

MINUTES

SPECIAL COMMITTEE ON MEDICAL MALPRACTICE

November 20-21, 1985  
Room 514-S, Statehouse

Members Present

Representative Joe Knopp, Chairman  
Senator Jack Walker, Vice Chairman  
Senator Roy M. Ehrlich  
Senator Paul Feleciano  
Senator Frank K. Gaines  
Senator Jeanne Hoferer  
Senator Nancy Parrish  
Senator Jack Steineger  
Senator Robert Talkington  
Senator Wint Winter, Jr.  
Senator Eric Yost  
Representative Marvin Barkis  
Representative William Brady  
Representative J. Frank Buehler  
Representative Rex Hoy  
Representative Ruth Luzzati  
Representative Michael O'Neal  
Representative Vincent Snowbarger  
Representative John Solbach  
Representative Dale Sprague  
Representative Thomas Walker

Staff Present

Mike Heim, Kansas Legislative Research Department  
Emalene Correll, Kansas Legislative Research Department  
Melinda Hanson, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Mary Hack, Revisor of Statutes Office  
Bob Coldsnow, Legislative Counsel  
Mary Jane Holt, Secretary

Others Present

Ron Smith, Kansas Bar Association  
Sherman A. Parks, Jr., Kansas Chiropractic Association  
Harold E. Riehm, Kansas Association of Osteopathic Medicine  
Ted Fay, Kansas Department of Insurance  
Derenda Mitchell, Kansas Department of Insurance  
Terri Rosselot, Kansas State Nurses Association  
Richard Harmon, Domestic Insurance Companies  
Charles Belt, Wichita Chamber of Commerce, Wichita  
Jack R. Cooper, M.D., Johnson County Medical Society, Fairway  
Jerry Slaughter, Kansas Medical Society  
Marsha Hutchison, Kansas Medical Society  
Loretta Class, United Way - League of Women Voters  
Steve Robrahn, Associated Press  
Lori Callahan, American Insurance Association  
Richard H. Enewold, AT&T  
David Litwin, Kansas Chamber of Commerce and Industry  
Kathleen Sebelius, Kansas Trial Lawyers Association  
Maxine Yager, Kansas Association of Nursing Students

Others Present (continued)

Denise Rogers, Kansas Association of Nursing Students  
Lee Wright, Farmers Insurance Group, Mission  
Don Strole, Kansas Board of Healing Arts  
Dr. John Heibert, Kansas Board of Healing Arts

November 20, 1985  
Morning Session

The meeting was called to order by the Chairman, Representative Joe Knopp at 10:00 a.m.

Staff distributed copies of the following proposed bill drafts to the Committee: 5 RS 1590, post-judgment interest rate; 5 RS 1591, attorney fees approval; 5 RS 1595, HCSP — averaging premium surcharge; 5 RS 1596, expert witness qualification/clinical practice; 5 RS 1597, itemized verdicts; 5 RS 1603, Board of Healing Arts — reporting by medical facilities and others; 5 RS 1604, information reported by insurers; and 5 RS 1607, Board of Healing Arts—mandatory reporting, licensees.

Staff reviewed bill draft 5 RS 1615, a proposed bill draft relating to grounds for revocation, suspension, and limitation of licensees by the Board of Healing Arts. The recommendations included in this bill came from the Federation of State Licensing Boards.

Jerry Slaughter informed the Committee the Board of Healing Arts had recommended that additional disciplinary powers be made available to the Board. They suggested reprimand, formal censure and annulment.

A motion was made by Senator Walker to include in Section 1, public or private censure and annulment. Representative Luzzati seconded the motion. The motion passed

Senator Walker moved to approve proposed bill draft 5 RS 1615, as amended. The motion was seconded by Senator Hoferer. The motion passed.

Staff noted bill draft 5 RS 1622, addresses the establishment and maintenance of risk management programs in medical care facilities and also deals with reporting to county medical societies and other county professional groups. The bill is based on a draft prepared by the Kansas Medical Society and the Kansas Hospital Association.

A motion was made by Representative Solbach to add to subsection 3 (b) and (c) of New Section 6, "any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency," for clarification and to conform other language to subsection (a) of New Section 6. Representative Snowbarger seconded the motion. The motion passed.

Senator Walker moved to add as a part of subsection (b) in New section 5, the agreement to provide for the use of the state licensing agency's restricted fee funds for payment of expenses of administration of the impaired provider committee, and to delete subsection (c) of New Section 5. Senator Feleciano seconded the motion and the motion passed.

