there is some question since they can teach and can consult through other institutions. The Chairman noted a bill is being drafted to exempt these persons when performing duties for the federal government. Mr. Furse, who is drafting the bill, was asked to discuss the bill with Dr. Hill.
3. Dual License: This problem arises especially on state lines. Most people in this situation are obtaining coverage in Kansas.
4. Postgraduate Trainees: This problem is not a lack of desire on the part of the resident to carry insurance but rather of how he will pay for it. Dr. Hill commended the institutions who have found a way to pay this for residents.
5. Screening Panels: The Board believes this should be a voluntary program. They have approached the various groups under the Board of Healing Arts. The osteopaths and chiropractors have their programs worked out and the M.D.'s are developing a list. The Chairman asked Dr. Hill to contact all groups licensed by the Board to see that the lists are developed as required by law and to notify him when this has been done.

In answer to questions, Dr. Hill made the following points. The Board has not had any problems with foreign doctors. Five or six physicians have said they would not renew their licenses if they have to carry malpractice insurance. Additional help was

hired to handle letters to those not listed initially as carrying insurance. Continuing to carry out the Board's responsibilities has put an additional burden on staff. The Board hopes the Insurance Commissioner's Office can eventually provide them with a list of only those licensees not covered which will save considerable time. With these increased responsibilities, the Board feels it will have to increase its staff.

Dr. Hill noted some of the questions raised relate to the larger problem of how you keep a person not physically or mentally competent from performing some act he is not capable of doing. If he is licensed, he can perform any procedure. In larger communities hospital staff and the local medical society can keep the Board informed of such persons. However, in smaller communities where there is only one doctor, there is no way of determining whether he is competent to carry out the procedures he carries out.

Norbert Stigge, O.D., Board of Optometry, stated they have not had trouble getting insurance. He noted that most licensees were covered prior to the passage of the law mandating coverage. One person who is about to retire does not have coverage but he probably will either retire or pay the premium. Premiums have increased from \$18.00 to \$25.00 to over \$200. This has caused two licensees to retire this year. In answer to a question, Mr. Stigge stated the larger premium is for less basic coverage. Rates are the same for all states. The Board has been requested to see if they can determine if this increase would have happened anyway or if it was caused by the Kansas law. Mr. Stigge was requested to share any information they collect relative to this request.

In answer to questions, Mr. Stigge stated there was less than \$1,000 in claims for all optometrists in the State of Kansas in 1976. Figures to date for 1977 are not available. Mr. Stigge stated that to his knowledge the Kansas law would not have increased the demand for coverage as most of the profession was covered before. He did not think there was a significant number of their profession covered by the Plan.

Staff noted the Plan's report indicated five optometrists were covered with a premium of approximately \$69.00 per person.

In answer to a question, Mr. Stigge stated that the premium for optometrists will probably go up again when the law allowing them to use topical drugs becomes effective.

Phil Hurley, Attorney General's Office, reviewed the case which is before the Barton County District Court. A brief has been submitted by the plaintiff and has been answered by the Attorney General and others. The plaintiff has been allowed to file an answer to this brief. The case is set for oral argument on July 5. The interveners, who support the law, are Kansas Medical Society, Kansas Hospital Association, Kansas Health Care Association and the Insurance Availability Plan.

In answer to questions, Mr. Hurley stated there are no injunctions. The position of the Attorney General, however, is not to take any action against those not covered until the court makes a decision. If action is taken now, the constitutional question would be raised so action might as well be delayed until this case is decided. Unless something unforeseen happens on July 5, a decision could be expected in 30 days. There could be an appeal to the Court of Appeals or the Supreme Court. Depending on how expeditiously an appeal is handled, there could be a decision before the 1978 Session. Although research has not been completed, it appears the position of the Attorney General would be that persons would have to pay premiums retroactively if the decision is in the state's favor.

Joseph Shalinsky, Executive Secretary, State Board of Pharmacy, stated he knew of no pharmacist who has had difficulty in obtaining coverage. The difficulty has been in the pharmacist's understanding that it is necessary for him to obtain coverage that will allow him to pay into the Fund. Many had a store policy and carriers found they were unable to determine the pharmacist's portion of such a policy so they could prorate that amount for the fund. Most carriers have taken the pharmacist out of the store policy and have written individual policies which has solved the problem.

He noted there was also the problem of determining who was affected by the law. Of the 2,500 pharmacists registered in Kansas, about 1,500 reside in the state. Some residing in the state do not practice, some residing in the state practice only outside of the state, and some residing outside of the state practice in Kansas. The Board's interpretation of the law is that anyone practicing in Kansas must be covered. However,

there is the problem of a person licensed in Missouri who covers for someone in Kansas for just a few days. In addition, a determination had to be made that interns who are not registered but who act under the direction of a registered pharmacist were not affected by the Act and did not have to be covered.

In answer to a question, Mr. Shalinsky stated the problem of who is affected by the law has been solved but he could not say it was completely solved. A pharmacist is required to notify the Board of a change in residence but not of a change in place of employment. Also a pharmacist may choose to work in Kansas only two or three days a week. These situations make it hard to pin down whether a person is practicing in Kansas. If the pharmacist does work in Kansas, the Board can inform him of the insurance requirements, but it is difficult for them to enforce.

The Board is concerned that if the Board takes action against a pharmacist, attorneys can use records submitted to the Board or minutes of the Board meeting as a basis for a malpractice suit against the pharmacist after the Board has taken action. This inhibits Board members from asking the kinds of questions which should be asked. Mr. Shalinsky also noted that if criminal action or malpractice action is taken against a pharmacist, it is difficult for the Board to find this out. After a discussion of the possibility of going into executive session and how this would be affected by the new open meetings law, the Chairman asked staff to research this question and report to the Commission.

In answer to questions, Mr. Shalinsky stated their premiums are usually \$18.00 to \$25.00. To his knowledge they are not being increased. He was not aware that 27 pharmacists were covered under the Plan, so he could not answer a question relative to why they could not be covered by the private market.

In answer to a question, Mr. Shalinsky stated the Board is aware of the problem of "prescription doctors" in Wichita and the fact some pharmacists could be involved. He did not answer if this would be a basis for a malpractice suit against the pharmacist if he was involved but did state the Board has a heavy agenda for the next meeting because of this situation.

In answer to a question raised by E. Marie Wyckoff, a member of the State Board of Pharmacy, Ron Todd, Insurance Commissioner's Office, stated if the Board has reason to believe a pharmacist is not covered, it is their responsibility to so inform the Attorney General and to take any other action the Board deems necessary.

