

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Rex B. Hoy at
Chairperson

3:30 ~~xx~~ a.m./p.m. on February 18, 1986 in room 521-S of the Capitol.

All members were present except:
Rep. Clyde Graeber, excused
Rep. Kenneth King, excused

Committee staff present:

Emalene Correll, Research Department
Melinda Hanson, Research Department
Gordon Self, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Dick Brock, Kansas Insurance Department
Dr. Robert Harder, SRS
Mr. Bill Preston, United Methodist Youthville
Mr. Wayne Sims, Wyandotte House Inc.
Mr. Bruce Linhos, Ks. Assoc. Licensed Child Care Agencies
Mr. Jack Roberts, Blue Cross Blue Shield
Mr. Bill Pitsenberger, HMO Kansas

The meeting was called to order by the Chairman.

Mr. Dick Brock, Kansas Insurance Department, asked that two bills be introduced; one relates to a guaranty fund (insolvent life, accident and health insurers), the other to licensing of crop hail insurance agents. A motion was made by Rep. DeBaun that the bills be introduced; Rep. Turnquist seconded the motion. The motion carried. (Attachment 1.)

Hearing on: House Bill 2812 - prohibiting certain exclusions in health, accident and sickness policies on emotionally handicapped children.

Dr. Robert Harder, SRS, explained that this bill would seek reimbursement from health insurance companies for emotionally handicapped children in non-medical settings. He stated that it would be advantageous for the insurers as care can be provided for these children in group homes which are less expensive than private hospital care. Discussion followed which indicated that the children to which this bill would pertain are in care levels 4, 5, and 6. (Attachment 2.)

Mr. Bill Preston, Resident Director of United Methodist Youthville, discussed the current responsibility lines for payment of expenses. This bill would require that health insurance companies pay for the medical bills, as well as the daily living expenses.

Mr. Wayne Sims, Wyandotte House Inc., cited some examples of successful treatment in residential group home care. Currently few of these children are covered by private insurance.

Mr. Bruce Linhos, Kansas Association of Licensed Private

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 521-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 18, 1986.

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Child Care Agencies, said this bill would offer advantages to insurers by enhancing their range of options at rates lower than those on treatments on which they currently pay. (Attachment 3.)

Hearing on: House Bill 2809 - mandating payment by HMOs for involuntary commitments.

Dr. Robert Harder, SRS, stated that HMOs currently do not provide coverage to persons involuntarily committed to state mental health hospitals, which has resulted in financial losses to the state. (Attachment 4.)

Mr. Jack Roberts, Blue Cross Blue Shield, suggested that it would be unfair for the insured public to have this burden placed on them and that it is cost shifting. He feels it needs a lot of probing as to its objectives and to how it will affect the small groups around the state.

Mr. Bill Pitsenberger, HMO Kansas, spoke on the principle of HMOs; they rely on a "gatekeeper" to make sure medical services are necessary. They shouldn't be regulated by the same kinds of mechanisms as traditional insurers.

Hearing on: House Bill 2810 - relating to continuation privileges by HMOs.

Mr. Dick Brock, Kansas Insurance Department, suggested that HMOs should be subject to the same type of six-month continuation plan as other insurers.

Mr. Bill Pitsenberger, HMO Kansas, stated that this legislation is not necessary. HMOs are required to rate on a community basis, and individual conversion policies are required by federal law at basically the same rate; however, continuation is not practical if a subscriber moves outside the service area. He was requested by the committee to provide copies of the federal statute.

The minutes of the previous meeting were approved.

The meeting was adjourned at 4:55 p.m.

LEGISLATIVE PROPOSAL NO. 14

AN ACT relating to insurance; guaranty fund; insolvent life, accident and health insurers; protection of policyholders and beneficiaries; requirements; amending K.S.A. 1985 Supp. 40-3003, 40-3005, K.S.A. 1985 Supp. 40-3002, 40-3008, 40-3009, 40-3006, 40-3007, 40-3010, 40-3011, 40-3012, 40-3013, 40-3014, 40-3017 and 40-3018 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 1985 Supp. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall provide coverage, for the policies and contracts specified in subsection (b) -- (1) to persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2), and

(2) to persons who are owners of or certificate holders under such policies or contracts, or, in the case of unallocated annuity contracts, to the persons who are the contract holders, and who --

(A) are residents, or

(B) are not residents, but only under all of the following conditions:

(i) the insurers which issued such policies or contracts are domiciled in this state,

(ii) such insurers never had a license or certificate of authority in the states in which such persons reside,

(iii) such states have associations similar to the association created by this act, and

(iv) such persons are not eligible for coverage by such associations.

(b)(1) This act shall apply provide coverage to the persons specified in subsection (a) for direct, non-group life, insurance policies, health, annuity and supplemental insurance policies, and or contracts, supplemental to life and health insurance policies for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by persons authorized to transact insurance in this state at any time member insurers, except as limited by this act.

~~(b) This act shall not apply to:~~

~~----(1)---Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;~~

~~----(2)---any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;~~

~~----(3)---any such policy or contract issued by persons transacting business pursuant to the provisions of K.S.A. 40-202 and amendments thereto; and~~

~~----(4)---any annuity contracts except with respect to contractual obligations of impaired insurers for which the association has become liable prior to July 1, 1985.~~

Sec. 2. K.S.A. 40-3005 is hereby amended to read as follows: 40-3005: As used in this act:

(a) "Account" means either of the ~~three~~ four accounts created under K.S.A. 40-3006.

(b) "Association" means the Kansas life and health insurance guaranty association created under K.S.A. 40-3006.

(c) "Commissioner" means the commissioner of insurance of this state.

(d) "Contractual obligation" means any obligation ~~under covered policies.~~ a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 3.

(e) "Covered policy" means any policy or contract within the scope of this act under K.S.A. 40-3003 and K.S.A. 40-3008, as amended.

(f) "Impaired insurer" means: ~~a member~~

~~(1) An insurer which, after the effective date of this act, becomes insolvent and is not an insolvent insurer, and~~

(1) is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or

(2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction. ~~is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction; or~~

~~----(2)---an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations.~~

61 (g) "Insolvent insurer" means a member insurer which after the
62 effective date of this act, is placed under an order of liquidation by a
63 court of competent jurisdiction with a finding of insolvency.

64 ~~(g)~~ (h) "Member insurer" means any person insurer licensed or which
65 holds a certificate of authority to transact in this state any kind of
66 insurance for which coverage is provided under section 3, and includes any
67 insurer whose license or certificate of authority in this state may have
68 been suspended, revoked, not renewed or voluntarily withdrawn, but does not
69 include:

70 (1) A non-profit hospital or medical service organization;

71 (2) A health maintenance organization;

72 (3) A fraternal benefit society;

73 (4) A mandatory state pooling plan;

74 (5) A mutual assessment company or any entity that operates on an
75 assessment basis;

76 (6) An insurance exchange; or

77 (7) Any entity similar to any of the above.

78 ~~authorized to transact in this state any kind of insurance to which this act~~
79 ~~applies under K.S.A. 40-3003.~~

80 (i) "Moody's corporate bond yield average" means the monthly average
81 corporates as published by moody's investors service, inc., or any successor
82 thereto.

83 ~~(h)~~ (j) "Premiums" means direct gross insurance premiums and annuity
84 considerations written on covered policies, less return premiums and
85 considerations thereon and dividends paid or credited to policyholders on
86 such direct business. "Premiums" do not include premiums and considerations
87 on contracts between insurers and reinsurers. As used in K.S.A. 40-3009
88 "premiums" are those for the calendar year preceding the determination of
89 impairment, amounts received on covered policies or contracts less premiums,
90 considerations and deposits returned thereon, and less dividends and
91 experience credits thereon. "Premiums" does not include any amounts
92 received for any policies or contracts or for the portions of any policies
93 or contracts for which coverage is not provided under section 3 (b) except
94 that assessible premium shall not be reduced on accounts for sections
95 3(b)(2)(C) relating to interest limitations and 3(c)(2) relating to
96 limitations with respect to any one life and any one contract holder;
97 provided that "premiums" shall not include any premiums in excess of five
98 million dollars on any unallocated annuity contract.

99 ~~(i)~~ (k) "Person" means any individual, corporation, partnership,
100 association or voluntary organization.