Senator Talkington moved to amend New Section 8, subsection (b), to include public and private censure, reprimand, and annulment. Representative Buehler seconded the motion and the motion passed.

It was noted in Section 7, line 8, the word "known" was inadvertently omitted and should be inserted.

A motion was made by Representative Solbach and seconded by Representative Walker that the language in New Section 7 be approved, with the addition of the word "known." The motion passed.

During discussion of New Section 9, a Committee member reported the Kansas Citizens Committee for Review of the Tort System recommended specific statutory civil remedies be enacted to give protection from wrongful discharge arising from reporting under this bill.

Senator Gaines distributed a letter from Barbara J. Sabol, Secretary of the Department of Health and Environment, concerning the type and frequency of hospital inspections. See Attachment L.

A motion was made by Senator Parrish to provide in New Section 9 of bill draft 5 RS 1622, the recommendation of the Kansas Citizens Committee for Review of the Tort System concerning enacting a specific statutory civil cause of action to give protection to persons who report deficiencies to a hospital peer review committee or to the Board of Healing Arts. The proposal is to prevent retaliation by physicians or hospital management against persons who, in good faith, report malpractice or unethical conduct. Provision for equitable relief would permit a Court to order an employee's reinstatement with back pay if it is established that discharge or adverse action was due to filing the complaint and to levy a civil penalty not to exceed twice the amount of damages. Representative Luzzati seconded the motion. The motion passed.

Senator Walker moved to approve proposed bill draft 5 RS 1622, as amended. Senator Gaines seconded the motion. The motion passed.

Ted Fay, Kansas Insurance Department, distributed to the Committee copies of a letter and a report dated November 19, 1985, from Dani Associates Inc., Actuarial Consultants, on actuarial evaluation of proposed legislative changes on the Kansas Health Care Stabilization Fund. See Attachment II.

In answer to a question by a Committee member, Mr. Fay stated the entire package of bills recommended by the Committee will be submitted to the actuary.

The Committee recessed for lunch.

#### Afternoon Session

The Committee considered proposed bill 5 RS 1637. This bill states that no person shall qualify as an expert witness in a civil or criminal action if such person's compensation for testifying is based on the outcome of the case.

A motion was made by Senator Gaines and seconded by Representative Snowbarger to approve proposed bill 5 RS 1637.

Representative Snowbarger withdrew his second to the motion as the bill was drafted. He said the bill should state that it is unlawful to pay compensation to a witness or for procuring a witness on a contingent fee basis. Senator Gaines agreed to amend his motion to insert after the word compensation, "whether direct or indirect," and to recommend the bill be approved. A vote was taken and the motion failed.

Proposed bill 5 RS 1639 provides that inactive health care providers that have contributed to the Fund for three consecutive years are protected by the fund.

Representative Solbach moved to change the language in the bill to "any physician that leaves the state or retires after paying into the Fund for less than three years must continue paying into the Fund until he had paid into the Fund for three years, or proves he has picked up alternative insurance to cover claims that might arise out of negligent acts while practicing in Kansas." Senator Steineger seconded the motion. The motion passed.

Representative Solbach moved to approve bill draft 5 RS 1639, as amended. Senator Talkington seconded the motion and the motion passed.

Staff reviewed bill draft 5 RS 1640, which requires evidence the licensee is maintaining a policy of professional liability insurance and has paid the annual premium surcharge.

The Committee discussed Section 1 (d). Senator Walker made a motion to amend Section 1 (d) to provide that the second notice shall go out on the date of expiration and permit 30 days to pay the annual fee, and that the additional fee should be changed to not to exceed \$500. Representative Walker seconded the motion. The motion passed.

Senator Talkington moved to amend Section 4 to change the effective date to notice in the Kansas Register. The motion was seconded by Senator Feleciano and the motion passed.

A motion was made by Representative Walker and seconded by Representative O'Neal to report proposed bill 5 RS 1640 favorably, as amended. The motion passed.

The Committee considered proposed bill 5 RS 1648. This bill addresses dual insurance coverage and provides that a health care provider who is qualified for coverage under the Fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other health care provider who is also qualified for coverage under the Fund. And, an insurer who provides coverage to a health care provider may exclude from coverage any liability incurred by such provider from the rendering of or the failure to render professional services by any other health care provider who is required to maintain professional liability insurance in effect as a condition to rendering professional services as a health care provider in this state.

A motion was made by Representative Solbach and seconded by Representative Sprague to recommend proposed bill 5 RS 1648 favorably. The motion passed.

Staff informed the Committee, podiatrists are now licensed instead of registered.