The Commission recessed for lunch at 12:00 and reconvened at 1:00 p.m.

Afternoon Session

Frank Gentry, Kansas Hospital Association, stated most large hospitals are experiencing lower premiums. However, smaller hospitals are experiencing higher premiums primarily for two reasons: (1) most small hospitals had three-year policies and are just now being hit with the increase others felt earlier; (2) small hospitals are carrying their own umbrella policy in addition to the surcharge for the Fund because they are not sure the Fund is constitutional. Because of this problem, the Hospital Association intervened to broaden the issues covered in the Barton County case. Mr. Gentry then referred to his written statement (Attachment C).

Mr. Gentry stated the Hospital Association would like to recommend the State pay the premium for medical residents; that consideration be given to lowering the \$100,000 requirement for hospitals to be self-insured; an adjustment of the 45 percent surcharge for groups based on the group's use of the fund. It was noted this latter could mean an increased percentage for hospitals as well as a decrease.

In answer to a question, Mr. Todd stated two hospitals are self-insured. After a review of the statutory provision for being self-insured, it was noted there was no significance to the figure \$100,000. The legislative intent was not to provide for a substantial number of self-insured. Mr. Gentry was asked to report to the Commission any hardship cases that do not seem to fit the \$100,000 figure.

Some objection was voiced to lowering the surcharge for large hospitals since most of them had experienced such reduced premiums as to constitute a windfall.

Jerry Slaughter, Kansas Medical Society, thanked those who worked for the present law. He noted persons on the state's border have contacted them to see how they can get into the Kansas Plan. The problem they see now is that the market has not yet stabilized enough so more could withdraw from the Plan. They do not think this is due to the situation in Kansas but rather to the national situation and the fact some companies have withdrawn from the market.

Mr. Slaughter noted that the Attorney General's Office and the Insurance Commissioner's Office have been most cooperative. The Society chose to intervene in the Barton County case to assure that more than the mandatory provision of the law was tested. They have been told the first of the year is the earliest they can expect a decision if the Supreme Court hears the case and is urged to expedite such hearings. He stated that when the law is finally tested, those doctors not now covered will purchase insurance. When the law went into effect, the Society notified its members of the requirements of the law and advised them they might consider keeping higher limits until the law was tested in court.

Mr. Slaughter stated the Society supports the recommendation the state purchase coverage for medical residents and also asks consideration be given to exempting VA physicians.

In order to develop a list of physicians willing and qualified to serve on screening panels, the Society sent letters to members giving an explanation of the panel and what serving on one involved. The Society is presently developing a list by region and specialty from the information received.

In answer to a question, Mr. Slaughter stated he did not think the Insurance Commissioner had written companies where doctors have chosen to carry higher coverage notifying them only \$100/\$300,000 was required.

Mr. Slaughter, in answer to a question, stated about 220 to 240 physicians are covered by the Plan. A number of physicians who are good risks have been dropped by their companies. They probably could purchase coverage on the open market but the two companies still writing in Kansas do not want to increase their risk portfolio. This decision includes all types of risks.

In answer to a question, Mr. Slaughter stated that in talking to physicians, he does not feel the practice of defensive medicine has diminished since the law became effective. The Society is attempting to encourage physicians to practice cost-conscious medicine which is probably increasing. Doctors on the Commission agreed the practice of preventive medicine has not diminished and may have even increased.

Fletcher Bell, Insurance Commissioner, introduced his staff. He noted he had some reservations about the legislation passed in 1976, but he is now convinced Kansas has one of the best sets of statutes in this area. He noted the Plan and Fund are operating as intended although some problems, none of which were unsurmountable, have arisen. His office has no legislative recommendations to make at this time. However, his office does have some concerns. Although his job is not enforcement, he expressed concern over the number of non-compliers. As of April 30, 1977, 2,367 were listed as in non-compliance. As of April 30, 1977, 2,367 were listed as in non-compliance. Of these, 1,007 were in compliance but because of a time lag in reporting their renewal was not yet reported. Of the 1,360 left, some are no doubt not active and therefore, not subject to the requirement. However, this still leaves a significant number not in compliance. Commissioner Bell expressed hope that in time the licensing agencies will obtain information from non-residents so a more accurate figure of the number of non-compliers in the non-resident category can be provided. Mr. Bell reviewed statistics relative to claims and disbursements from the April 30 report which was sent to Commission members earlier. He stated there have been quite a few claims reported within the last few weeks but because of the claim limits in the law, the Fund is on a firm financial footing and will remain so.

In answer to a question, Mr. Bell stated that if a non-resident provider is actively engaged in providing health care in Kansas, he must comply with the law.

Mr. Bell, in answer to questions, stated they do not have a record of the prior carrier, but he felt most people covered by the Plan were there because the previous carrier, still admitted to sell in Kansas, had removed itself from this market. He noted that what is seen in the market was not unanticipated. His office knew Aetna wanted to withdraw from this market but stayed in at his request until the Legislature had time to take some action. Medical Protective was willing to write new policies. He expressed the feeling that St. Paul will be willing to increase coverage for hospitals. He expressed optimism that since the Plan has seen a good year, his office can influence other companies that Kansas is a good place to do business. Companies remaining in Kansas are expanding to some degree. The Gulf Atlantic is now in the malpractice market. Dr. Corpolongo noted that two of their members had applied to this company and had been denied. Since these were new physicians he questioned the selectivity of the company. Mr. Bell stated his office could not and should not force a company to cover someone. Gulf Atlantic had told him they would give consideration to all applicants but had not said they would cover all applicants.

Answering a question, Mr. Bell stated he felt that if things continue as they are now, the claim against the General Fund can be removed in five years.

In answer to a question, Mr. Bell stated that in the beginning some applied to the Plan because of the rate. However, with the new declination requirement, there will be a rapid decrease in those applications. Those covered by the Plan have to reapply each year and may or may not be accepted.

The problem of residents having to purchase prior coverage was raised. Mr. Bell noted this issue had been raised in a letter he received from the Chairman which he had not yet answered. He thought this problem could be handled administratively and would not require legislation. He noted they could suggest to St. Paul they make a filing with the Insurance Commissioner's Office allowing Wesley Hospital to continue coverage while residents are serving elsewhere for a short period of time and have it apply to maturity for claims made.

In answer to a question, Mr. Bell told Dr. Roberts that if his present company cancels his policy or he leaves them and goes to another company, eight years later he would have to purchase prior coverage. He noted that his office is aware of the problem and it will be solved. The Chairman noted that it was his impression from the hearings last year that the tail would be handled by the Fund.