101 ~~(j)~~ (l) "Resident" means any person who resides in this state at the
102 time the impairment is determined and to whom contractual obligations are
103 owed, a member insurer is determined to be an impaired or insolvent insurer
104 and to whom a contractual obligation is owed. A person may be a resident of
105 only one state, which in the case of a person other than a natural person
106 shall be its principal place of business.

107 (m) "Unallocated annuity contract" means any annuity contract or group
108 annuity certificate which is not issued to and owned by an individual,
109 except to the extent of any annuity benefits guaranteed to an individual by
110 an insurer under such contract or certificate.

111 (n) "Supplemental contract" means any agreement entered into for the
112 distribution of policy or contract proceeds.

113 Sec. 3. K.S.A. 1985 Supp. 40-3002 is hereby amended to read as
114 follows: 40-3002. ~~The purpose of this act is to protect policyowners,~~
115 ~~insureds, beneficiaries, payees, and assignees of life insurance policies,~~
116 ~~health insurance policies, and supplemental contracts, subject to certain~~
117 ~~limitations, against failure in the performance of contractual obligations~~
118 ~~due to the impairment of the insurer issuing such policies or contracts. To~~
119 ~~provide this protection: (1) An association of insurers is created to~~
120 ~~enable the guaranty of payment of benefits and of continuation of coverages;~~
121 ~~(2) members of the association are subject to assessment to provide funds~~
122 ~~to carry out the purpose of this act; and (3) the association is authorized~~
123 ~~to assist the commissioner, in the prescribed manner, in the detection and~~
124 ~~prevention of insurer impairments. (a) The purpose of this act is to~~
125 protect, subject to certain limitations, the persons specified in section
126 3(a) against failure in the performance of contractual obligations, under
127 life and health insurance policies and annuity contracts specified in
128 section 3(b), because of the impairment or insolvency of the member insurer
129 that issued the policies or contracts.

130 (b) To provide this protection, an association of insurers is created
131 to pay benefits and to continue coverages as limited herein, and members of

132 the association are subject to assessment to provide funds to carry out the
133 purpose of this act.

134 Sec. 4. K.S.A. 40-3008 is hereby amended to read as follows: 40-3008.
135 ~~In addition to the powers and duties enumerated in other sections of this~~
136 ~~act:~~

137 ~~(a) If a domestic insurer is an impaired insurer, the association may,~~
138 ~~prior to an order of liquidation or rehabilitation, and subject to any~~
139 ~~conditions imposed by the association other than those which impair the~~
140 ~~contractual obligations of the impaired insurer, and approved by the~~
141 ~~impaired insurer and the commissioner:~~

142 ~~----(1)--- Guarantee or reinsure, or cause to be guaranteed, assumed, or~~
143 ~~reinsured, all the covered policies of the impaired insurer;~~

144 ~~----(2)--- Provide such moneys, pledges, notes, guarantees, or other means as~~
145 ~~are proper to effectuate subsection (1), and assure payment of the~~
146 ~~contractual obligations of the impaired insurer pending action under~~
147 ~~subsection (1);~~

148 ~~----(3)--- Loan money to the impaired insurer;~~

149 ~~(b) If a foreign or alien insurer is an impaired insurer, the~~
150 ~~association may, prior to an order of liquidation, rehabilitation, or~~
151 ~~conservation, with respect to the covered policies of residents and subject~~
152 ~~to any conditions imposed by the association other than those which impair~~
153 ~~the contractual obligations of the impaired insurer, and approved by the~~
154 ~~impaired insurer and the commissioner:~~

155 ~~----(1)--- Guarantee or reinsure, or cause to be guaranteed, assumed, or~~
156 ~~reinsured, the impaired insurer's covered policies of residents;~~

157 ~~----(2)--- Provide such moneys, pledges, notes, guarantees or other means as~~
158 ~~are proper to effectuate subsection (1), and assure payment of the impaired~~
159 ~~insurer's contractual obligations to residents pending action under~~
160 ~~subsection (1);~~

161 ~~----(3)--- Loan money to the impaired insurer.~~

162 ~~(c) If a domestic insurer is an impaired insurer under an order of~~
163 ~~liquidation or rehabilitation, the association shall, subject to the~~
164 ~~approval of the commissioner:~~

165 ~~----(1)--- Guarantee, assume or reinsure, or cause to be guaranteed, assumed~~
166 ~~or reinsured the covered policies of the impaired insurer;~~

167 ~~----(2)--- assure payment of the contractual obligations of the impaired~~
168 ~~insurer; and~~

169 ~~----(3)--- provide such moneys, pledges, notes, guarantees, or other means as~~
170 ~~are reasonably necessary to discharge such duties.~~

171 ~~If the association fails to act within a reasonable period of time, the~~
172 ~~commissioner shall have the powers and duties of the association, on behalf~~
173 ~~of the association, under this act with respect to such domestic impaired~~
174 ~~insurer.~~

175 ~~(d) If a foreign or alien insurer is an impaired insurer under an order~~
176 ~~of liquidation, rehabilitation, or conservation, the association shall,~~
177 ~~subject to the approval of the commissioner:~~

178 ~~----(1)--- Guarantee, assume, or reinsure or cause to be guaranteed, assumed,~~
179 ~~or reinsured the covered policies of residents;~~

180 ~~----(2)--- Assure payment of the contractual obligations of the impaired~~
181 ~~insurer to residents; and~~

182 ~~----(3)--- Provide such moneys, pledges, notes, guarantees, or other means as~~
183 ~~are reasonably necessary to discharge such duties.~~

184 ~~If the association fails to act within a reasonable period of time, the~~
185 ~~commissioner, on behalf of the association, shall have the powers and duties~~
186 ~~of the association under this act with respect to such foreign or alien~~
187 ~~impaired insurer.~~

188 ~~(e) (1) In carrying out its duties under subsections (c) and (d), the~~
189 ~~association may request that there be imposed policy liens, contract liens,~~
190 ~~moratoriums on payments, or other similar means and such liens, moratoriums,~~
191 ~~or similar means may be imposed if the commissioner:~~

192 ~~----(A)--- Finds that the amounts which can be assessed under this act are~~
193 ~~less than the amounts needed to assure full and prompt performance of the~~
194 ~~impaired insurer's contractual obligations, or that the economic or~~
195 ~~financial conditions as they affect member insurers are sufficiently adverse~~
196 ~~to render the imposition of policy or contract liens, moratoriums, or~~
197 ~~similar means to be in the public interest; and~~

198 ~~----(B)--- Approves the specific policy liens, contract liens, moratoriums, or~~
199 ~~similar means to be used.~~

200 ~~(2) Before being obligated under subsections (c) and (d) the~~
201 ~~association may request that there be imposed temporary moratoriums or liens~~

202 ~~on payments of cash values and policy loans and such temporary moratoriums~~
203 ~~and liens may be imposed if they are approved by the commissioner.~~
204 ~~---(f)---The association shall have no liability under this section for any~~
205 ~~covered policy of a foreign or alien insurer whose domiciliary jurisdiction~~
206 ~~or state of entry provides by statute or regulation, for residents of this~~
207 ~~state protection substantially similar to that provided by this act for~~
208 ~~residents of other states.~~

209 (a) If a member insurer is an impaired domestic insurer, the
210 association may, in its discretion, and subject to any conditions imposed by
211 the association that do not impair the contractual obligations of the
212 impaired insurer, that are approved by the commissioner, and that are,
213 except in cases of court ordered conservation or rehabilitation, also
214 approved by the impaired insurer --

215 (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed,
216 or reinsured, any or all of the policies or contracts of the impaired
217 insurer;

218 (2) Provide such monies, pledges, notes, guarantees, or other means as
219 are proper to effectuate paragraph (1) and assure payment of the contractual
220 obligations of the impaired insurer pending action under paragraph (1); or

221 (3) Loan money to the impaired insurer.

222 (b) (1) If a member insurer is an impaired insurer, whether domestic,
223 foreign or alien, and the insurer is not paying claims timely, then subject
224 to the preconditions specified in paragraph (2), the association shall, in
225 its discretion, either --

226 (A) Take any of the actions specified in subsection (a), subject to the
227 conditions therein, or

228 (B) Provide substitute benefits in lieu of the contractual obligations
229 of the impaired insurer solely for: health claims; periodic annuity benefit
230 payments; death benefits; supplemental benefits; and cash withdrawals for
231 policy or contract owners who petition therefor under claims of emergency or
232 hardship in accordance with standards proposed by the association and
233 approved by the commissioner.