Staff then reviewed proposed bill 5 RS 1649, which limits the liability of the Fund to \$1,000,000 for any one judgement, on and after July 1, 1986, subject to an aggregate limit of \$3,000,000 for each provider.

A motion was made by Representative Solbach and seconded by Representative Buehler to recommend proposed bill 5 RS 1649 favorably. The motion passed.

Staff reviewed proposed bill 5 RS 1650. This bill increases the public members of the Board of Healing Arts to three. No two of the public members shall be from the same Congressional district. The bill removes the restrictions requiring the Governor to appoint members from lists submitted by professional associations or societies.

Representative Walker moved to recommend this bill favorably. Representative Sprague seconded the motion. The motion passed.

Proposed bill 5 RS 1655, which authorizes the State Board of Healing Arts to assess civil fines against licensees violating the Kansas Healing Arts Act, was discussed.

A motion was made by Senator Walker and seconded by Senator Ehrlich to approve proposed bill 5 RS 1655. The motion passed.

Staff reviewed proposed bill 5 RS 1657 which mandates settlement conferences be held not more than 30 days after the close of discovery and prior to ruling on any motion for summary judgment in a medical malpractice liability action. The bill provides the settlement conference shall be conducted by a judge other than the trial judge and the offers, admissions, and statements made in conjunction with or during the settlement conference shall not be admissible at trial or in any subsequent action and shall not be communicated to the trial judge. The bill also addresses recovery of reasonable attorney fees incurred from the date of the offer by either the plaintiff or the defendant. The bill further contains provisions for attorney fees and costs when the Health Care Stabilization Fund is a party.

Representative O'Neal moved to add a subsection to cover cases where the court finds both parties fail to make offers within 25 percent of the final judgment. The amendment would provide that no fees or costs should be assessed to the other party in this case. Representative Brady seconded the motion. The motion passed.

Representative Snowbarger moved to delete everything after the word discovery in Section 1 (a). The motion was seconded by Representative Sprague.

A substitute motion was made by Senator Steineger that the judge shall require one or more settlement conferences be held not more than 30 days after the close of discovery. The motion was seconded and the substitute motion failed.

A vote was taken on the original motion by Representative Snowbarger. The motion passed.

Senator Steineger moved to amend Section 1 (b). The first sentence should read "The settlement conference shall be conducted by the trial judge." The motion was seconded by Representative Solbach.

An amendment was made by Representative Snowbarger to add, "or his designee." The motion, as amended, passed.

Representative O'Neal moved to amend Section 1 (d) (1) to insert "against that party," in the third line after the word "judgment," and to amend in Section 1, (e) (1), to provide that if the Health Care Stabilization Fund is disposed to accept the claimant's offer and feels it is a good offer or one that they proposed then the Fund would not have any liability for fees and costs. The motion was seconded by Senator Steineger and the motion passed.

A motion was made by Representative Sprague and seconded by Senator Gaines to report favorably proposed bill 5 RS 1657, as amended. The motion passed.

Staff reviewed proposed bill 5 RS 1659 which amends the present statute on screening panels making the written report of the screening panel admissible in any subsequent legal proceeding and sets fees for panel members and who shall pay such expenses.

A Committee member suggested that the Committee Report reflect that the Committee feels doctors should serve on screening panels as a part of the right to practice medicine in Kansas.

Representative Buehler moved to amend proposed bill 5 RS 1659 to include if a duly appointed screening panel makes an unanimous decision that a claim is without merit and a subsequent jury finds a verdict in favor of the defendant, the plaintiff would be liable for the attorney fees, costs, and reasonable expenses as determined by the court. The motion was seconded by Senator Walker.

A substitute motion was made by Senator Talkington and seconded by Representative Sprague to approve bill draft 5 RS 1659 favorably, with a clarifying amendment on page 2, Section 2 (b), to provide that the panel is unable to make a recommendation, then each side shall pay one-half of the costs. The substitute motion passed.

Staff reviewed proposed bill 5 RS 1666. This bill would provide for a panel of three attorneys to evaluate claims against the Fund in excess of \$150,000. The costs of employing the attorneys would be paid from the Fund.

Ted Fay, Kansas Department of Insurance, stated this would be another layer of costs for the Fund to pay.

A motion was made by Senator Walker and seconded by Representative Sprague to table proposed bill 5 RS 1666. The motion passed.

Staff reviewed proposed bill 5 RS 1664 for the Committee which addresses caps on awards from the Health Care Stabilization Fund, itemized verdicts, and annuities for future medical care and related benefits.

The Committee adjourned until 9:00 a.m., Thursday, November 21, 1985.