Mr. Bell, in answer to a question, stated only one claim has been paid. There have been 24 additional petitions but they were all denied because the occurrence was prior to July 1, 1976. A question was raised as to how many of these 24 involved providers not covered before or who had a claims-made policy before and now had no tail. The attorney for the Commissioner's Office stated that under the Act, only incidents which have occurred after July 1, 1976 are covered. The petitions were reviewed and inquiries made to determine the incident giving rise to the petition which occurred prior to July 1, 1976. In answer to a question, Mr. Bell stated that any admitted company offering a claims-made policy had to file with his office that they would offer tail coverage and had to notify their policyholders it was available. However, they have no control over non-admitted companies.

Glen Hanson, Kansas Chiropractic Association, summarized his written statement (Attachment D). In answer to a question, he stated a list to serve on screening panels had been prepared by the officers of the Association and had been sent to the Board of Healing Arts and to the judicial districts.

In answer to a question, Mr. Cowan stated if there was a question about whether or not a provider group was covered, they contacted the appropriate board to determine if the group was licensed. There is still a question about employed technicians. Staff noted physiotherapist is included under the physical therapy law. It was suggested that future reports list the official title of the group with the adopted title in parenthesis.

Carl Schmitthenner, Kansas State Dental Association, stated that dentists are not currently having any problems with malpractice. The licensing board is in the process of compiling a list of persons to serve on screening panels.

T.C. Anderson, Kansas Bar Association, presented a written statement including recommendations for amendments to the present statutes (Attachment E).

It was noted making the amended statute of limitations apply to all professional groups, was considered by the 1976 interim committee and the standing committees of the Legislature. The stumbling block had been finding a workable definition of professional services. Mr. Anderson stated the Association proposed "anyone licensed by the State of Kansas."

Staff Report

Responding to a question raised earlier by Mr. Shalinsky, staff stated amendments passed during the 1977 Session, placed limitations on instances in which a meeting could be closed and required that the justification must be stated as part of the motion to close the meeting. It was pointed out the intent of the law was to cover units of government reviewing hiring and firing of nonelected personnel. To correct the problem raised by Mr. Schalinsky the law would probably have to be amended. By consensus, staff is to draft an amendment speaking to the problem raised by Mr. Shalinsky.

There was a discussion relative to protecting the person reporting to or testifying before a licensing board. Reference was made to Santa Fe v. Civil Rights Commission, a case in which the court ruled there is a difference between an investigation and the hearing itself. Records of the investigation are not open records and are not public records. However, once there is a hearing, then those matters and records come under the open records law. This law requires that records be kept and maintained and the Court has ruled this includes records of meetings.

After further discussion, the consensus was to ask staff to draft a bill providing for disciplinary proceedings relating to health care providers be conducted in a manner similar to the disciplinary proceedings against attorneys in regard to confidentiality of records and testimony.

Staff presented a summary of the medical malpractice package passed during the 1976 Session of the Legislature.

In answer to a question, staff stated that the number of suits filed and the number of claims paid is available from the Insurance Commissioner's Office. However, there is no mechanism for recording whether or not there was a screening panel appointed. It was noted the rules governing screening panels have been adopted by the Supreme Court and Judge Kline, Sedgwick County, is willing to use one when the lists from which members are to be chosen are available.

The next meeting was tentatively set for September, depending on whether or not information from the Insurance Commissioner's Office can be compiled and made available by that time. Subjects suggested for consideration at the next meeting were: "tail" coverage for those who did not have a claims-made policy from an admitted company at the time the present law went into effect; coverage for those who did not carry insurance between July 1 and the time a court decision regarding the constitutionality of present statutes is handed down; providing an incentive for people selling insurance to buy it on the open market. It was also suggested the Commission hear from the various boards regarding how they determine which providers do not have insurance and how many providers there are questions about. The Chairman asked Commission members to give consideration to the points which should be included in the report due December 15. Members are also to send the Chairman any additional subject matter they wish considered or additional people they would like to hear.

The meeting was adjourned at 4:00 p.m.

Prepared by Emalene Correll

Approved by Committee on:

6/20/77
(Date)

Attachment A

KANSAS HEALTH CARE PROVIDER / INSURANCE AVAILABILITY PLAN

February 18, 1977

Board of Governors

CHAIRMAN
JAMES L. KETCHERSIDE
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Farmers Alliance Mutual Ins. Co.
McPherson, Kansas 67460

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HOMER H. COWAN, JR.
Assistant Secretary
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One State Farm Plaza
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DAVID W. WILSON
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The Honorable Fletcher Bell
Commissioner of Insurance
State Office Building
Topeka, Kansas 66612

Dear Fletcher,

It is with a great deal of pleasure that I submit the following information relating to the first six months of operation of the Kansas Health Care Provider Insurance Availability Plan. For the purpose of brevity, I will refer hereafter in this report to the "Plan".

The Board of Governors of the Plan, composed of two representatives from the Domestic Insurance Companies, three representatives from the Foreign Insurance Companies, one representative from the Health Care Providers, two representatives from the general public and one representative from the agents, totalling nine Governors, met for the first time as an official Board on July 21, 1976. At that meeting the undersigned was elected Chairman of the Board of Governors. Mr. Paul Tompkins was elected Treasurer and Mr. Paul Fleener was elected Secretary. Prior to this meeting the AD-HOC Committee, composed of the same members as those serving on the Board of Governors, adopted the "Plan" as required in K.S.A. 40-3413 and submitted it to your office for formal approval. The formal approval was received June 18, 1976, to be effective July 1, 1976. Mr. Homer Cowan of the Western Insurance Companies served as Chairman of the AD-HOC Committee, and certainly served in a superb manner. Through his efforts, the "Plan" was designed and adopted within the very limited but necessary deadlines. He certainly should be commended for the diligent effort he put forth during the development period.

Since the effective date of the Plan, July 1, 1976, and through December 31, 1976, the Board of Governors has met twice. Both of these meetings were held in Topeka, Kansas, at the office of the Insurance Department. At each meeting of the Board of Governors, staff from your department were in attendance, and were extremely helpful to the Board. Both Robert Hayes and Dick Brock of your department have been very helpful and cooperative and have provided a considerable amount of counsel to the Board. We appreciate their assistance very much.

