

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m. ~~p.m.~~ on March 20, 1984 in room 529-S of the Capitol.

All members were present except:

Sen. Hess - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department
Representative Dennis Spaniol
Jerry Slaughter, Kansas Medical Society
Marlon Dauner, Blue Cross and Blue Shield of Kansas

The minutes of March 16 and March 19 were approved.

Copies of testimony of Larry Magill of the Independent Insurance Agents of Kansas regarding HB 2833 had been distributed to the committee along with a letter from Mr. Magill stating his reasons for not appearing at the hearing on the bill.
(See Attachment I.)

The hearing began on HB 2755 dealing with health care provider insurance availability. Ron Todd, Kansas Insurance Department, appeared in support of the bill which was requested by the Insurance Commissioner's office. Mr. Todd explained a change in the original bill located in subsection (g), line 173, where the sunset provision expiring on July 1, 1983, is eliminated and replaced with a sunset provision to expire on July 1, 1987. He said that the only other amendment is in Section 1 which was not proposed by the Insurance Department, but the Department does not disagree with it. He urged the enactment of the bill saying that it would be in the public interest to do so.

Mr. Todd responded affirmatively to the chairman's question as to if this statute has kept malpractice insurance rates from increasing dramatically as they had been in the past.

In response to Sen. Gannon's question as to who "health care providers" include, Mr. Todd said it includes most people involved in delivering health care except dentists. He read a list prepared last session showing the types of health care providers and the number of each under this plan (approximately 600).

Sen. Karr inquired about the funds available for the plan and as to if there is a cap on the funds except three million dollars on any one claim. Mr. Todd replied that this is dealt with in SB 507 and that there is no cap on the funds. Sen. Werts asked if the new language in Section 1 of HB 2755 is consistent with SB 507, and Mr. Todd explained that this language is not in SB 507.

The chairman called on Jerry Slaughter, Kansas Medical Society, for his testimony in support of HB 2755. First he responded to Sen. Karr's previous inquiry regarding funds saying that his organization had hired an independent actuary to determine the needs for it. It was determined that at the end of five years fifty million dollars will be needed to be solvent. The fund is at seven million dollars at present. And in response to Sen. Werts' inquiry regarding language in SB 507, Mr. Slaughter said that SB 507 and HB 2755 will need to be coordinated. He supports HB 2755 because he feels it is prudent to have the legislature look at the plan on a regular basis, and the sunset provision allows this to be accomplished. The hearing was concluded.

The committee's attention was turned to Substitute for HB 2855 dealing with the provision of health services by professional providers. Representative Dennis Spaniol appeared in support of the bill. He said that he had had the bill originally introduced as a result of numerous constituent complaints he had received from the Wichita area. The complaints were from persons who had thought that all charges in the hos-

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,
room 529-s, Statehouse, at 9:00 a.m./~~p.m.~~ on March 20, 1984

pital were covered by Blue Cross and Blue Shield but had received bills for third party treatments such as radiologists or pathologists who send separate bills because they are not under the Blue Cross and Blue Shield contract. The bill would solve this problem because it provides that anyone providing services in a hospital under a contract with the hospital must contract under Blue Cross and Blue Shield. This would apply to six to eight percent of the physicians in Kansas.

Jerry Slaughter, Kansas Medical Society, testified in opposition to Substitute for HB 2885. He said that he recognizes the problem involved and sympathizes with the consumer who feels that all is covered in his stay in the hospital by Blue Cross and Blue Shield and finds that all services are not covered later. However, this bill will say that if a physician provides services in a hospital, he will get reimbursed only for a certain amount that is paid by Blue Cross and Blue Shield. This affects a small number of physicians, but Mr. Slaughter objects to the principal of the bill.

Marlon Dauner, Blue Cross and Blue Shield of Kansas, appeared in support of Substitute for HB 2885. (See Attachment II.)

Ron Todd, Kansas Insurance Department, stated that the Department is in support of Substitute for HB 2885.

With the hearing on Substitute for HB 2885 concluded, the chairman turned the committee's attention to HB 2833 dealing with no-fault insurance which had been previously heard. A discussion followed as to if Section 4 of the bill is necessary. The chairman noted that this is the most controversial portion of the bill and had caused most of the problems in the House. He said the he had visited with a representative of the Kansas Bar Association who had indicated that if Section 4 were eliminated, the bill would be less objectionable to him although he still would not like the bill.