234 (2) The association shall be subject to the requirements of paragraph
235 (1) only if --

236 (A) The laws of its state of domicile provide that until all payments
237 of or on account of the impaired insurer's contractual obligations by all
238 guaranty associations, along with all expenses thereof and interest on all
239 such payments and expenses, shall have been repaid to the guaranty
240 associations or a plan of repayment by the impaired insurer shall have been
241 approved by the guaranty associations; (i) the delinquency proceeding shall
242 not be dismissed, (ii) neither the impaired insurer nor its assets shall be
243 returned to the control of its shareholders or private management, and (iii)
244 it shall not be permitted to solicit or accept new business or have any
245 suspended or revoked license restored, and

246 (B) (i) if the impaired insurer is a domestic insurer, it has been
247 placed under an order of rehabilitation by a court of competent jurisdiction
248 in this state, or;

249 (ii) if the impaired insurer is a foreign or alien insurer,

250 (aa) it has been prohibited from soliciting or accepting new business
251 in this state,

252 (bb) its certificate of authority has been suspended or revoked in this
253 state, and

254 (cc) a petition for rehabilitation or liquidation has been filed in a
255 court of competent jurisdiction in its state of domicile by the commissioner
256 of the state.

257 (c) If a member insurer is an insolvent insurer, the association shall,
258 in its discretion, either --

259 (1) (A) Guaranty, assume or reinsure, or cause to be guaranteed,
260 assumed or reinsured, the policies or contracts of the insolvent insurer; or

261 (B) Assure payment of the contractual obligations of the insolvent
262 insurer; and

263 (C) Provide such monies, pledges, guarantees, or other means as are
264 reasonably necessary to discharge such duties; or

265 (2) With respect only to life and health policies, provide benefits and
266 coverages in accordance with subsection (d).

267 (d) When proceeding under subsections (b)(1)(B) or (c)(2), the
268 association shall, with respect to only life and health insurance policies --

269 (1) Assure payment of benefits for premiums identical to the premiums
270 and benefits (except for terms of conversion and renewability) that would
271 have been payable under the policies of the insolvent insurer, for claims
272 incurred --

273 (A) With respect to group policies, not later than the earlier of the
274 next renewal date under such policies or contracts or 45 days, but in no
275 event less than 30 days, after the date on which the association becomes
276 obligated with respect to such policies;

277 (B) With respect to individual policies, not later than the earlier of
278 the next renewal date (if any) under such policies or one year, but in no
279 event less than 30 days, from the date on which the association becomes
280 obligated with respect to such policies;

281 (2) Make diligent efforts to provide all known insureds or group
282 policyholder with respect to group policies 30 days notice of the
283 termination of the benefits provided; and

284 (3) with respect to individual policies, make available to each known
285 insured, or owner if other than the insured, and with respect to an
286 individual formerly insured under a group policy who is not eligible for
287 replacement group coverage, make available substitute coverage on an
288 individual basis in accordance with the provisions of paragraph (4), if the
289 insureds had a right under law or the terminated policy to convert coverage
290 to individual coverage or to continue an individual policy in force until a
291 specified age or for a specified time, during which the insurer had no right
292 unilaterally to make changes in any provision of the policy or had a right
293 only to make changes in premium by class.

294 (4) (A) In providing the substitute coverage required under paragraph
295 (3), the association may offer either to reissue the terminated coverage or
296 to issue an alternative policy.

297 (B) Alternative or reissued policies shall be offered without requiring
298 evidence of insurability, and shall not provide for any waiting period or
299 exclusion that would not have applied under the terminated policy.

300 (C) The association may reinsure any alternative or reissued policy.

301 (5) (A) Alternative policies adopted by the association shall be
302 subject to the approval of the commissioner. The association may adopt
303 alternative policies of various types for future issuance without regard to
304 any particular impairment or insolvency.

305 (B) Alternative policies shall contain at least the minimum statutory
306 provisions required in this state and provide benefits that shall not be
307 unreasonable in relation to the premium charged. The association shall set
308 the premium in accordance with a table of rates which it shall adopt. The
309 premium shall reflect the amount of insurance to be provided and the age and
310 class of risk of each insured, but shall not reflect any changes in the
311 health of the insured after the original policy was last underwritten.

312 (C) Any alternative policy issued by the association shall provide
313 coverage of a type similar to that of the policy issued by the impaired or
314 insolvent insurer, as determined by the association.

315 (6) If the association elects to reissue the insured's terminated
316 coverage at a premium rate different from that charged under the terminated
317 policy, the premium shall be set by the association in accordance with the
318 amount of insurance provided and the age and class of risk, subject to
319 approval of the commissioner and by a court of competent jurisdiction.

320 (7) The association's obligations with respect to coverage under any
321 policy of the impaired or insolvent insurer or under any reissued or
322 alternative policy shall cease on the date such coverage or policy is
323 replaced by another similar policy by the policyholder, the insured, or the
324 association.

325 (e) When proceeding under subsections b(1)(B) or (c) with respect to
326 any policy or contract carrying guaranteed minimum interest rates, the
327 association shall assure the payment or crediting of a rate of interest
328 consistent with section 3(b)(2)(C).

329 (f) Nonpayment of premiums within 31 days after the date required under
330 the terms of any guaranteed, assumed, alternative or reissued policy or
331 contract or substitute coverage shall terminate the association's
332 obligations under such policy or coverage under this act with respect to
333 such policy or coverage, except with respect to any claims incurred or any
334 net cash surrender value which may be due in accordance with the provisions
335 of this act.

336 (g) Premiums due after entry of an order of liquidation of an insolvent
337 insurer shall belong to and be payable at the direction of the association,
338 and the association shall be liable for unearned premiums due to policy or
339 contract owners arising after the entry of such order.

340 (h) The protection provided by this act shall not apply where any
341 guaranty protection is provided to residents of this state by the laws of
342 the domiciliary state or jurisdiction of the impaired or insolvent insurer
343 other than this state.

344 (i) In carrying out its duties under this section (b) and (c), the
345 association may, subject to approval by the court:

346 (1) Impose permanent policy or contract liens in connection with any
347 guarantee, assumption or reinsurance agreement, if the association finds
348 that the amounts which can be assessed under this act are less than the
349 amounts needed to assure full and prompt performance of the association's
350 duties under this act, or that the economic or financial conditions as they
351 affect member insurers are sufficiently adverse to render the imposition of
352 such permanent policy or contract liens, to be in the public interest;

353 (2) Impose temporary moratoriums or liens on payments of cash values
354 and policy loans, or any other right to withdraw funds held in conjunction
355 with policies or contracts, in addition to any contractual provisions for
356 deferral of cash or policy loan value.

357 (j) If the association fails to act within a reasonable period of time
358 as provided in subsections (b)(1)(B), (c) and (d) of this section, the
359 commissioner shall have the powers and duties of the association under this
360 act with respect to impaired or insolvent insurers.

361 ~~(g)~~ (k) The association may render assistance and advice to the
362 commissioner, upon his request, concerning rehabilitation, payment of
363 claims, ~~continuations~~ continuance of coverage, or the performance of other
364 contractual obligations of any impaired or insolvent insurer.

365 ~~(h)~~ (l) The association shall have standing to appear before any court
366 in this state with jurisdiction over an impaired or insolvent insurer
367 concerning which the association is or may become obligated under this act.
368 Such standing shall extend to all matters germane to the powers and duties
369 of the association, including, but not limited to, proposals for
370 reinsuring, modifying or guaranteeing the covered policies or contracts of
371 the impaired or insolvent insurer and the determination of the policies or
372 contracts and contractual obligations. The association shall also have the
373 right to appear or intervene before a court in another state with
374 jurisdiction over an impaired or insolvent insurer for which the association
375 is or may become obligated or with jurisdiction over a third party against
376 whom the association may have rights through subrogation of the insurer's
377 policyholders.