Attch. A

KANSAS HEALTH CARE PROVIDER / INSURANCE AVAILABILITY PLAN

Board of Governors

CHAIRMAN
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Farmers Alliance Mutual Ins. Co.
McPherson, Kansas 67460

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Fort Wayne, Indiana 46805

The Board of Governors recognized that initially there would be numerous small but important questions that would need answered, particularly in the day to day operation. Therefore, in order to more quickly address itself to those questions at a minimum of cost, but yet in a responsible way, the Chairman of the Board of Governors appointed an Underwriting and Forms Committee. This Committee is composed of Mr. Don Jones, St. Paul Companies, Mr. David Wilson, Medical Protective Company and Dr. George Learned, Health Care Provider. Mr. Jones serves as the Chairman of the Committee. It is through the efforts of this Committee that numerous questions were answered and details worked out that alleviated the necessity of having a meeting of the entire Board of Directors.

At the meeting of the Board of Governors July 21, 1976, the Board ratified the AD-HOC Committee's selection of the Western Insurance Companies of Fort Scott, Kansas, to be the servicing carrier for the business written through the Plan. As of December 31, 1976, this arrangement has proven very satisfactory. The Western Insurance Companies receive compensation for their services in the amount of 25% of the gross premium of those risks written through the Plan. At the outset, it was recognized by the servicing carrier and the Board of Governors that the servicing contract and fee were developed quite rapidly and without the data normally desired to make a reasonable analysis of what should be required. The time deadlines did not permit an in-depth study. Consequently, the servicing carrier has gone on record with the "Plan" that the Western Companies are aware that after the initial set-up costs have been incurred, the fee being charged may produce un-anticipated excessive profits. Further, the servicing carrier has agreed that if it is determined by the Board of Governors that the servicing carrier has realized excess profits as a result of the fee structure of the contract, the excess profits will be voluntarily returned to the "Plan".

Some of the highlights of the "Plan" operation include:

- (1) As of December 31, 1976, there are 680 Health Care Providers insured through the Plan. Since the "Plan" is to insure those Health Care Providers that are unable to procure the required insurance coverages through ordinary methods, we can assume that the "Plan" is providing insurance protection for 680 Health Care Providers that would not be able to buy insurance in the normal market and would quite likely be uninsured.

KANSAS HEALTH CARE PROVIDER / INSURANCE AVAILABILITY PLAN

Board of Governors

CHAIRMAN

JAMES L. KETCHERSIDE
Treasurer
Farmers Alliance Mutual Ins. Co.
McPherson, Kansas 67450

SECRETARY

PAUL E. FLEENER
Kansas Farm Bureau
2321 Anderson Avenue
Manhattan, Kansas 66502

TREASURER

PAUL D. TOMPKINS
2101 W. 21st
Topeka, Kansas 66604

J. B. BARBEE

Kansas Legislative Director
United Transportation Union
508 West 29th Street North
Wichita, Kansas 67204

HOMER H. COWAN, JR.

Assistant Secretary
The Western Insurance Companies
Fort Scott, Kansas 66701

DONALD J. JONES

General Manager
The St. Paul Insurance Companies
210 West 10th Street
Kansas City, Missouri 64105

DR. GEORGE LEARNED

401 Arkansas
Lawrence, Kansas 66044

LAURA P. SULLIVAN

Senior Attorney
State Farm Insurance Companies
One State Farm Plaza
Bloomington, Illinois 61701

DAVID W. WILSON

Vice President
The Medical Protective Company
5184 Reed Road
Fort Wayne, Indiana 46805

- (2) As of December 31, 1976, the "Plan" has collected \$782,311 in premiums and paid \$339,214 to the Health Care Stabilization Fund as surcharges, making a total amount collected of \$1,121,526.
- (3) As of December 31, 1976, the "Plan" had paid \$70,106.98 in commissions to various licensed Kansas insurance agents.

Enclosed with this report you will find the following attachments:

- Exhibit I- Statement of Assets, Liabilities and Plan Balance as of December 31, 1976, and the related Statement of Operations for the period July 1, 1976, through December 31, 1976, (unaudited) by the firm of Mize, Houser, Mehlinger & Kimes, certified Public Accountants.
- Exhibit II- Listing of various classes of insureds in Plan by number and premium per class.
- Exhibit III- Unearned premium as of December 31, 1976.
- Exhibit IV - Loss Reserve as of December 31, 1976.
- Exhibit V - Allocated Expense Reserve as of December 31, 1976.
- Exhibit VI- I.B.N.R. Loss Reserve as of December 31, 1976.
- Exhibit VII- I.B.N.R. Allocated Loss Expense Reserve as of December 31, 1976.

The "Plan" has retained the services of L. M. Cornish of the Law Firm of Glenn, Cornish & Leuenberger, Topeka, Kansas, to assist it in matters requiring legal guidance. The constitutional test, by Dr. Liggett, of the Health Care Law as enacted by the 1976 Legislature is of grave concern to the Board of Governors and we will supply whatever information the court might require in its review of this question.

KANSAS HEALTH CARE PROVIDER / INSURANCE AVAILABILITY PLAN

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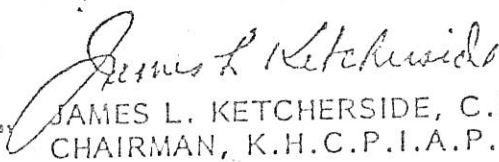
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5184 Reed Road
Fort Wayne, Indiana 46805

Although the "Plan" has only been operational six months, it does seem to be operating smoothly and serving the purpose for which it was created. The Board of Governors has recognized a major deficiency in the Health Care Law as enacted. That deficiency is the failure to include a "run-off" or dissolution clause for the "Plan" when it expires July 1, 1978. This should be corrected by the 1977 Legislature.

This report is somewhat brief in nature. However, I trust it will provide some guidance as to what information you will request from the "Plan" in the annual report.

Again, I extend my thanks to you and your staff for all the assistance we have received. Also, I wish to recognize the volunteer time given by each of the members of the Board of Governors. All have very graciously donated their time and talent to the successful operation of the "Plan" to date.


JAMES L. KETCHERSIDE, C.P.C.U.
CHAIRMAN, K.H.C.P.I.A.P.

Enc.

KANSAS HEALTH CARE PROVIDER
INSURANCE AVAILABILITY PLAN

PREMIUMS UNEARNED

AS OF 12-31-76

Servicing Carrier: THE WESTERN CASUALTY & SURETY CO.

Policy Year

<u>Name of Business</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>Total</u>
Physicians/Surgeons	256,016.29				
Hospitals	123,177.12				
Other Health Care Professionals	49,121.53				
Other Health Care Facilities	.00				
Other Incidental Coverages	14,132.52				
 *Total	 442,447.46				

*Total must balance to Premiums Unearned of Monthly Statistical Summary Control.