November 21, 1985  
Morning Session

The Committee discussed proposed bill 5 RS 1664, dealing with caps on awards.

Senator Walker moved to strike in New Section 1 (b) the last sentence, "Future medical care and related benefits does not mean nonessential specialty items or devices of convenience." The motion was seconded by Representative Buehler. The motion passed.

In new Section 2, regarding caps, a Committee member suggested making the cap on future medical care float up with inflation. A Committee member inquired what would happen if the plaintiff improved and no longer needed the future medical care. Another Committee member suggested having the limit float up and down if the Consumer Price Index goes up and down. Another Committee member suggested the limit could be examined every year by the Legislature.

A motion was made by Representative Barkis and seconded by Senator Parrish to tie the lid on future medical care and related benefits to a Consumer Price Index to be adjusted over time. After Committee discussion a vote was taken and the motion failed.

The Committee discussed the two alternatives under subsection (2) in New Section 2.

Representative Snowbarger moved to adopt the second alternative which provides "The total amount recoverable for all claims for future medical and related benefits shall not exceed the amount of benefits that can be provided by an annuity contract having a present value equal to the difference between \$1,000,000 and the amount of the judgment for all claims other than claims for future medical care and related benefits." The motion was seconded by Representative O'Neal.

A substitute motion was made by Senator Winter to adopt a \$1,000,000 cap. Senator Feleciano seconded the substitute motion.

Senator Winter amended his substitute motion to provide that on itemized jury verdicts economic losses will be paid up front or in cash and all noneconomic losses, future lost wages, future medical care, and future economic costs would be structured from the balance of the \$1,000,000 lid.

Senator Feleciano withdrew his second. Representative Walker seconded the amended substitute motion. After Committee discussion, a vote was taken and the motion passed.

A motion was made by Representative Solbach to pay current pain and suffering up front, and future pain and suffering would be paid in the structured settlement. After Committee discussion, Representative Solbach withdrew his motion.

Representative Sprague moved that the future structured settlement be exempt from legal process. Senator Gaines seconded the motion. The motion passed.

A motion was made by Senator Yost and seconded by Representative Snowbarger that if the award exceeds \$1,000,000 the current and future damages would be reduced proportionately. The motion failed.

Representative Solbach offered his motion again to pay current pain and suffering up front. Future pain and suffering would be paid in the structured settlement. Senator Steineger seconded and then withdrew his second.

A substitute motion was made by Representative O'Neal to cap pain and suffering and that it be paid immediately and not be structured. The substitute motion was seconded by Senator Walker.

A vote was taken and the substitute motion passed.

Senator Winter moved that the cap on pain and suffering be \$250,000. Representative Snowbarger seconded.

A substitute motion was made by Senator Yost and seconded by Representative Buehler to cap pain and suffering at \$100,000. The substitute motion failed.

A vote was taken on the original motion by Senator Winter and the motion passed.

The Committee discussed structured settlements. It was suggested the judge should approve all structured settlements. The jury would determine how much money would be needed for actual future needs. If the award exceeded the \$1,000,000 limit it would be cut back by the judge to the limit and an annuity would be approved for that amount. The Committee also discussed the involvement of the Health Care Stabilization Fund in structuring awards.

Representative Sprague moved to include structured annuity funds in the guaranteed fund for annuities. The motion was seconded by Senator Steineger. The motion passed.

The Committee recessed for lunch.

#### Afternoon Session

Dr. John Heibert, a member of the Board of Healing Arts, testified. He noted that his recommendations do not reflect the feelings of the Board. He cited health insurance, medicare, health maintenance organizations and DRGs as restraints on health care costs. He said it was impossible to enforce a standard of care because medical technology changes so rapidly. He also stated caps were not the solution to the medical malpractice problem. He recommended tort law change.

Dr. Heibert informed the Committee there is a distinction between malpractice and incompetence. Physicians sued for malpractice generally are not incompetent. He stated the Board of Healing Arts can address the problem of incompetence. He recommended improving quality assurance by peer review. He recommended quality assurance be determined by health care providers; implementation of a hardware-software system profiling prescribed controlled substances by physicians; and the abandonment of the continuing medical education requirement for relicensure. In regard to the continuing medical education, he stated the Board of Healing Arts is studying alternatives, one of which is relicensure by reexamination.

The Committee again considered proposed bill 5 RS 1664. Staff reported the bill states the Fund limits as \$800,000-\$2,400,000. This will be changed to \$1,000,000-\$3,000,000 as directed by the Committee.

A Committee member suggested New Section 3 (2) should be changed to distinguish between present and future damages.