Sen. Feleciano moved to strike Section 4 from HB 2833. Sen. Karr seconded, and the motion carried.

Sen. Harder moved to recommend HB 2833 favorably as amended. Sen. Reilly seconded, and the motion carried with Senators Feleciano and Pomeroy voting "no".

Sen. Feleciano made a motion to report Substitute for HB 2885 favorably. Sen. Werts seconded, and the motion carried.

Sen. Werts made a motion to report HB 2755 favorably. Sen. McCray seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3-20	Lee WRIGHT	Lenexa	Farmers Ins Group
	MARION DAUER	TOPEKA	BC-BS
	JERRY SAUGHTER	TOPEKA	KMS
	John Peterson	Topeka	K A E G
	LARRY MAGILL	"	IIAK
	Homer Cowan Jr	Ft. Scott	The Western Ins Co's
	Dick Brock	Topeka	Ks Ins Dept

Independent Insurance Agents of Kansas

March 19, 1984

The Honorable Neil Arasmith, Chairman
Senate C&FI Committee
State Capitol
Topeka, Kansas 66612

Dear Neil:

I apologize for missing the hearing on Monday morning, March 19, 1984 on no-fault. Because our power had been out since 8:00 Sunday evening, I relied on an employee who indicated that the legislature was recessed due to the weather.

I would like to assure you and the members of your committee that our association fully supports the changes proposed in HB 2833. Enclosed with this letter is a copy of our testimony to that effect.

I would be happy to answer any questions you have.

Best regards,


Larry W. Magill, Jr.
Executive Vice President

akw

encl.

cc: Senate C&FI Committee

Larry W. Magill, CPCU, CLU, AAI, Executive Vice President
917 Topeka Avenue, Topeka, Kansas 66612 Tel. 913/232-0561



Attachment I

Testimony on HB 2833
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you for this opportunity to testify today in support of HB 2833, increasing personal injury protection (PIP) benefits and the tort threshold under the Kansas Automobile Injury Reparations Act (no-fault).

What Is No-Fault?

No-fault insurance is not a new concept in Kansas. All of you should be familiar with workers' compensation insurance which was the first true no-fault system passed in the state. Prior to workers' compensation an employer had three defenses available to resist a worker's claim for injury which were: the fellow servant rule, the assumption of risk and the employee's own contributory negligence. Workers' compensation operates as a complete bar against suit by the employee of the employer under the "exclusive remedy" principle. Employees have been far better compensated under "no-fault" workers' compensation than they were under the expensive and "if" tort system it replaced where they had to prove negligence. Yet if we tried to pass workers' compensation today, I am sure the same opponents would make the same arguments.

In Kansas, no-fault auto insurance represents a compromise rather than a true no-fault system. The threshold does not operate as a complete bar against recovery since an injured party may sue if their medical expenses exceed the threshold or if they meet the "verbal" threshold, which is very liberal under present law. In addition, an injured party can always sue for actual bodily injury and property damage losses.

The Kansas no-fault system represents a trade-off between first party benefits (PIP) and a somewhat restrictive access to the courts through the threshold mechanism.

What Is IIAK's Stake In No-Fault?

We believe in it. We believe it provides the consumer with more net dollars in payment of their actual losses than under the tort system on a prompter, fairer, hassle-free claim settlement procedure where they deal with their own insurance company.

We believe that it holds the potential for cost control where there is an adequate threshold to avoid expensive court litigation for all but serious injuries.

We believe it is in the consumer's best interests, which, in the longrun, is in ours. We have not received any complaints about the no-fault system in general nor heard of any. It is certainly working, but can work better with an improved schedule of PIP benefits and a truly meaningful threshold.

We surveyed our members this past summer to determine their support for no-fault. We asked, "Do you think the consumers of Kansas have benefited from no-fault and that IIAK should vigorously pursue an increase in the PIP benefits and threshold?" The response was an overwhelming 81% supported that position.

What Is The Correlation Between Threshold And PIP?

None. There is no direct relationship between the two and no reason the increase in one should be tied to the increase in the other. Rates will seek their own level - if a \$1,500 threshold is inadequate to offset the increased costs of the PIP benefits, this will be reflected through increases in the rates charged for auto insurance. There are over 900 companies licensed to write property and casualty insurance in Kansas in an extremely competitive environment. At the original proposed \$5,000 threshold we think there was potential for cost savings which would have been passed on to the consumer. Nevertheless, we support the \$1,500 threshold as being an improvement and pragmatically the best we can do this session.