KANSAS HEALTH CARE PROVIDER
INSURANCE AVAILABILITY PLAN

LOSS RESERVE

AS OF 12-31-76

Servicing Carrier: THE WESTERN CASUALTY & SURETY CO.

<u>Line of Business</u>	<u>Pol. Yr. 1976</u>		<u>Pol. Yr. 1977</u>		<u>Pol. Yr. 1978</u>		<u>Pol. Yr. 1979</u>		<u>Total</u>
	<u>Acc. Yr. 1976</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1980</u>	
Physicians/Surgeons	0								
Hospitals	0								
Other Health Care Professionals	0								
Other Health Care Facilities	0								
Other Incidental Coverages	3,350.00								
*Total	3,350.00								

*Total must balance to Loss Reserve of the Monthly Statistical Summary Control.

KANSAS HEALTH CARE PROVIDER
INSURANCE AVAILABILITY PLAN

ALLOCATED EXPENSE RESERVE

AS OF 12-31-76

Service Carrier: THE WESTERN CASUALTY & SURETY CO.

	<u>Pol. Yr. 1976</u>		<u>Pol. Yr. 1977</u>		<u>Pol. Yr. 1978</u>		<u>Pol. Yr. 1979</u>		<u>Total</u>
	<u>Acc. Yr. 1976</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1980</u>	
<u>of Business</u>									
Physicians/Surgeons	0								
Hospitals	0								
Other Health Care Professionals	0								
Other Health Care Facilities	0								
Other Incidental Coverages	1,340.00								
*Total	1,340.00								

*Total must balance to Allocated Expense Reserve of the Monthly Statistical Summary Control.

KANSAS HEALTH CARE PROVIDER
INSURANCE AVAILABILITY PLAN

IBNR LOSS RESERVES

AS OF 12-31-76

Servicing Carrier: THE WESTERN CASUALTY & SURETY CO.

<u>Line of Business</u>	<u>Pol. Yr. 1976</u>		<u>Pol. Yr. 1977</u>		<u>Pol. Yr. 1978</u>		<u>Pol. Yr. 1979</u>		<u>Total</u>
	<u>Acc. Yr. 1976</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1977</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1978</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1979</u>	<u>Acc. Yr. 1980</u>	
Physicians/Surgeons	0								
Hospitals	0								
Other Health Care Professionals	0								
Other Health Care Facilities	0								
Other Incidental Coverages	251.25								
*Total	251.25								

*Total must balance to IBNR Loss Reserve of the Monthly Statistical Summary Control.

MIZE, HOUSER, MEHLINGER & KIMES

CERTIFIED PUBLIC ACCOUNTANTS

NO. 1 TOWNSITE PLAZA

TOPEKA, KANSAS 66603

ROBERT P. MIZE, C.P.A.
RALPH E. HOUSER, C.P.A.
ROBERT M. MEHLINGER, C.P.A.
TERRY J. KIMES, C.P.A.
DUANE E. BOND, C.P.A.
KEITH L. OLSON, C.P.A.

MEMBERS
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
PHONE 913 233-0536

Board of Governors
Kansas Health Care Providers
Insurance Availability Plan

Ladies and Gentlemen:

The accompanying statement of assets, liabilities and Plan balance of the Kansas Health Care Provider Insurance Availability Plan as of December 31, 1976, and the related statement of operations for the period July 1, 1976 (date operations commenced) through December 31, 1976, were not audited by us and, accordingly, we do not express an opinion on them.

Mize, Houser, Mehlinger & Kimes

January 31, 1977

Kansas Health Care Provider Insurance Availability Plan
Statement of Assets, Liabilities and Plan Balance
Unaudited

Assets

	<u>December 31,</u> <u>1976</u>
Cash in Plan bank account	\$ 32,529
Cash in servicing carrier bank account	62,392
Cash in savings account (Note 2)	<u>491,283</u>
	586,204
Accrued interest receivable (Note 2)	<u>2,086</u>
 Total assets	 <u>\$588,290</u>

Liabilities and Plan Balance

Reserve for losses - Case basis	\$ 3,350
Reserve for losses incurred but not reported (Note 3)	251
Reserve for claim expenses (Note 3)	1,440
Servicing carrier fee payable (Note 4)	22,378
Accounts payable	1,176
Commissions payable	1,191
Unearned premiums	442,447
Payable to the Kansas Health Care Stabilization Fund (Note 1)	8,019
Amounts collected on unissued policies	38,399
Accrued taxes	<u>2,549</u>
 Total liabilities	 <u>521,200</u>
Plan balance on July 1, 1976 (date operations commenced)	-
Excess of premiums earned over losses and expenses for the six months ending December 31, 1976 (Note 1)	<u>67,090</u>
 Total appropriated Plan balance (Note 1)	 <u>67,090</u>
 Total liabilities and Plan balance	 <u>\$588,290</u>

See accompanying summary of significant accounting policies
and notes to unaudited financial statements

Kansas Health Care Provider Insurance Availability Plan
Statement of Operations
Unaudited

	Six Months Ended December 31, <u>1976</u>
Underwriting income:	
Premiums written	\$782,311
Less unearned premiums	<u>442,447</u>
Premiums earned	<u>339,864</u>
Underwriting losses and expenses incurred:	
Losses paid	171
Increase in loss reserves (Note 3)	<u>3,601</u>
Losses incurred	3,772
Claims adjustment expenses paid	250
Increase in claim adjustment expense reserve (Note 3)	<u>1,440</u>
Losses and expenses incurred	5,462
Servicing carrier fees (Note 4)	195,578
Commission expense	70,107
Accounting	1,260
Blanket bond	556
Bank charges	52
Travel and expenses	3,359
Office supplies	152
Legal fees	50
State insurance taxes	2,549
Miscellaneous expenses	<u>18</u>
Total underwriting losses and expenses	<u>279,143</u>
Net underwriting gain	60,721
Interest income earned	<u>6,369</u>
Excess of premiums earned over losses and expenses (Note 1)	<u>\$ 67,090</u>

See accompanying summary of significant accounting policies
and notes to unaudited financial statements

Kansas Health Care Provider Insurance Availability Plan
Summary of Significant Accounting Policies

Income Recognition

The accrual method of accounting is used for financial, tax and Kansas Insurance Commission reporting purposes.

Reserve for Losses

Case Basis - The case basis reserve for losses is determined by the service carrier and is an estimate of reported losses in process of settlement.

IBNR - The reserve for losses incurred but not reported represents an estimate by the service carrier of the losses to be incurred on claims in the process of being reported.