Senator Gaines moved to recommend 5 RS 1664, as amended, favorable for passage. Representative O'Neal seconded the motion.

A substitute motion was made by Representative Solbach and seconded by Senator Steineger, in lieu of the caps in 5 RS 1664, to place a 1/4 of one percent tax on all insurance companies doing business in the state of Kansas based on the premiums they collect and the money be put in a fund managed by a board to be used to subsidize medical malpractice premium charges and surcharges, so doctors paying high premiums will not be forced out of practice. The substitute motion failed.

A vote was taken on the original motion made by Senator Gaines and the motion passed.

The Committee discussed whether the recommended bills should be introduced individually, grouped into several bills, or all put into one bill.

Senator Gaines asked Bob Coldsnow, Legislative Counsel, for his recommendation regarding the number of bills that would be needed. Mr. Coldsnow said five or six separate bills would probably be needed to insure that the two subject prohibition of Article 2, Section 16 of the Kansas Constitution was not violated. He said all the Committee recommendations should not be included in one bill.

Mr. Coldsnow briefly reviewed a few of the recent cases interpreting the new Article 2 of the Kansas Constitution adopted in 1974. He said that the Court, while recognizing the mandate for a more liberal construction of Article 2, Section 16, indicates the principles enunciated in earlier cases interpreting this section still control and there is a continuing concern regarding any evidence of "logrolling."

Mary Torrence of the Revisor of Statutes Office also noted several bills probably would be needed and stated that the postjudgement interest bill which applies to all civil cases definitely had to be introduced as a separate bill.

Senator Steineger moved that the Chairman and staff decide the number of bills that are needed. The motion was seconded by Senator Gaines.

A substitute motion was made by Representative Solbach to leave the bill drafts separate as they are now and to request the Legislative Coordinating Council introduce all of them in the same house and send all of them to the same Committee. Representative Luzzati seconded the motion. The substitute motion failed.

A substitute motion was made by Senator Yost to group the bills into four or five subject categories. No second was made.

The original motion by Senator Steineger was voted on and the motion passed.

Staff passed out copies of the preliminary draft of the Committee report for consideration by the Committee. Mike Heim reviewed the Committee Conclusions and stated the Committee Recommendations would cover bill summaries under headings such as tort reform, caps on awards, limitation on attorney fees, insurance issues, and health care provider issues.

A Committee member suggested listing the eight or nine objectives the Committee recommended that are broader than just medical malpractice insurance affordability.

Another Committee member suggested changing the first sentence in the Committee "Conclusions" so it would not appear the insurance industry was the problem. A Committee member suggested just changing the word "cost" to "premiums" in the first sentence.

The Chairman announced the report will be mailed early next week to the Committee members. The members then will have an opportunity to suggest changes. If the changes are controversial the Chairman will consult with the ranking minority member and the Vice-Chairman to suggest changes to staff. If deemed necessary, a minority report will be issued. The Chairman suggested due to time constraints, the Committee tentatively approve the report as of December 1, 1985, subject to changes by the Committee members.

A motion was made by Representative Walker and seconded by Representative Hoy that the minutes of the Committee meetings be approved as of December 1, 1985, if there are no additions or corrections prior to that time, and to tentatively approve the Committee report as of December 1, 1985, with additions and corrections submitted prior to December 1, 1985, approved by the Chairman, Vice-Chairman, and the ranking minority member. The motion passed.

The Committee adjourned.

Prepared by Mike Heim

Approved by Committee on:

Jan 13, 1986  
(date)

*Attachment I*

State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT



Barbara J. Sabol, Secretary

Forbes Field  
Topeka, Kansas 66620  
913-862-9360

November 13, 1985

The Honorable Frank D. Gaines  
The State Senate  
P. O. Box 219  
Augusta, Kansas 67010

Dear Senator Gaines:

This is in response to your request for information about the type and frequency of hospital inspections.

The Department of Health and Environment inspects hospitals to assure compliance with licensure standards and to assure compliance with certification standards for participation in the Medicare program. However, both licensure and Medicare regulations recognize approval by the Joint Commission on Accreditation of Hospitals (JCAH), a national, voluntary, nongovernment accreditation program, and we do not routinely conduct inspections in those hospitals which are JCAH accredited. Approximately 50 percent of Kansas hospitals, representing 75 percent of the total licensed beds, are accredited by JCAH.

For those hospitals not accredited by JCAH, the Department of Health and Environment conducts an annual survey for both licensure and Medicare purposes. This survey consists of inspections of the hospitals by a generalist surveyor (usually a registered nurse), a sanitarian, a clinical laboratory specialist, a radiological health specialist, and a representative of the State Fire Marshal's office. These individuals usually visit the facility on different days; however, their visits are usually conducted within a 30-day time span.