378 ~~(i)~~ ~~(l)~~ (m) (1) Any person receiving benefits under this act shall
379 be deemed to have assigned his the rights under, and any causes of action
380 relating to, the covered policy or contract to the association to the extent
381 of the benefits received because of this act, whether the benefits are
382 payments of or on account of contractual obligations, or continuation of
383 coverage or provision of substitute or alternative coverages. The
384 association may require an assignment to it of such rights and cause of
385 action by any payee, policy or contract owner, beneficiary, insured or
386 annuitant as a condition precedent to the receipt of any rights right or
387 benefits conferred by this act upon such person. ~~The association shall be~~
388 ~~subrogated to these rights against the assets of any impaired insurer.~~

389 (2) The subrogation rights of the association under this subsection
390 shall have the same priority against the assets of the impaired or insolvent
391 insurer as that possessed by the person entitled to receive benefits under
392 this act.

393 (3) In addition to paragraphs (1) and (2) above, the association shall
394 have all common law rights of subrogation and any other equitable or legal
395 remedy which would have been available to the impaired or insolvent insurer
396 or holder of a policy or contract with respect to such policy or contracts.

397 ~~(j)~~ (n) The contractual obligations of the impaired insurer for which
398 the association becomes or may become liable shall be as great as but no
399 greater than the contractual obligations of the impaired insurer would have
400 been in the absence of an impairment unless such obligations are reduced as
401 permitted by subsection (e) but the association shall ~~have no liability with~~
402 ~~respect to any portion of a covered policy to the extent that the death~~
403 ~~benefit coverage on any one life exceeds an aggregate of three hundred~~
404 ~~thousand dollars (\$300,000) not provide coverage for --~~

405 (1) Any portion of a policy or contract not guaranteed by the insurer,
406 or under which the risk is borne by the policy or contract holder;

407 (2) Any policy or contract of reinsurance, unless assumption
408 certificates have been issued;

409 (3) Any portion of a policy or contract to the extent that the rate of
410 interest on which it is based -- (A) averaged over the period of four years
411 prior to the date on which the association becomes obligated with respect to
412 such policy or contract, exceeds a rate of interest determined by
413 subtracting two percentage points from moody's corporate bond yield average
414 averaged for that same four year period or for such lesser period if the
415 policy or contract was issued less than four years before the association

416 became obligated; and (B) on and after the date on which the association
417 becomes obligated with respect to such policy or contract, exceeds the rate
418 of interest determined by subtracting three percentage points from moody's
419 corporate bond yield average as most recently available;

420 (4) Any plan or program of an employer, association or similar entity
421 to provide life, health or annuity benefits to its employees or members to
422 the extent that such plan or program is self-funded or uninsured, including
423 but not limited to benefits payable by an employer, association or similar
424 entity under

425 (A) A multiple employer welfare arrangement as defined in section 514
426 of the employee retirement income security act of 1974, as amended;

427 (B) A minimum premium group insurance plan;

428 (C) A stop-loss group insurance plan; or

429 (D) An administrative services only contract;

430 (5) Any portion of a policy or contract to the extent that it provides
431 dividends or experience rating credits, or provides that any fees or
432 allowances be paid to any person, including the policy or contract holder,
433 in connection with the service to or administration of such policy or
434 contract;

435 (6) Any policy or contract issued in this state by a member insurer at
436 a time when it was not licensed or did not have a certificate of authority
437 to issue such policy or contract in this state; and

438 (7) Any unallocated annuity contract.

439 (o) The benefits for which the association may become liable shall in
440 no event exceed the lesser of --

441 (1) The contractual obligations for which the insurer is liable or
442 would have been liable if it were not an impaired or insolvent insurer; or

443 (2) With respect to any one life, regardless of the number of policies
444 or contracts:

445 (A) \$300,000 in life insurance death benefits, but not more than
446 \$100,000 in net cash surrender and net cash withdrawal values for life
447 insurance;

448 (B) \$100,000 in health insurance benefits, including any net cash
449 surrender and net cash withdrawal values;

450 (C) \$100,000 in the present value of annuity benefits, including net
451 cash surrender and net cash withdrawal values;

452 (D) Provided, however, that in no event shall the association be liable
453 to expend more than \$300,000 in the aggregate with respect to any one life
454 under subsections (A), (B) and (C) above.

455 (3) With respect to any one contract holder, \$5,000,000 unallocated
456 annuity contract benefits, irrespective of the number of such contracts held
457 by that contract holder.

458 ~~(k)~~ (p) The association may:

459 (1) Enter into such contracts as are necessary or proper to carry out
460 the provisions and purposes of this act; ;

461 (2) Sue or be sued, including taking any legal actions necessary or
462 proper ~~for~~ to ~~recovery~~ recover of any unpaid assessments under K.S.A. 40-
463 3009- and to settle claims or potential claims against it;

464 (3) Borrow money to effect the purposes of this act; ; any notes or
465 other evidence of indebtedness of the association not in default shall be
466 legal investments for domestic insurers and may be carried as admitted
467 assets; ;

468 (4) Employ or retain such persons as are necessary to handle the
469 financial transactions of the association, and to perform such other
470 functions as become necessary or proper under this act.

471 ~~(5) Negotiate and contract with any liquidator, rehabilitator,~~
472 ~~conservator, or ancillary receiver to carry out the powers and duties of the~~
473 ~~association.~~

474 ~~(6) (5) Take such legal action as may be necessary to avoid payment of~~
475 ~~improper claims; ;~~

476 ~~(7) (6) Exercise, for the purposes of this act and to the extent~~
477 ~~approved by the commissioner, the powers of a domestic life or health~~
478 ~~insurer, but in no case may the association issue insurance policies or~~
479 ~~annuity contracts other than those issued to perform ~~the contractual~~ its~~
480 ~~obligations of ~~the impaired insurer~~ under this act.~~

481 (q) The association may join an organization of one or more other state
482 associations of similar purposes, to further the purposes and administer the
483 powers and duties of the association.

484 New Sec. 5. (a) No person, including an insurer, agent or affiliate of
485 an insurer shall make, publish, disseminate, circulate, or place before the
486 public, or cause directly or indirectly, to be made, published,

487 disseminated, circulated or placed before the public, in any newspaper,
488 magazine or other publication, or in the form of a notice, circular,
489 pamphlet, letter or poster, or over any radio station or television station,
490 or in any other way, any advertisement, announcement or statement, written
491 or oral, which uses the existence of the insurance guaranty association of
492 this state for the purpose of sales, solicitation, or inducement to purchase
493 any form of insurance covered by the Kansas life and health insurance
494 guaranty association act. Provided, however, that this section shall not
495 apply to the Kansas life and health insurance guaranty association or any
496 other entity which does not sell or solicit insurance.

497 (b) Within 180 days of the effective date of this act, the association
498 shall prepare a summary document describing the general purposes and current
499 limitations of the act and complying with subsection (c). This document
500 should be submitted to the commissioner for approval. Sixty days after
501 receiving such approval, no insurer may deliver a policy or contract
502 described in section 3(b)(1) to a policy or contract holder unless the
503 document is delivered to the policy or contract holder prior to or at the
504 time of delivery of the policy or contract except if subsection (d)
505 applies. The document should also be available upon request by a
506 policyholder. The distribution, delivery, or contents or interpretation of
507 this document shall not mean that either the policy or the contract or the
508 holder thereof would be covered in the event of the impairment or insolvency
509 of a member insurer. The description document shall be revised by the
510 association as amendments to the act may require. Failure to receive this
511 document does not give the policyholder, contractholder, certificateholder,
512 or insured any greater rights than those stated in this act.

513 (c) The document prepared under subsection (b) shall contain a clear
514 and conspicuous disclaimer on its face. The commissioner shall promulgate a
515 rule establishing the form and content of the disclaimer. The disclaimer
516 shall:

517 (1) State the name and address of the life and health insurance
518 guaranty association and insurance department.

519 (2) Prominently warn the policy or contract holder that the life and
520 health insurance guaranty association may not cover the policy or, if
521 coverage is available, it will be subject to substantial limitations,
522 exclusions and conditioned on continued residence in the state;

523 (3) State that the insurer and its agents are prohibited by law from
524 using the existence of the life and health insurance guaranty association
525 for the purpose of sales, solicitation or inducement to purchase any form of
526 insurance;

527 (4) Emphasize that the policy or contractholder should not rely on
528 coverage under the life and health insurance guaranty association when
529 selecting an insurer;

530 (5) Provide other information as directed by the commissioner.