Claim Expenses - The reserve for claim expense represents an estimate by the service carrier of the future costs of settling the case basis and IBNR losses.

Income Taxes

The Plan received its tax-exempt status under Internal Revenue Code Section 501(c)(6). The Plan files an information return only, and thus the Plan has neither a Federal or State liability for income taxes.

Kansas Health Care Provider Insurance Availability Plan
Notes to Financial Statements
December 31, 1976
Unaudited

1. Organization

The Plan was created by the provisions of the 1976 Kansas Senate Bill 646 to issue professional liability insurance policies commencing July 1, 1976, to health care providers who are unable to obtain coverage through ordinary methods. Under the provisions of the bill, health care providers must maintain a minimum coverage of \$100,000 per claim and \$300,000 annual aggregate for all claims made during the policy period. In addition, the health care providers are required to pay a surcharge to the Kansas Health Care Stabilization Fund which is funded to compensate malpractice victims who are successful in judgments in excess of the above listed coverages.

Every entity authorized to write bodily injury or property damage liability insurance in Kansas is required to be a member in the Plan. In the event that sufficient funds are not available for the sound financial operations of the Plan, all members shall, on a temporary basis, pending recoupment, contribute to the financial requirements of the Plan. Such contributions to the Plan will be recoverable annually from any excess of premiums earned over losses and expenses or, if no such excess exists, from the Kansas Health Care Stabilization Fund.

Any excess of premium earned over losses and expenses is to be transferred on an annual basis to the Kansas Health Care Stabilization Fund.

2. Cash in Savings Account

The Plan had \$491,283 on deposit at 5% in a passbook savings account at December 31, 1976.

3. Reserves for Losses and Expenses

The incurred but not reported losses have been estimated to be \$251 which represents 7½% of the reserve for losses as determined on a case basis. The reserve for claim expenses has been estimated to be \$1,440 which represents 40% of the expected claim losses.

The Plan writes insurance policies on a "claims made" basis which provides coverage to the health care provider for claims reported to the Plan during the twelve-month term of the policy. Premium determination is based on the cost of handling and paying claims made during the term of the policy.

Kansas Health Care Provider Insurance Availability Plan
Notes to Financial Statements
December 31, 1976
Unaudited

4. Servicing Carrier Fees

The Plan has entered into an agreement with The Western Casualty and Surety Company to act as servicing carrier for the period July 1, 1976 through June 30, 1978, unless terminated earlier by either of the parties. The duties of the servicing carrier include the issuance and servicing of health care provider liability insurance policies of the Plan and the performance of related administrative functions. The compensation for such services is 25% of the premiums written on behalf of the Plan.

5. Plan Continuation

The State of Kansas has charged a physician with violations of Kansas law in that the defendant does not maintain professional liability insurance as required by Kansas Senate Bill 646 and requests he be enjoined from rendering professional services as a health care provider in Kansas. The defendant alleges that Kansas Senate Bill 646 is unconstitutional. The continuation of the Plan may be dependent on the future outcome of the case.

KANSAS HEALTH CARE PROVIDERS INSURANCE AVAILABILITY PLAN

Through December 31, 1976

<u>Physicians and Surgeons</u>	<u>Number</u>	<u>Premium</u>
80102 - Em. Medicine - no major surgery	12	21,492.
80109 - Physicians - no major surgery	3	5,901.
80114 - Surg. - ophthalmology	1	2,001.
80116 - Physicians or Surg. Asst. (Fellowship)	43	13,085.
80117 - Surg. - General or Family practice - Not primarily engaged in major surgery	7	13,814.
80129 - Employed Physicians Asst.	2	233.
80141 - Surgery - cardiac	1	3,440.
80143 - Surgery - general	26	71,195.
80144 - Surgery - thoracic	1	4,797.
80145 - Surgery - urological	2	5,500.
80148 - Employed Tech.	11	338.
80151 - Anesthesiology	8	21,486.
80153 - Surgery - OB-GYN	15	54,870.
80154 - Surgery - orthopedic	17	57,801.
80157 - Em. Medicine - major surgery	1	3,440.
80159 - Surgery - otorhinolaryngology	1	3,440.
80167 - Surgery - Gyn.	3	10,794.
80177 - Employed Phy. or Surg.	26	16,118.
80235 - Physical Medicing & Rehabilitation	3	1,848.
80239 - Fam. Prac. - No surgery	10	7,255.
80241 - Gastroenterology - no surgery	1	185.
80242 - Gen. Prac. - no surgery	15	9,055.
80249 - Psychiatry	11	7,042.
80251 - Psychosomatic Medicine	4	1,480.
80254 - Allergy	1	616.
80257 - Internal Med. - no surgery	16	7,642.
80261 - Neurology - no surgery	3	1,848.
80263 - Ophthalmology - no surgery	1	616.
80266 - Pathology - no surgery	9	4,650.

80267 - Pediatrics - no surgery	2	1,232.
80268 - Physicians - no surgery	4	2,500.
80269 - Pulmonary Diseases - no surgery	1	616.
80273 - Family Practice - minor surgery	31	24,844.
80274 - Gastroenterology - minor surgery	1	616.
80275 - Gen. Prac. - minor surgery	10	12,488.
80282 - Dermatology - minor surgery	2	2,174.
80284 - Int. Med. - minor surgery	1	1,304.
80291 - Otorhinolaryngology - minor surgery	1	1,087.
80293 - Pediatrics - minor surgery	1	1,087.
80294 - Physicians - minor surgery	2	21,740.
80999 - Partnerships or Prof. Corp		12,884.

OTHER HEALTH CARE PROVIDERS

59112 - Pharmacist	27	648.
80410 - Chiropractor	233	33,595.
80411 - Employed Chiropractor	1	35.
80412 - Partnership - Chiropractor	2	112.
80938 - Physical Therapist (employed)	3	99.
80994 - Optometrist	5	348.
80960 - CRNA	56	34,759.
80993 - Podiatrist	32	7,491.
80995 - Physiotherapist (self-employed)	2	292.
80999 - Partnership or Professional Corp.		301.

MEDICAL CARE FACILITIES

Hospitals	9	266,635.
OLT		20,126.

THE WESTERN CASUALTY AND SURETY COMPANY

AS SERVICING CARRIER

OF

THE KANSAS HEALTH CARE PROVIDERS INSURANCE AVAILABILITY PLAN

AN

OVER-REVIEW

THE WESTERN AS
SERVICING CARRIER:

The Western did not seek nor solicit the role of servicing carrier. We were deemed to be an appropriate company due to the fact that (1) We are a Kansas domestic company. (2) We have six claims offices throughout the state plus offices on the borders of Missouri and Oklahoma. (3) There was a tax incentive due to being a domestic company. (4) And the fact that no other carrier indicated a willingness to serve in this capacity.