As a result of the surveys by the various specialists, a formal statement of any deficiencies noted is provided to the hospital following the last visit by one of the specialists. The hospital is then required to develop a plan of correction prior to the renewal of license and Medicare certification.

In addition to these annual visits, the department investigates any complaints that appear to involve potential violations of either licensure or Medicare standards. Also, hospitals are required to submit plans for any structural modifications or new construction to the department for review and approval prior to the commencement of construction.

If you should need any further information, please let us know.

Sincerely,

*Barbara J. Sabol*

Barbara J. Sabol  
Secretary

P

*11/20-21/85*  
*Attachment I*



*Attachment II*

# DANI Associates Inc.

Actuarial Consultants

Ashland Office Center • Evesham & Alpha Avenues • Voorhees, N.J 08043  
(609) 795-5558

November 19, 1985

Mr. Robert D. Hayes  
Fire and Casualty Policy Examiner  
Kansas Insurance Department  
420 South West 9th  
Topeka, Kansas 66612

Re: Actuarial Evaluation of Proposed Legislative Changes to the Kansas HCPIAA  
October 14, 1985 Report Addendum

Dear Bob:

Enclosed, as Attachments 2 through 5, are summary evaluations of the new coverage scenarios you requested on Thursday, November 14th. For ease of comparison with the scenarios presented in our October 14, 1985 report, Attachment 1 ranks all proposals examined to date in terms of their effect on the 1986/87 surcharge rate. Attachment 6 provides an analogous ranking of the savings indicated in the 1985/86 surcharge rate implemented on July 1, 1985.

This material is based upon methods and assumptions which are consistent with our October 14th analysis, and should be considered an integral part of that report. Please note that the current proposals involve an indemnity cap of \$500,000 as opposed to a \$500,000 cap on indemnity other than medical expense which was evaluated in conjunction with a \$1 million medical cap in the October 14th report. Some important caveats regarding this report and these attachments follow.

The primary data available to us at this time for costing of the various proposals was taken from the September, 1980 Final Compilation of the Medical Malpractice Closed Claim Study by the National Association of Insurance Commissioners (NAIC). This compilation does not distinguish between current and future medical expenditures, hence we are unable at this time to evaluate supplemental medical expense proposals based on this distinction. As a result, the surcharge rate indications presented in these attachments conservatively estimate the effects of statutory caps stated in terms of future medical expenses. An example should clarify this point.

Assume a statutory cap of \$500,000 on indemnity and \$500,000 on supplemental future medical expense is adopted. A claimant who has incurred \$1 million in current medical expenses would only be able to recover \$500,000 under the indemnity cap. A second claimant who has incurred \$1 million in future medical expenses would be able to recover \$500,000 under the indemnity cap and \$500,000 under the supplemental medical cap. In our analyses, we have been forced to assume that each claimant would recover \$1 million.

*11/20-21/85  
Attachment II*



Mr. R. D. Hayes  
November 19, 1985  
Page 2 of 2

Second, since the NAIC study does not provide a component breakdown of expense categories, we furthermore cannot determine the portion of medical expenses that custodial care comprises. We are thus unable to separately evaluate the impact of this liability in the legislative proposals.

Finally, we have assumed in our analyses that statutory caps apply to the present value (discounting for both interest and mortality) of claimant recoveries. To the extent that structured settlements are utilized, recoveries in future dollars can exceed otherwise applicable statutorily defined limits. Therefore such statutory caps can represent understatements of the amounts ultimately recoverable by claimants. On the other hand, to the extent that settlement amounts in excess of present values can be currently obtained, then the surcharge indications presented in the attachments and report can represent overstatements of the Fund's needs if structured settlements were required.

Please do not hesitate to call if you have any questions regarding this material or earlier reports.

Sincerely,

A handwritten signature in cursive script that reads 'Tony Valenti'.