531 (d) No insurer or agent may deliver a policy or contract described in
532 section 3(b)(1) and excluded under section 3(b)(2)(A) from coverage under
533 this act unless the insurer or agent, prior to or at the time of delivery,
534 gives the policy or contract holder a separate written notice which clearly
535 and conspicuously discloses that the policy or contract is not covered by
536 the life and health insurance guaranty association. The commissioner shall
537 by rule specify the form and content of the notice.

538
539 Sec. 6. K.S.A. 40-3009 is hereby amended to read as follows: 40-3009.

540 (a) For the purpose of providing the funds necessary to carry out the
541 powers and duties of the association, the board of directors shall assess
542 the member insurers, separately for each account, at such ~~times~~ time and
543 for such amounts as the board finds necessary. ~~The board shall collect the~~
544 ~~assessments after thirty (30) days written notice to the member insurers~~
545 ~~before payment is due.~~ Assessments shall be due not less than 30 days after
546 prior written notice to the member insurers and shall accrue interest at
547 percent per annum on and after the due date.

548 (b) There shall be ~~three classes of~~ two assessments, as follows:

549 (1) Class A assessments shall be made for the purpose of meeting
550 administrative costs and legal costs and other general expenses not related
551 to a particular impaired insurer. and examinations conducted under the
552 authority of section 12(e). Class A assessments may be made whether or not
553 related to a particular impaired or insolvent insurer.

554 (2) Class B assessments shall be made to the extent necessary to carry
555 out the powers and duties of the association under K.S.A. 40-3008 with
556 regard to an impaired ~~domestic~~ or an insolvent insurer.

557 ~~(3) Class C assessments shall be made to the extent necessary to carry~~
558 ~~out the powers and duties of the association under K.S.A. 40-3008 with~~
559 ~~regard to an impaired foreign or alien insurer.~~

560 (c) (1) The amount of any class A assessment ~~for each account~~ shall be
561 determined by the board. ~~The amount of any class B or C assessment shall be~~
562 ~~dividend among the accounts in the proportion that the premiums received by~~
563 ~~the impaired insurer on the policies covered by each account bears to the~~
564 ~~premiums received by such insurer on all covered policies, and may be made~~
565 ~~on a pro rata or non-pro rata basis. If pro rata, the board may provide~~
566 ~~that it be credited against future class B assessments. A non-pro rata~~
567 ~~assessment shall not exceed \$150 per member insurer in any one calendar~~
568 ~~year. The amount of any class B assessment shall be allocated for~~
569 ~~assessment purposes among the accounts pursuant to an allocation formula~~
570 ~~which may be based on the premiums or reserves of the impaired or insolvent~~
571 ~~insurer or any other standard deemed by the board in its sole discretion as~~
572 ~~being fair and reasonable under the circumstances.~~

573 (2) ~~Class A and class C assessments against member insurers for each~~
574 ~~account shall be in the proportion that the premiums received on business in~~
575 ~~this state by each assessed member insurer on policies covered by each~~
576 ~~account bears to such premiums received on business in this state by all~~
577 ~~assessed member insurers. Class B assessments against member insurers for~~
578 ~~each account shall be in the proportion that the premiums received on~~
579 ~~business in this state by each assessed member insurer or policies or~~
580 ~~contracts covered by each account for the three most recent calendar years~~
581 ~~for which information is available preceding the year in which the insurer~~
582 ~~became impaired or insolvent, as the case may be, bears to such premiums~~
583 ~~received on business in this state for such calendar years by all assessed~~
584 ~~member insurers.~~

585 ~~(3) Class B assessments for each account shall be made separately for~~
586 ~~each state in which the impaired domestic insurer was authorized to transact~~
587 ~~insurance at any time, in the proportion that the premiums received on~~
588 ~~business in such state by the impaired insurer on policies covered by such~~
589 ~~account bears to such premiums received in all such states by the impaired~~
590 ~~insurer. The assessments against member insurers shall be in the proportion~~
591 ~~that the premiums received on business in each such state by each assessed~~
592 ~~member insurer on policies covered by each account bears to such premiums~~
593 ~~received on business in each state by all assessed member insurers.~~

594 ~~(4)~~ (3) Assessments for funds to meet the requirements of the
595 association with respect to an impaired or insolvent insurer shall not be
596 made until necessary to implement the purposes of this act. Classification
597 of assessments under subsection (b) and computation of assessments under
598 this subsection shall be made with a reasonable degree of accuracy,
599 recognizing that exact determinations may not always be possible.

600 (d) The association may abate or defer, in whole or in part, the
601 assessment of a member insurer if, in the opinion of the board, payment of
602 the assessment would endanger the ability of the member insurer to fulfill
603 its contractual obligations. In the event an assessment against a member
604 insurer is abated, or deferred in whole or in part, the amount by which such
605 assessment is abated or deferred may be assessed against the other member
606 insurers in a manner consistent with the basis for assessments set forth in
607 this section.

608 (e) The total of all assessments upon a member insurer for each account
609 shall not in any one calendar year exceed two percent ~~(2%)~~ of such insurer's
610 average premiums received in this state on the policies and contracts
611 covered by the account during the three calendar years preceding the year in
612 which the insurer became an impaired or insolvent insurer.

613 ~~(e) In the event an assessment against a member insurer is abated, or~~
614 ~~deferred in whole or in part, because of the limitations set forth in~~
615 ~~subsection (d), the amount by which such assessment is abated or deferred,~~
616 ~~shall be assessed against the other member insurers in a manner consistent~~
617 ~~with the basis for assessments set forth in this section. If the maximum~~
618 ~~assessment, together with the other assets of the association in either any~~
619 ~~account, does not provide in any one year in either account an amount~~
620 ~~sufficient to carry out the responsibilities of the association, the~~
621 ~~necessary additional funds shall be assessed as soon thereafter as permitted~~
622 ~~by this act.~~

623 The board may provide in the plan of operation a method of allocating
624 funds among claims, whether relating to one or more impaired or insolvent
625 insurers, when the maximum assessment will be insufficient to cover
626 anticipated claims.

627 (f) The board may, by an equitable method as established in the plan of
628 operation, refund to member insurers, in proportion to the contribution of

629 each insurer to that account, the amount by which the assets of the account
630 exceed the amount the board finds is necessary to carry out during the
631 coming year the obligations of the association with regard to that ~~amount;~~
632 account, including assets accruing from assignment, subrogation, net
633 realized gains and income from investments. A reasonable amount may be
634 retained in any account to provide funds for the continuing expenses of the
635 association and for future losses ~~if refunds are impractical.~~

636 (g) It shall be proper for any member insurer, in determining its
637 premium rates and policyowner dividends as to any kind of insurance within
638 the scope of this act, to consider the amount reasonably necessary to meet
639 its assessment obligations under this act.

640 ~~(g)~~ (h) The association shall issue to each insurer paying an
641 assessment under this act, other than class A assessment, a certificate of
642 contribution, in a form prescribed by the commissioner, for the amount of
643 the assessment so paid. All outstanding certificates shall be of equal
644 dignity and priority without reference to amounts or dates of issue. A
645 certificate of contribution may be shown by the insurer in its financial
646 statement as an asset in such form and for such amount, if any, and period
647 of time as the commissioner may approve.

648 Sec. 7. K.S.A. 40-3006 is hereby amended to read as follows: 40-3006.

649 (a) There is created a nonprofit legal entity to be known as the Kansas
650 life and health insurance guaranty association. All member insurers shall
651 be and remain members of the association as a condition of their authority
652 to transact insurance in this state. The association shall perform its
653 functions under the plan of operation established and approved under K.S.A.
654 40-3010 and shall exercise its powers through a board of directors
655 established under K.S.A. 40-3007. For purposes of administration and
656 assessment, the association shall maintain ~~three-(3)~~ four accounts:

- 657 (1) The health insurance account;
658 (2) The life insurance account; and
659 (3) The annuity account- , excluding unallocated annuity contracts; and
660 (4) The unallocated annuity contract account.

661 (b) The association shall come under the immediate supervision of the
662 commissioner and shall be subject to the applicable provisions of the
663 insurance laws of this state. Meetings or records of the association may be
664 opened upon majority vote of the board of directors of the association.