SERVICING CARRIER
STATISTICS:

Premium Written	\$951,285.00
Stabilization Fund Surcharge	416,045.00
Agents Commissions	83,990.58

INCURRED LOSSES:

With the exception of about 15 cases involving sums slightly in excess of \$13,000, our claim activity has been minor.

INCURRED BUT NOT
REPORTED (IBNR):

IBNR formulas of the past are useless since such formulas were based upon "occurrence" contracts. The correct IBNR for claims-made is at best an educated guess. It would be our estimate that a proper IBNR should be 60% of earned premium.

IBNR - \$480,771.00

(This IBNR has not at this time been accepted by the Board of Governors or the Department of Insurance.

SERVICING CARRIER
CONTRACT:

No one has any familiarity with a servicing carrier contract based upon the claims-made contract. Since the PLAN would not have to accept any "carry over", but was starting fresh without any backlog, it was logical to assume claim activity would be minimum at the inception.

The Western will
make refund.

The present Servicing Carrier contract was "tailored" after the usual contracts in existence (occurrence). There is a notable exception..... In that The Western is on record to the Board of Governors to Return any profit deemed to be excess. The Western anticipates a substantial return of Servicing Carrier fees to the Board at the end of the fiscal year, if claim activity remains at the present level.

PRIVATE MARKET:

There is some indication that the private market is beginning to function. The movement, however, is insignificant. As we receive requests for renewal, we can better ascertain if there is any trend.

Offsetting any functioning of the private market, is the fact that at least one company has withdrawn from the medical malpractice field. Realistically, it is too early to tell. The constitutional problem must be resolved and the PLAN must be subject to Loss Development before there will be any change of significance.

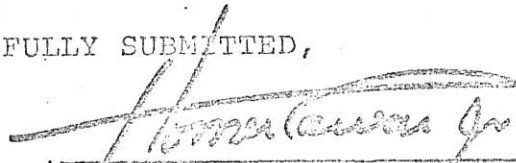
Certainly, if a company is writing medical malpractice at all and subject to their capacity, the tort changes in Kansas would make a risk that was formerly marginal, acceptable.

A minor example would be that out of 813 policies originally issued, 38 have been cancelled. 33 of these were written through the St. Paul.

RECOMMENDED LEGISLATIVE
CHANGES:

We cannot recommend any change in the law at this time. Any change, at this point in time, could be premature. After the constitutional question is determined and the PLAN has another year of maturity, there is a possibility that some changes would be required.

RESPECTFULLY SUBMITTED,



*HOMER H. COWAN, JR.
ASSISTANT VICE PRESIDENT
PUBLIC AFFAIRS

*Registered Lobbyist 1977

EXHIBIT: Classifications Insured
Under The PLAN.

KANSAS HEALTH CARE PROVIDERS INSURANCE AVAILABILITY PLAN

Through December 31, 1976

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80266 - Pathology - no surgery	9	4,650.

80267 - Pediatrics - no surgery	2	1,232.
80268 - Physicians - no surgery	4	2,587.
80269 - Pulmonary Diseases - no surgery	1	616.
80273 - Family Practice - minor surgery	31	24,844.
80274 - Gastroenterology - minor surgery	1	616.
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MEDICAL CARE FACILITIES

Hospitals	9	266,635.
OLT		20,126.

KANSAS HOSPITAL ASSOCIATION
COMMENTS
BEFORE THE HEALTH CARE PROVIDER
MALPRACTICE STUDY COMMISSION

May 18, 1977

Mr. Chairman and members of the Committee:

We thank you for the opportunity to participate in your deliberations. We also, once again, want to express our gratitude to the Kansas Legislature for the passage of the package of bills designed to alleviate a severe situation.

Undoubtedly, it is too early to accurately measure the benefits of the new laws. Availability of professional liability insurance is still limited. Two-thirds of the Kansas hospitals, almost exclusively the smaller ones, are with the same company and they have not realized a savings. As a matter of fact, they have all been caught up in the 200 to 400 percent increase in premiums. The larger hospitals that are gambling on the constitutionality of K.S.A. 1976 Supp. 40-3401 et seq (S.B. 646, 1976 Session), have realized very significant savings. Some are still buying coverage in excess of the basic \$100/300,000 in order to be safe should the law be found to be unconstitutional.

The Kansas Hospital Association is involved in the litigation the State of Kansas has brought against Byron Liggett, M.D. in the District Court of Barton County. We entered that case with the sole purpose of ascertaining the constitutionality of the law. Without our participation we were convinced that the only issue in that case would relate to the right of a physician to practice medicine without the required liability insurance. Our legal

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counsel has been successful in broadening the issues to the extent that if the case is resolved to our satisfaction, we all can feel more comfortable. If there are questions concerning the status of that suit, I am sure you can attain answers through the office of the Attorney General or we will be pleased to arrange for Wayne Stratton, our legal counsel, to appear.

I am not certain just when this Committee will be considering possible modifications to the statute. At the appropriate time, we would like to visit with you about some possibilities. These relate to the self-insurance provision and a possible differential in the amount of surcharge based on the use of the availability fund.

Thank you again for an opportunity to appear. We look forward to seeing the report of your deliberations.

Frank L. Gentry
President
Kansas Hospital Association

Kansas Chiropractic Association

GLYNDON J. HANSON
EXECUTIVE DIRECTOR

Mr. Chairman and Members of the Commission:

My name is Glyndon J. Hanson and I am the Executive Director of the Kansas Chiropractic Association. On behalf of the Association, I want to thank you for the opportunity to present our views on the malpractice insurance situation as it applies to doctors of chiropractic medicine.

We would have to agree with the Chairman, who noted in his invitation to appear here today that at this time there indeed is insufficient data upon which to base hard conclusions.

To state our views briefly, in the view of the KCA the program is working well, we believe the profession is being treated equitably, and we have no recommendations for any alteration in the law.

To elaborate, we can make some observations about the present and some speculations about the future.

First, to our knowledge there are no current malpractice claims against Kansas chiropractors. None were listed in the first report of the Insurance Commissioner covering the initial 18 months of the

operation of the state program.

Second, this situation tends to reflect the profession's record in Kansas for the past 64 years. Malpractice suits against chiropractors have been quite rare.

Third, because of this record, Kansas chiropractors by and large traditionally carried no malpractice insurance and have become a major market for such insurance only since the passage of state law requiring them to obtain it.