Anthony T. Valenti  
President

ATV/vev  
Enclosures  
cc: Mr. C. M. Lederman

KANSAS HEALTH CARE STABILIZATION FUND

Indicated 1986/87 Surcharge Rates  
Based on Various Proposed Statutory Caps  
Placed on Claimant Recoveries

Statutory Cap	Based on Prospective Implementation	Based on Retrospective Implementation
\$500,000 Indemnity *	91.0% (Exh 2, Pg 1)	48.1% (Exh 3, Pg 1)
\$750,000 Indemnity *	93.4% (Exh 2, Pg 2)	—
\$500,000 Indemnity \$500,000 Supplemental Medical Expense **	94.1% (Attachment 2)	66.8% (Attachment 4)
\$1,000,000 Indemnity *	94.7% (Exh 2, Pg 3)	—
\$500,000 Indemnity Other Than Medical \$1,000,000 Medical Expense *	97.1% (Exh 2, Pg 4)	79.6% (Exh 3, Pg 2)
\$500,000 Indemnity Unlimited Supplemental Medical Expense **	98.7% (Attachment 3)	85.8% (Attachment 5)

8/8/85 Indicated 1986/87 Surcharge Rate Under the HCPIAA as Presently Constituted: 99.6%

\* October 14, 1985 Report.

\*\* November 19, 1985 Addendum.

KANSAS HEALTH CARE STABILIZATION FUND

Legislation Applicable To All Occurrences On or After July 1, 1986  
Indemnity Capped At \$500,000  
\$500,000 Cap On Supplemental Medical Expense Per Incident

Surcharge and Disbursement Summary (\$000's)

	Fiscal Year		
	85/86	86/87	87/88
<b>I. Based on the Prospective Funding of Post 7/1/84 Accrued Loss and LAE</b>			
(1) Estimated \$200,000/\$600,000 Written Premium *	\$22,230	\$22,698	\$23,050
(2) Indicated Required Surcharge Receipts	\$16,620	\$14,068	\$14,130
(3) Indicated Surcharge Rate (2)/(1)	74.8%	62.0%	61.3%
(4) Projected Loss & LAE Disbursements	\$ 440	\$ 1,821	\$ 4,020
<b>II. Based on the Retrospective Funding of Pre 7/1/84 Accrued Loss and LAE</b>			
(5) Indicated Required Surcharge Receipts	\$ 7,626	\$ 7,290	\$ 6,063
(6) Indicated Surcharge Rate (5)/(1)	34.3%	32.1%	26.3%
(7) Projected Loss & LAE Disbursements	\$ 7,626	\$ 7,290	\$ 6,063
(8) Estimated Ending Discounted Remaining Unfunded Liability	\$26,415**	\$21,189	\$16,530
<b>III. Total</b>			
(9) Indicated Surcharge Rate (3)+(6)	109.1%	94.1%	87.6%
(10) Projected Loss & LAE Disbursements (4)+(7)	\$ 8,066	\$ 9,111	\$10,083

\*,\*\* See : Notes to Attachments.

KANSAS HEALTH CARE STABILIZATION FUND

Legislation Applicable To All Occurrences On or After July 1, 1986  
Indemnity Capped At \$500,000  
Unlimited Supplemental Medical Expense Per Incident

Surcharge and Disbursement Summary (\$000's)

	Fiscal Year		
	85/86	86/87	87/88
I. Based on the Prospective Funding of Post 7/1/84 Accrued Loss and LAE			
(1) Estimated \$200,000/\$600,000 Written Premium *	\$22,230	\$22,698	\$23,050
(2) Indicated Required Surcharge Receipts	\$16,620	\$15,119	\$17,020
(3) Indicated Surcharge Rate (2)/(1)	74.8%	66.6%	73.8%
(4) Projected Loss & LAE Disbursements	\$ 440	\$ 1,824	\$ 4,011
II. Based on the Retrospective Funding of Pre 7/1/84 Accrued Loss and LAE			
(5) Indicated Required Surcharge Receipts	\$ 7,626	\$ 7,290	\$ 6,063
(6) Indicated Surcharge Rate (5)/(1)	34.3%	32.1%	26.3%
(7) Projected Loss & LAE Disbursements	\$ 7,626	\$ 7,290	\$ 6,063
(8) Estimated Ending Discounted Remaining Unfunded Liability	\$26,415**	\$21,189	\$16,530
III. Total			
(9) Indicated Surcharge Rate (3)+(6)	109.1%	98.7%	100.1%
(10) Projected Loss & LAE Disbursements (4)+(7)	\$ 8,066	\$ 9,114	\$10,074

\*,\*\* See : Notes to Attachments.