666 Sec. 8. K.S.A. 40-3007 is hereby amended to read as follows: 40-3007.

667 (a) The board of directors of the association shall consist of not less
668 than five ~~(5)~~ nor more than nine ~~(9)~~ members member insurers serving terms
669 as established in the plan of operation. The members of the board shall be
670 selected by member insurers subject to the approval of the commissioner.
671 Vacancies on the board shall be filled for the remaining period of the term
672 ~~in the manner described in the plan of operation~~ by a majority vote of the
673 remaining board members, subject to the approval of the commissioner. To
674 select the initial board of directors, and initially organize the
675 association, the commissioner shall give notice to all member insurers of
676 the time and place of the organizational meeting. In determining voting
677 rights at the organizational meeting each member insurer shall be entitled
678 to one ~~(1)~~ vote in person or by proxy. If the board of directors is not
679 selected within ~~sixty--(60)~~ 60 days after notice of the organizational
680 meeting, the commissioner may appoint the initial members.

681 (b) In approving selections or in appointing members to the board, the
682 commissioner shall consider, among other things, whether all member insurers
683 are fairly represented.

684 (c) Members of the board may be reimbursed from the assets of the
685 association for expenses incurred by them as members of the board of
686 directors but members of the board shall not otherwise be compensated by the
687 association for their services.

688 Sec. 9. K.S.A. 40-3010 is hereby amended to read as follows: 40-3010.

689 (a)(1) The association shall submit to the commissioner a plan of operation
690 and any amendments thereto necessary or suitable to assure the fair,
691 reasonable, and equitable administration of the association. The plan of
692 operation and any amendments thereto shall become effective upon the
693 commissioner's written approval in writing by the commissioner or unless he
694 or she has not disapproved it within 30 days.

695 (2) If the association fails to submit a suitable plan of operation
696 within ~~one hundred eighty--(180)~~ 120 days following the effective date of
697 this act or if at any time thereafter the association fails to submit
698 suitable amendments to the plan, the commissioner shall, after notice and

699 hearing, adopt and promulgate such reasonable rules as are necessary or
700 advisable to effectuate the provisions of this act. Such rules shall
701 continue in force until modified by the commissioner or superseded by a plan
702 submitted by the association and approved by the commissioner.

703 (b) All member insurers shall comply with the plan of operation.

704 (c) The plan of operation shall, in addition to requirements enumerated
705 elsewhere in this act:

706 (1) Establish procedures for handling the assets of the association.

707 (2) Establish the amount and method of reimbursing members of the board
708 of directors under K.S.A. 40-3007.

709 (3) Establish regular places and times for meetings including telephone
710 conference calls of the board of directors.

711 (4) Establish procedures for records to be kept of all financial
712 transactions of the association, its agents, and the board of directors.

713 (5) Establish the procedures whereby selections for the board of
714 directors will be made and submitted to the commissioner.

715 (6) Establish any additional procedures for assessments under K.S.A. 40-
716 3009.

717 (7) Contain additional provisions necessary or proper for the execution
718 of the powers and duties of the association.

719 (d) The plan of operation may provide that any or all powers and duties
720 of the association, except those under K.S.A. 40-3008 subsection (k)(3) and
721 K.S.A. 40-3009, are delegated to a corporation, association, or other
722 organization which performs or will perform functions similar to those of
723 this association, or its equivalent, in two ~~(2)~~ or more states. Such a
724 corporation, association, or organization shall be reimbursed for any
725 payments made on behalf of the association and shall be paid for its
726 performance of any function of the association. A delegation under this
727 subsection shall take effect only with the approval of both the board of
728 directors and the commissioner, and may be made only to a corporation,
729 association or organization which extends protection not substantially less
730 favorable and effective than that provided by this act.

731
732 Sec. 10. K.S.A. 40-3011 is hereby amended to read as follows: 40-
733 3011. In addition to the duties and powers enumerated elsewhere in this act:

734 (a) The commissioner shall:

735 ~~(1) Notify the board of directors of the existence of an impaired~~
736 ~~insurer not later than three days after a determination of impairment is~~
737 ~~made or he receives notice of impairment.~~

738 ~~(2)~~ (1) Upon request of the board of directors, provide the association
739 with a statement of the premiums in this and any other appropriate states
740 for each member insurer.

741 ~~(3)~~ (2) When an impairment is declared and the amount of the impairment
742 is determined, serve a demand upon the impaired insurer to make good the
743 impairment within a reasonable time; notice to the impaired insurer shall
744 constitute notice to its shareholders, if any; the failure of the insurer
745 to promptly comply with such demand shall not excuse the association from
746 the performance of its powers and duties under this act.

747 ~~(4)~~ (3) In any liquidation or rehabilitation proceeding involving a
748 domestic insurer, be appointed as the liquidator or rehabilitator. ~~If a~~
749 ~~foreign or alien member insurer is subject to a liquidation proceeding in~~
750 ~~its domiciliary jurisdiction or state of entry, the commissioner shall be~~
751 ~~appointed conservator.~~

752 (b) The commissioner may suspend or revoke, after notice and hearing,
753 the certificate of authority to transact insurance in this state of any
754 member insurer which fails to pay an assessment when due or fails to comply
755 with the plan of operation. As an alternative the commissioner may levy a
756 forfeiture on any member insurer which fails to pay an assessment when due.
757 Such forfeiture shall not exceed ~~five percent~~ ~~(5%)~~ 5% of the unpaid
758 assessment per month, but no forfeiture shall be less than ~~one hundred~~
759 ~~dollars~~ ~~(\$100)~~ \$100 per month.

760 (c) Any action of the board of directors or the association may be
761 appealed to the commissioner by any member insurer if such appeal is taken
762 within ~~thirty~~ ~~(30)~~ 60 days of the final action being appealed. If a member
763 company is appealing an assessment, the amount assessed shall be paid to the
764 association and available to meet association obligations during the
765 pendancy of an appeal. If the appeal on the assessment is upheld, the
766 amount paid in error shall be returned to the member company Any final
767 action or order of the commissioner shall be subject to judicial review in a
768 court of competent jurisdiction.

769 (d) The liquidator, rehabilitator, or conservator of any impaired
770 insurer may notify all interested persons of the effect of this act.

771 Sec. 11. K.S.A. 40-3012 is hereby amended to read as follows: 40-
772 3012. To aid in the detection and prevention of insurer impairments:

773 (a) It shall be the duty of the commissioner

774 (1) To notify the commissioners of all other states, territories of the
775 United States and the District of Columbia when he or she takes any of the
776 following actions against a member insurer:

777 (A) Revocation of license;

778 (B) suspension of license; or

779 (C) makes any formal order that such company restricts its premium
780 writing, obtain additional contributions to surplus, withdraw from the
781 state, reinsure all or any part of its business, or increase capital,
782 surplus, or any other account for the security of policyholders or creditors.

783 Such notice shall be mailed to all commissioners within 30 days
784 following the action taken or the date on which such action occurs.

785 (2) To report to the board of directors when he has taken any of the
786 actions set forth in paragraph (1) or has received a report from any other
787 commissioner indicating that any such action has been taken in another
788 state. Such report to the board of directors shall contain all significant
789 details of the action taken or the report received from another commissioner.

790 (3) To report to the board of directors when he has reasonable cause to
791 believe from any examination, whether completed or in process, of any member
792 company that such company may be an impaired or insolvent insurer.

793 (4) To furnish to the board of directors the national association of
794 insurance commissioners' insurance regulatory information system (IRIS)
795 ratios and listings of companies not included in the ratios developed by the
796 national association of insurance commissioners, and the board may use the
797 information contained therein in carrying out its duties and
798 responsibilities under this section. Such report and the information
799 contained therein shall be kept confidential by the board of directors until
800 such time as made public by the commissioner or other lawful authority.

801 (b) The commissioner may seek the advice and recommendations of the
802 board of directors concerning any matter affecting his or her duties and
803 responsibilities regarding the financial condition of member insurers and
804 companies seeking admission to transact insurance business in this state.

805 ~~(a)~~ (c) The board of directors may, upon majority vote, make reports
806 and recommendations to the commissioner upon any matter germane to the
807 solvency, liquidation, rehabilitation or conservation of any member insurer
808 or germane to the solvency of any company seeking to do an insurance
809 business in this state. Such reports and recommendations shall not be
810 considered public documents.

811 (d) It shall be the duty of the board of directors, upon majority vote,
812 to notify the commissioner of any information indicating any member insurer
813 may be an impaired or insolvent insurer.