What does State Farm's 8.7 million dollar dividend have to do with the current no-fault debate?

Nothing - proponents of HB 2833 have agreed that an improvement in our no-fault law will help control future auto insurance costs and possibly reduce them. Lots of factors affect auto insurance costs, including the 55 mph speed limit, the enactment of comparative negligence, the repeal of the guest statute, inflation, particularly in medical costs, and auto repair costs, the public attitude towards suing and awards granted by juries, to name a few. Over the 10 years since enactment of no-fault there have been numerous cost increases in auto insurance from an average premium of \$44.71 for bodily injury and property damage liability only to an average premium today of \$100.70 for a typical car and driver for one of Kansas' larger writers. This auto insurance writer has had cumulative rate increases of 125.18% in the past 10 years for liability coverages.

State Farm's announcement of a dividend is no more attributable to the present no-fault threshold being adequate than proponents could argue that all of these cost increases since 1973 are due to an inadequate threshold.

The undisputable logic of HB 2833 is that it will shift more of the premium dollar to the consumer in direct first party PIP benefits through savings in litigation expenses. The higher the threshold the more effective it will be in controlling future cost increases.

State Farm actually lost \$770,000 in 1983 on PIP benefits required by no-fault. State Farm only represents 19.6% of the auto insurance market in Kansas. Most other companies have lost significant amounts of money recently on auto insurance. But that is not the issue here.

The fact of State Farm's dividend is proof that the consumer will benefit better than expected loss experience. It provides that Kansas

enjoys a competitive insurance market that will pass on any savings from HB 2833 with a \$5,000 threshold to the consumer. If any of you polled your constituents, how many do you think would tell you they are paying too little for their auto insurance or that they hope they'll pay even more in the future? That is the issue.

We urge you to ignore the "smokescreen" raised by opponents of no-fault that a dividend on one year's policies means that our present \$500 threshold is adequate or has any bearing on the \$1,500 threshold proposed in HB 2833.

Why \$5,000?

Although somewhat "academic" at this point, we believe the threshold must be significant in order to avoid expensive litigation in all but serious injury cases for the "trade-off" to work. No-fault in Kansas has never really had an opportunity to work when you consider the insignificance of a \$500 threshold in terms of today's medical care costs.

At \$5,000, the threshold would avoid becoming a "target" - one that claimants and their attorneys strive to exceed in order to sue for pain and suffering. Conversely, a lower threshold may only serve to increase everyone's costs when people seek unnecessary treatment to exceed the lower threshold. This increased cost would be passed on to the consumers in the form of higher auto insurance rates.

In Short

HB 2833 would provide increased PIP benefits for everyone - a benefit anyone injured in an auto accident in Kansas would realize.

The proposed \$5,000 threshold would: 1) help hold the line on cost increases in the future; 2) it affects only a few claimants compared to the vast number of consumers who must buy auto insurance; 3) it is not a complete bar to court access for consumers; 4) it avoids becoming a target which would only inflate everyone's auto insurance costs; and 5) it guarantees that seriously injured claimants still have access to the court system. We urge you to report HB 2833 favorably for passage.

The Florida Times-Union

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Editor, Editorial Page

Jacksonville, Monday, February 13, 1984

Florida's no-fault insurance passes tests with high grades

For years, the Florida Legislature was the scene of annual battles between trial lawyers and the insurance industry over no-fault insurance. But last year there was no fight, and none appears in the offing for the 1984 session that begins in a few weeks.

Presumably the constant wrangling succeeded in enough compromise so that everyone is content to let it lie. What amazes is that a workable and equitable law apparently resulted from those annual donnybrooks.

Florida insurance rates are lower than those in other states. Average premiums in the state at the end of 1978 were \$298 compared with the national average of \$289. By mid-1983, the state average was \$356, compared with \$381 nationwide.

In Jacksonville, the number of auto negligence suits as a percentage of the total civil cases declined 39 percent from 1976 through 1980.

Such statistics are one reason why the the Journal of American Insurance praised the state's no-fault law in a recent issue.