KANSAS HEALTH CARE STABILIZATION FUND

Legislation Applicable To All Claims Outstanding At July 1, 1986  
Indemnity Capped At \$500,000  
\$500,000 Cap On Supplemental Medical Expense Per Incident

Surcharge and Disbursement Summary (\$000's)

	Fiscal Year		
	85/86	86/87	87/88
I. Based on the Prospective Funding of Post 7/1/84 Accrued Loss and LAE			
(1) Estimated \$200,000/\$600,000 Written Premium *	\$22,230	\$21,771	\$22,569
(2) Indicated Required Surcharge Receipts	\$16,620	\$10,030	\$11,478
(3) Indicated Surcharge Rate (2)/(1)	74.8%	46.1%	50.9%
(4) Projected Loss & LAE Disbursements	\$ 440	\$ 1,720	\$ 3,259
II. Based on the Retrospective Funding of Pre 7/1/84 Accrued Loss and LAE			
(5) Indicated Required Surcharge Receipts	\$ 7,626	\$ 4,512	\$ 3,322
(6) Indicated Surcharge Rate (5)/(1)	34.3%	20.7%	14.7%
(7) Projected Loss & LAE Disbursements	\$ 7,626	\$ 4,512	\$ 3,322
(8) Estimated Ending Discounted Remaining Unfunded Liability	\$26,415**	\$ 8,333	\$ 5,790
III. Total			
(9) Indicated Surcharge Rate (3)+(6)	109.1%	66.8%	65.6%
(10) Projected Loss & LAE Disbursements (4)+(7)	\$ 8,066	\$ 6,232	\$ 6,581

\*,\*\* See : Notes to Attachments.

KANSAS HEALTH CARE STABILIZATION FUND

Legislation Applicable To All Claims Outstanding At July 1, 1986  
 Indemnity Capped At \$500,000  
 Unlimited Supplemental Medical Expense Per Incident

Surcharge and Disbursement Summary (\$000's)

	Fiscal Year		
	85/86	86/87	87/88
<b>I. Based on the Prospective Funding of Post 7/1/84 Accrued Loss and LAE</b>			
(1) Estimated \$200,000/\$600,000 Written Premium *	\$22,230	\$21,771	\$22,569
(2) Indicated Required Surcharge Receipts	\$16,620	\$13,532	\$16,166
(3) Indicated Surcharge Rate (2)/(1)	74.8%	62.2%	71.6%
(4) Projected Loss & LAE Disbursements	\$ 440	\$ 1,743	\$ 3,639
<b>II. Based on the Retrospective Funding of Pre 7/1/84 Accrued Loss and LAE</b>			
(5) Indicated Required Surcharge Receipts	\$ 7,626	\$ 5,128	\$ 4,175
(6) Indicated Surcharge Rate (5)/(1)	34.3%	23.6%	18.5%
(7) Projected Loss & LAE Disbursements	\$ 7,626	\$ 5,128	\$ 4,175
(8) Estimated Ending Discounted Remaining Unfunded Liability	\$26,415**	\$12,783	\$ 9,598
<b>III. Total</b>			
(9) Indicated Surcharge Rate (3)+(6)	109.1%	85.8%	90.1%
(10) Projected Loss & LAE Disbursements (4)+(7)	\$ 8,066	\$ 6,871	\$ 7,814

\*,\*\* See : Notes to Attachments.

KANSAS HEALTH CARE STABILIZATION FUND

Notes to Attachments

\* The modest growth in the basic written premium (see 10/14/85 Exhibit 1) reflects rate changes which can be reasonably anticipated based on primary carriers' past filing activities. Although the reflection of investment earnings and competitive pressures serve to contain basic premium costs, increases in both the frequency and severity of loss will continue to overshadow these cost containment forces.

Reductions in basic premiums attributable to ALAE savings and the exhausting of statutory coverage limits through the stacking of primary policies represent a one time savings (see 10/14/85 Summary). Under a retrospective implementation (Attachments 4 and 5), these savings will be sufficient to temporarily counteract the otherwise indicated growth in premiums. The full benefit of these savings are achieved more slowly under a prospective implementation (Attachments 1 and 2), and hence the effect on basic premiums is less apparent.

\*\* Because a portion of the fiscal year 85/86 liabilities, which varies by coverage and implementation method, will be affected by proposed legislation, we estimate that the following percentage savings of 85/86 basic written premium (\$22.230 million) will be realized. As noted in the 10/14/85 Summary, these savings can be used to reduce the estimated unfunded pre 7/1/84 liabilities.

Prospective Implementation		Retrospective Implementation	
10/14/85 Exhibit 2, Page 1	3.1%	10/14/85 Exhibit 3, Page 1	72.7%
10/14/85 Exhibit 2, Page 2	2.7%		
11/19/85 Attachment 2	2.5%	11/19/85 Attachment 4	47.8%
10/14/85 Exhibit 2, Page 3	2.4%		
10/14/85 Exhibit 2, Page 4	2.1%	10/14/85 Exhibit 3, Page 2	28.6%
11/19/85 Attachment 3	1.9%	11/19/85 Attachment 5	18.3%