It is because of this history that few insurance carriers wrote malpractice insurance for chiropractors--there was little demand for it, there was a very limited claims experience basis upon which to base rates, and, most important, it simply wasn't a profitable business venture.

Today, there are four sources for malpractice insurance coverage for Kansas chiropractors: National Chiropractic Mutual, St. Paul Fire and Marine, and Western Casualty and Surety, both as a private carrier and again as administrator of the state fund.

National is a small company with very high rates--about \$600 a year including the surcharge. In addition, the insurance is available only to members of the American Chiropractic Association, to which only about 100 Kansas chiropractors belong.

The other two private carriers offer a different type of insurance which is substantially less costly, and comparable to that offered by the state fund, which is the least expensive of all, but within the range of the other two.

Naturally, the majority of Kansas chiropractors opted for the least costly coverage which was offered by the state fund.

While predictions about insurance companies and their premiums are hazardous at best, our best guess--and that's all it is--is that the following things are likely to occur:

1. National Chiropractic Mutual eventually will be compelled to alter its insurance program so that its premiums will be competitive.
2. National will be aided by the fact that as the other policies mature over a four-year period, the premiums will rise sharply.
3. Kansas chiropractors will continue to have a good claims experience record, and other carriers will want a share of the profits to be made, introducing more competition with concurrent pressure to keep premiums in line.
4. Eventually, economic factors will make the state fund less attractive than private policies.

Over the next five years, the profession itself will experience substantial changes as the number of practicing chiropractors declines.

A number of chiropractors--perhaps 100 of them--are listed as practicing doctors when in reality their practices are quite limited. They are virtually retired, but still see a very limited number of patients in the course of a year. Insurance premiums probably will force them into full retirement.

While we have no hard statistics, we believe our membership, which approaches 400, includes the vast majority of full-time practitioners

in the state. There are something more than 500 licensees who reside in the state.

In conclusion, I will tell you frankly that when the Association did not resist inclusion of the profession in the malpractice insurance program, there was some grumbling in the ranks, particularly among the semi-retired doctors.

It is the view of the KCA, however, that we should seek no special privilege or special treatment in this or any other matter. If the profession is to share in the privilege of providing primary health care to Kansans, then it must share in the responsibilities that go with providing that care. We ask only that the profession's record of providing quality health care--with barely a trace of malpractice problems--be respected.

Thank you for your attention.

May 18, 1977

KANSAS BAR ASSOCIATION REPORT ON HEALTH CARE PROVIDERS LEGISLATION

May 16, 1977

The 1976 Legislature adopted many proposals with regard to Health Care Providers. Sufficient time has not elapsed to ascertain what effect this legislation has had regarding malpractice claims or the availability and cost of malpractice insurance. We assume that this data will be furnished to the Health Care Providers Malpractice Study Commission by the Kansas Insurance Department and the various Health Care Provider groups.

Several observations, however, can be made at this time:

1. The Bar recommended that the statute of limitations should apply uniformly to all professional groups in order to avoid any question of unconstitutionality. We again suggest seriously that KSA-60-513 (7) (c) may not as adopted by the 1976 Legislature be the answer. We think an amendment to the statute of limitations of Kansas should be adopted covering all persons who render professional services, either amending (c) or adding an additional sub-section.

We suggest that the following amendment be considered:

The cause of action in this section shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall the period be extended more than four (4) years beyond the time of the act giving rise to the cause of action if said injury was caused by malpractice, error or omission in the rendering of a professional service by any person, group of persons, firm or corporation, licensed or practicing under a permit, under any act of the State of Kansas, rule or regulation of an administrative branch of the State of Kansas, or of the Supreme Court, to perform such professional services, and if the injury is otherwise caused, in no event shall the period be extended more than ten (10) years beyond the time of the act giving rise to the cause of action. (The provisions of this section as it was constituted prior to the effective date of this act shall continue in force and effect for a period of one (1) year from the effective date of this act, with respect to any act giving rise to a cause of action occurring prior to the effective date of this act.)


If this statute applies to all professional persons it is believed that such a statute would be constitutional.

2. Medical Malpractice Screening Panels were provided for in the adoption of KSA-65-4901 through 4908. The Supreme Court recently adopted rules relating to Medical Malpractice Screening Panels. Information has not been made available to the Bar Association as to the use of Medical Malpractice Screening Panels in Kansas. Perhaps sufficient time has not elapsed to determine whether or not these Screening Panels as now provided has resulted in fewer cases of malpractice now being filed or to determine whether this vehicle has resulted in more settlements, or has been of benefit to the Health Care Providers. We hope that this Study Commission will determine whether or not the Screening Panels are feasible and are providing the benefits desired. The Bar Association recommended that Screening Panels should be considered which would be used without the necessity of filing a law suit before the Screening Panel statute is invoked. To make this possible the present statute may be too complicated or expensive to really work. We hope that this Study Commission will obtain information from other states in order that a Screening Panel can accomplish the purposes for which it was intended. A Screening Panel such as provided for in Jackson County, Missouri, may better serve in reducing the number of cases filed as well as cutting down the actual litigation load of the courts.
3. Health Care Providers insurance was the subject of an intensive study of the Kansas Insurance Commissioner and resulted in the adoption of article 34 of KSA 1976 supp. We do not have any statistics concerning whether this article is workable. We do note, however, that 40-3405 "Transfer of amount from state general fund to health care stabilization fund for insufficiency; appropriation for fiscal year of transfer; repayment; maximum premium surcharge for fiscal years when health care stabilization fund indebted to state general fund," provides that the provisions of the section expires on July 1, 1981, and that 40-3413 "Apportionment of risk among insurers; preparation of plan; contents; approval or disapproval; amendment; preparation by commissioner of insurance, when; governing board, membership; order to discontinue unfair or unreasonable activities or activities inconsistent with act; commissions on insurance under plan; expiration of section," provides that the provisions of the section expires on July 1, 1978.

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We assume that this Commission will make some recommendations with regard to the effect on article 34 of these expiration dates.

The Kansas Bar Association will give attention to any additional provisions of proposed legislation that may be of assistance to this Commission if the Commission so desires.

Respectfully submitted,


Edwin Dudley Smith, Chairman,
Health Care Providers Sub-Committee,
Professional Relations Committee,
Kansas Bar Association

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Committee: Health Care Provider Malpractice State
Commission

Date of Meeting:

Oct. 4, 1977

Members Notified by:

FILE

Vouchers Prepared: *mf*

Minutes Received:

9/25/78

Minutes not approved or available
until interim 1978