814 (e) The board of directors may, upon majority vote, request that the
815 commissioner order an examination of any member insurer which the board in
816 good faith believes may be an impaired or insolvent insurer. Within 30 days
817 of the receipt of such request, the commissioner shall begin such
818 examination. The examination may be conducted as a national association of
819 insurance commissioners examination or may be conducted by such persons as
820 the commissioner designates. The cost of such examination shall be paid by
821 the association and the examination report shall be treated as are other
822 examination reports. In no event shall such examination report be released
823 to the board of directors prior to its release to the public, but this shall
824 not preclude the commissioner from complying with subsection (a).

825 The commissioner shall notify the board of directors when the
826 examination is completed. The request for an examination is completed. The
827 request for an examination shall be kept on file by the commissioner but it
828 shall not be open to public inspection prior to the release of the
829 examination report to the public.

830 ~~(b)~~ (f) The board of directors may, upon majority vote, make
831 recommendations to the commissioner for the detection and prevention of
832 insurer impairments insolvencies.

833 ~~(c)~~ (g) The board of directors shall, at the conclusion of any insurer
834 impairment insolvency in which the association carried out its duties under
835 this act or exercised any of its powers under this act, prepare a report on
836 the history and causes of such impairment, based on the information
837 available to the association, and submit such report to the commissioner.
838 was obligated to pay covered claims, prepare a report to the commissioner
839 containing such information as it may have in its possession bearing on the
840 history and causes of such insolvency. The board shall cooperate with the
841 board of directors of guaranty associations in other states in preparing a

842 report on the history and causes of insolvency of a particular insurer, and
843 may adopt by reference any report prepared by such other associations.
844

845 Sec. 12. K.S.A. 40-3013 is hereby amended to read as follows: 40-
846 3013. (a) Nothing in this act shall be construed to reduce the liability
847 for unpaid assessments of the insureds of an impaired or insolvent insurer
848 operating under a plan with assessment liability.

849 (b) Records shall be kept of all negotiations and meetings in which the
850 association or its representatives are involved to discuss the activities of
851 the association in carrying out its powers and duties under K.S.A. 40-3008.
852 Records of such negotiations or meetings shall be made public only upon the
853 termination of a liquidation, rehabilitation, or conservation proceeding
854 involving the impaired or insolvent insurer, upon the termination of the
855 impairment or insolvency of the insurer, or upon the order of a court of
856 competent jurisdiction. Nothing in this subsection shall limit the duty of
857 the association to render a report of its activities under K.S.A. 40-3014.

858 (c) For the purpose of carrying out its obligations under this act, the
859 association shall be deemed to be a creditor of the impaired or insolvent
860 insurer to the extent of assets attributable to covered policies reduced by
861 any amounts to which the association is entitled as subrogee pursuant to
862 K.S.A. 40-3008 subsection (h). ~~All~~ Assets of the impaired or insolvent
863 insurer attributable to covered policies shall be used to continue all
864 covered policies and pay all contractual obligations of the impaired or
865 insolvent insurer as required by this act. Assets attributable to covered
866 policies, as used in this subsection, ~~is~~ are that proportion of the assets
867 which the reserves that should have been established for such policies bear
868 to the reserve that should have been established for all policies of
869 insurance written by the impaired or insolvent insurer.

870 (d)(1) Prior to the termination of any liquidation, rehabilitation, or
871 conservation proceeding, the court may take into consideration the
872 contributions of the respective parties, including the association, the
873 shareholders and policyowners of the impaired insolvent insurer, and any
874 other party with a bona fide interest, in making an equitable distribution
875 of the ownership rights of such impaired insolvent insurer. In such a
876 determination, consideration shall be given to the welfare of the
877 policyholders of the continuing or successor insurer.

878 (2) No distribution to stockholders, if any, of an impaired or
879 insolvent insurer shall be made until and unless the total amount of
880 ~~assessments levied by the association~~ valid claims of the association with
881 interest thereon for funds expended in carrying out its powers and duties
882 under K.S.A. 40-3008 with respect to such insurer have been fully recovered
883 by the association.

884 ~~(e) It shall be a prohibited unfair trade practice for any person to~~
885 ~~make use in any manner of the protection afforded by this act in the sale of~~
886 ~~insurance.~~

887 ~~(f)(1)~~ (e)(1) If an order for liquidation or rehabilitation of an
888 insurer domiciled in this state has been entered, the receiver appointed
889 under such order shall have a right to recover on behalf of the insurer,
890 from any affiliate that controlled it, the amount of distributions, other
891 than stock dividends paid by the insurer on its capital stock, made at any
892 time during the five years preceding the petition for liquidation or
893 rehabilitation subject to the limitations of subsections (2) to (4).

894 (2) No such dividend distribution shall be recoverable if the insurer
895 shows that when paid the distribution was lawful and reasonable, and that
896 the insurer did not know and could not reasonably have known that the
897 distribution might adversely affect the ability of the insurer to fulfill
898 its contractual obligations.

899 (3) Any person who was an affiliate that controlled the insurer at the
900 time the distributions were paid shall be liable up to the amount of
901 distributions he or she received. Any person who was an affiliate that
902 controlled the insurer at the time the distributions were declared, shall be
903 liable up to the amount of distributions he or she would have received if
904 they had been paid immediately. If two or more persons are liable with
905 respect to the same distributions, they shall be jointly and severally
906 liable.

907 (4) The maximum amount recoverable under this subsection shall be the
908 amount needed in excess of all other available assets of the impaired
909 insolvent insurer to pay the contractual obligations of the impaired
910 insolvent insurer.

911 (5) If any person liable under subsection (3) is insolvent, all its
912 affiliates that controlled it at the time the dividend distribution was

913 paid, shall be jointly and severally liable for any resulting deficiency in
914 the amount recovered from the insolvent affiliate.

915
916 Sec. 13. K.S.A. 40-3014 is hereby amended to read as follows: 40-
917 3014. The association shall be subject to examination and regulation by the
918 commissioner. The board of directors shall submit to the commissioner, not
919 later than ~~May 1 of each~~ 120 days after the association's fiscal year, a
920 financial report ~~for the preceding calendar year~~ in a form approved by the
921 commissioner and a report of its activities during the preceding ~~calendar~~
922 fiscal year.

923 Sec. 14. K.S.A. 40-3017 is hereby amended to read as follows: 40-
924 3017. There shall be no liability on the part of and no cause of action of
925 any nature shall arise against any member insurer or its agents or
926 employees, the association or its agents or employees, members of the board
927 of directors, or the commissioner or his or her representatives, for any
928 action or omission taken by them in the performance of their powers and
929 duties under this act. Such immunity shall extend to the participation in
930 any organization of one or more other state associations of similar purposes
931 and to any such organization and its agents or employees.

932 Sec. 15. K.S.A. 40-3018 is hereby amended to read as follows: 40-
933 3018. All proceedings in which the ~~impaired~~ insolvent insurer is a party in
934 any court in this state shall be stayed ~~sixty-(60)~~ 60 days from the date an
935 order of liquidation, rehabilitation, or conservation is final to permit
936 proper legal action by the association on any matters germane to its powers
937 or duties. As to a judgment under any decision, order, verdict, or finding
938 based on default the association may apply to have such judgment set aside
939 by the same court that made such judgment and shall be permitted to defend
940 against such suit on the merits.

941 Sec. 16. K.S.A. 1985 Supp. 40-3003, 40-3005, K.S.A. 1985 Supp. 40-3002,
942 40-3008, 40-3009, 40-3006, 40-3007, 40-3010, 40-3011, 40-3012, 40-3013, 40-
943 3014, 40-3017 and 40-3018 are hereby repealed.