No state has a "pure" no-fault law. Most allow litigation after a certain amount of damage or after a "threshold" is surpassed — "permanent injury" being the Florida threshold.

But even limited no-fault means that people involved in most auto accidents are quickly compensated for their loss by their own insurance company, without having to go through expensive,

drawn-out litigation, studies have concluded.

Although a certain segment of the legal profession continues to debate the issue, and to advocate change in the no-fault law, there is general agreement that it has been a benefit to consumers.

The last shot trial lawyers took at no-fault was in the 1982 Legislature when the insurance code was up for "sunset" review. Minor changes were made, but no-fault survived.

University of Nebraska Law Professor Roger C. Henderson, who studied Florida's no-fault law, found that no-fault benefits were distributed more evenly than benefits in the tort system. "Henderson said his findings also indicated that no-fault generally results in less expense to the system while it allows a greater portion of insurance premiums to be returned to victims," the Journal said.

The no-fault experience also has shown the virtue of states being "laboratories" in which to experiment with different variations of no-fault insurance. Rates in Florida might be different if Congress had imposed its own untried version of no-fault insurance nationwide.

Nor does Florida's success guarantee it would work as a model federal law. Other states have different problems and their solutions are tailored to fit.

In retrospect, the 1971 Florida Legislature, and those which have made constructive modifications since then, deserve a round of applause from this state's millions of motorists.

TESTIMONY ON HOUSE BILL 2885

By Marlon R. Dauner

Senior Vice President

External Affairs

Blue Cross and Blue Shield of Kansas

Blue Cross and Blue Shield of Kansas provides health care coverage for approximately 35% of eligible Kansans. Blue Cross provides coverage for institutional (or hospital) services. Blue Shield provides coverage for professional (or physician) services.

Kansas statutes, commonly referred to as the Blue Cross and Blue Shield Enabling Acts, authorize Blue Cross and Blue Shield to enter into contracts with providers of care on behalf of subscribers to facilitate the financing and delivery of health care services in a cost effective manner. At this time, Blue Cross has contracts with 100% of the hospitals in the Kansas Plan area and Blue Shield has contracts with 87.5% of the physicians. The providers who have signed contracts have agreed to accept the Blue Cross and Blue Shield allowances for services as payment in full for services rendered to subscribers. These providers may bill subscribers for deductibles, coinsurance, and noncovered services.

There exists in the delivery of medical care some services that are arranged for and provided by hospitals although they also involve the physician. Most commonly, the services involved are radiology, and sometimes

anesthesiology, and pathology services. It is not unusual for hospitals to enter into arrangements with professional providers of these specialties to render the professional portion of these services to hospital patients. Often, these arrangements are exclusive to a limited number of professional providers.

These arrangements result in a problem for Blue Cross and Blue Shield subscribers when they seek services from a contracting hospital expecting to have full coverage for services rendered and then receive a bill from a non-contracting professional provider for balances above the Blue Shield allowances. The patient may not have even seen the professional provider and, in most cases, has had no choice of provider rendering those services. In essence, the patient expected the contracting hospital to provide services in accordance with the contract with Blue Cross and Blue Shield and without choice or notification received services and a billing from a non-contracting professional provider. Blue Cross and Blue Shield receives numerous complaints each year over this issue. Most of these complaints involve Wichita providers.

House Bill 2885 resolves this problem by requiring a non-contracting professional provider rendering services under arrangement with a contracting hospital to accept the Blue Shield allowance as payment in full, except for copayments, if the subscriber was not given the option of receiving services from a contracting professional provider. If the subscriber has a choice of receiving care from a contracting professional provider, such as a contracting radiologist, or in the case of the independent physician (general practitioner), the provisions of this bill are not applicable.

There are only 12.5% of the physicians in Kansas who have elected not to contract with Blue Cross and Blue Shield. Of these physicians, between 6% and 8% represent those physicians that might be affected by the legislation.

Although few professional providers will be affected, the benefit and predictability of costs for subscribers is much improved. Several non-contracting specialty groups in Wichita provide many services under arrangements with hospitals in the Wichita area. Virtually every subscriber in Wichita may currently be subjected to a "no choice" balance billing from a non-contracting professional provider although the primary provider, the hospital, from which they sought service is contracting. This bill would appropriately resolve this problem for Blue Cross and Blue Shield subscribers.

3/19/84