944 Sec. 17. This act shall take effect and be in force from and after its
945 publication in the statute book.

LEGISLATIVE PROPOSAL NO. 15

AN ACT relating to insurance; agents; licensing; waiver of examination; hail insurance on growing crops; amending K.S.A. 1984 Supp. 40-241c and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1984 Supp. 40-241c is hereby amended to read as
2 follows: 40-241c. The commissioner of insurance, under appropriate rules
3 and regulations, shall waive examinations when the applicant establishes
4 that:

5 (a) The applicant has been engaged in an active career as an insurance
6 agent in a specified class or classes of insurance in some other state,
7 territory or the District of Columbia and that the license held in such
8 other state, territory or the District of Columbia: (1) Was based upon a
9 written examination; (2) that the state, territory or District of Columbia
10 from which the applicant comes has standards equal to those maintained in
11 Kansas; (3) that the applicant's license has never been suspended or
12 revoked; and (4) the applicant shall file a certificate from such licensing
13 authority which shall provide the class or classes of insurance which the
14 agent was authorized to write and such further information as the
15 commissioner may require; or

16 (b) the applicant seeks a license as travel insurance agent to persons
17 selling transportation tickets of common carriers, who shall act as such
18 agent only as to transportation ticket policies, or health or accident
19 insurance, or baggage insurance on personal effects in connection with such
20 transportation tickets of common carriers; or

21 (c) the applicant has been licensed and certified in Kansas for the
22 class of insurance the applicant is applying for and where the license and
23 certifications have been permitted to lapse for not more than two years
24 prior to the date of the application and where the commissioner of insurance
25 is satisfied that the applicant is trustworthy and competent; or

26 (d) the applicant is an applicant for a license to write hail insurance
27 on growing crops in this state and has been continuously certified to write
28 such coverage in this state on and after April 30, 1986.

29 Sec. 2. K.S.A. 1984 Supp. 40-241c is hereby repealed.

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

A H. 2

State Department of Social and Rehabilitation Services

Statement Regarding H.B. 2812

1. Title

An Act concerning health care services, prohibiting certain exclusions and limitations in health insurance policies which relate to emotionally handicapped children.

2. Purpose

This bill expands insurance companies and health maintenance organizations' (HMO) options for persons receiving care and treatment as an emotionally handicapped child from in-patient hospital care to a non-hospital residential treatment facility.

3. Background

At the present time neither insurance carriers nor HMOs extend coverage for "emotionally handicapped children" in a residential care setting. These residential placements are group home type facilities. They provide an intensive treatment program in the least restrictive setting possible for the child. They are a logical extension of the acute care network.

An emotionally handicapped child is defined in the statute as a child who in the judgment of a licensed social worker, psychologist or psychiatrist is exhibiting those symptoms and behavior patterns that are determined to be of such a nature that the child needs the care and treatment given by a residential treatment facility for children.

Kansas currently has a similar program for insurance coverage for treatment of alcoholism, drug abuse and nervous or mental conditions (KSA 40-2,105). These programs generally promote the early care and treatment of symptoms in less costly settings than found in public and private hospitals.

4. Effect of Change

If passed, this bill would provide families an option for an emotionally disturbed member other than just psychiatric hospitalization, ie., group home/residential center. This bill may have the potential of keeping families legally intact, since a family could place a child in a residential placement without court intervention, utilizing their own health insurance resources. At the same time, the child will be receiving the treatment needed.

Insurance companies could realize benefits by passage of this bill due to the availability of early intervention efforts in a lower cost facility for the number of days specified by the policy. Many times these early intervention efforts preclude in-patient hospital treatment. For those in acute care hospitalization, this bill could assume continuation of the treatment in a less expensive facility within the terms of the contract. For example,

acute care in hospitals today is \$400 per day as compared to a daily cost of between \$50 and \$100 for residential treatment facilities.

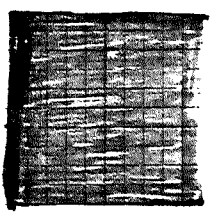
5. SRS Recommendation

SRS recommends passage of this bill.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 18, 1986

Dollars

400
375
350
325
300
275
250
225
200
175
150
125
100
75
50
25



Approximate Daily Costs
Private Psychiatric Hospital

Maximum Daily Cost
Level V Group Home

10 Squares to the Inch

KALPCCA

KANSAS ASSOCIATION OF LICENSED PRIVATE CHILD CARE AGENCIES



DATE: February 18, 1986

TO: House Insurance Committee

FROM: KALPCCA (Kansas Association of Licensed Private Child Care Agencies)

RE: HB2812

EXECUTIVE COMMITTEE

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(913) 267-5900

VICE-PRESIDENT Peg Martin

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POLITICAL ACTION Judy Culley

The Shelter Inc.
342 Missouri
Lawrence, Kansas 66044

MEMBERSHIP Sr. Frances Radencic

St. John Children's Home
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KALPCCA SERVICES:

The Kansas Association of Licensed Private Child Care Agencies is a voluntary association of thirty-five member agencies. These agencies provide various residential treatment services to approximately 800 emotionally disturbed children in Kansas in licensed boarding homes. KALPCCA facilities provide trained, well supervised childcare staff and professional treatment for children and their families in settings that are less institutional and less expensive than hospitals.

PURPOSE OF BILL:

This bill provides that health insurance pay for licensed boarding home treatment for emotionally handicapped children, similar to hospitalization coverage. Licensed boarding home treatment is currently financed primarily through the state, with the child being placed in SRS custody.

POSITION:

KALPCCA strongly supports HB2812.

ADVANTAGES:

This bill is advantageous in the following ways:

- * It allows a savings for insurance companies in that licensed boarding home care is less expensive on a daily basis than hospitalization. Because the bill provides coverage on the same basis as inpatient hospital medical coverage, it will be less expensive for insurance companies to pay for a given number of days in a licensed boarding home than to pay for the same number of days in a hospital.

Attachment 3
House Insurance 2/18/86

- * It allows families to maintain custody of their children and get residential service without having to resort to hospitalization.
- * It encourages families to seek help earlier because it offers an alternative to hospitalization.
- * It prevents children from being hospitalized when a less institutional setting would be sufficient.
- * It encourages families to participate actively in the treatment process, knowing that the child is still in their custody and that their insurance is responsible for the cost.
- * It represents a step away from the state's intervention into families.

AH.7

STATE DEPARTMENT OF SRS
Statement Regarding Bill No. 2809

1. Title - This bill would prohibit certain exclusions of HMO coverage of persons who are involuntarily committed to state psychiatric hospitals.
2. Purpose - HMO's currently do not provide coverage to persons involuntarily committed to state mental health hospitals. This denial of coverage has resulted in increasing financial losses to the state. The bill would require HMO plans to include such coverage.
3. Background - An HMO is an organization which provides comprehensive health care for fixed fee. HMO's vary in structure, but health care is generally determined by primary care physicians who make decisions of assignment of care of patients. Such health care is also furnished by particular providers who are designated by the HMO as participating providers. Persons who are involuntarily committed to state mental health hospitals do not have the benefit of services of their primary care physicians. Neither do these persons have the benefit of receiving care from participating providers because they have been committed to a state facility.

A summary follows which provides the conditions of coverage of the majority of HMO's operating in the state.

<u>HMO</u>	<u>Coverage</u>
Kaiser Foundation Health Plan of Kansas City	All care assigned by primary care physician and provided at University of Kansas Medical Center. Coverage excluded for care which is required by law to be provided in public facilities.
Total Health Care	All care assigned by primary care physician through specific psychiatric groups. Involuntary admissions not covered.
Health Care Plus of America	All care assigned by primary care physician. Involuntary admissions not covered.

HMO

HMO Kansas

Coverage

All care assigned by primary care physician. Involuntary admissions not covered.

Health Plan of MidAmerica

Care provided by state hospitals is excluded. Psychiatric care which is provided at participating hospitals is covered.

Family Health Plan

All care assigned by primary care physician.

Prime Health

All care assigned by primary care physician. Any care ordered by third party is excluded from coverage. Emergency care covered if referred to primary care physician and participating hospital within 48 hours of admission.

Human Care Plus

Care is not assigned by primary care physician; however, care must be provided by participating provider. A waiver can be granted to cover care given by non-participating provider when emergency circumstances exist.

A chart which provides the losses of reimbursement due to HMO denial of coverage follows.

4. Effect of Passage - Requiring health maintenance organizations to provide coverage to their members who are involuntarily committed at state institutions would result in significant savings of costs to the state.
5. SRS Recommendation - The Department of Social and Rehabilitation Services supports this legislation because it provides state institutions with reimbursement from HMO's that is consistent with traditional insurance. Further, passage of the legislation would result in more equitable treatment of members of HMO's who require court directed psychiatric treatment.

Office of the Secretary
Robert C. Harder, Secretary
296-3271
February 18, 1986