

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Dale Sprague at
Chairperson

3:30 ~~a.m.~~^{XX}/p.m. on March 31, 19⁸⁷ in room 531-N of the Capitol.

All members were present except:
Rep. King

Committee staff present:

Emalene Correll, Chris Courtwright, Research Department
Bill Edds, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Art Thompson, Kansas Bar Association
Claire McCurdy, Kansas Insurance Department
Steve Garlow, Attorney General's Office
Bill Pitsenberger, Blue Cross and Blue Shield

The meeting was called to order by the Chairman. The minutes of the March 26, 1987, meeting were approved.

Hearing on: HB 2564 - Prepaid service plans, powers and duties of insurance commissioner

Mr. Ron Smith introduced Mr. Art Thompson, Kansas Bar Association. He said their motivation for requesting the bill is their concern with potential abuse by poorly operated prepaid services. He cited Legal Care Plus, which recently closed its office in Wichita, and said the consumers need to feel safe. KBA is only interested in the portion that deals with legal prepaid plans. The existing companies in the state are covered by a grandfather clause with certain provisions.

Mr. Dick Brock said the insurance department had drafted the bill and that they support it. He introduced Ms. Claire McCurdy, Kansas Insurance Department. She stressed that these plans do not constitute insurance; therefore, they aren't subject to insurance regulations. Her testimony is attached. (Att. 1.) Plans now in operation will have to be issued a certificate, maintain a list of their sales force, and meet deposit requirements. She said it would be confusing to regulate under the Unfair Trade Practices Act, as it is for insurance. The Consumer Practices Act is applicable. She said they would have a problem if the bill applied to prepaid legal only, as there are a number of dental plans. It does not address the marketing aspect of the plan. She spoke of the pharmacy service organization bill; it was for non-profit corporations; these plans are for profit. The deposit requirements will essentially be bonds. They have had very few complaints but many inquiries.

Mr. Steve Garlow, Kansas Attorney General's Office, said their experience is that the promotional literature for the marketing of this type of plan has been well drafted and the terms stated fairly. The problem arises when consumers have paid in advance in expectation of services, and the company goes broke. They file complaints and expect money to be available. There is a need to

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N Statehouse, at 3:30 ~~a~~m./p.m. on March 31, 1987

guarantee some type of financial security. He said the reason this bill places these plans under the insurance department is that they have the mechanism and staff to oversee the bonding regulations. The AG's office will continue to look at misrepresentations for organizations that aren't dealing with "necessities."

Mr. Bill Pitsenberger, Blue Cross and Blue Shield, said they have disagreed with the insurance department over whether any kind of prepaid plans constitute insurance. He said they don't object to this bill if if it limited to legal prepaid plans.

Final action: HB 2564 - Prepaid service plans, powers and duties of insurance commissioner

Rep. Bryant made a motion that the bill be limited to legal prepaid plans only; Rep. Neufeld seconded the motion.

One concern stated was that this bill could cause unforeseen problems with PPO's if dental plans were left in, though there was some concern that a lot of unregulated dental plans would be operating.

The motion carried.

Rep. Neufeld made a motion to recommend the bill favorably as amended; Rep. Cribbs seconded the motion. The motion carried.

Final action: SB 132 - Long-term insurance; standards and requirements

Rep. Wells made a motion that the bill be amended to require that a service be "medically" necessary; Rep. Gross seconded the motion.

Mr. Brock said the ad hoc committee wanted "medically necessary" out; they wanted the definition broad enough to encourage experimentation with various types of long term care. Mr. Frank Lawler, AARP, who served on the ad hoc committee, agreed with Mr. Brock and said that they were concerned that mandating too many things would force the price out of reach for many older citizens. They want to encourage competition and feel this bill is a step in the right direction.

The motion failed.

Rep. Wells made a motion to amend the bill as suggested by the Kansas Health Care Association (Att. 5; March 30, 1987); Rep. Gross seconded the motion. Rep. Beauchamp made a substitute motion that the bill be recommended favorably; Rep. Brady seconded the motion. The motion carried.

The meeting was adjourned at 4:40 p.m.

Presentation By
Claire McCurdy
Kansas Insurance Department
on
House Bill 2564

House Insurance Committee
March 24, 1987

What Is A Prepaid Plan?

This question is probably best answered by explaining what a prepaid plan isn't and why. Although similar in many ways to HMO's, PPO's, and the nonprofit service corporations found in Article 19 of the insurance code, these prepaid plans differ enough from each of these articles that they do not quite fit any of those concepts. Instead, they have created a new niche, and are becoming increasingly creative about how a plan is structured and what services it will offer.

A prepaid plan is not an HMO for several reasons. First, clearly HMO's deal with the provision of health care services. In comparison, a significant number of prepaid plans involve legal and dental services. Moreover, while in many instances the provider in a prepaid plan (whether a doctor, lawyer or optometrist, for example) is an independent contractor, rarely is that provider an employee of the plan as is possible with an HMO. Probably the most significant difference, however, is that an HMO is responsible for the quality of care of the services rendered to its enrollees. In contrast, the primary purpose of a prepaid plan is to bring the provider and member together.

A prepaid plan does not fall within the preferred provider category because preferred provider agreements allow an insurance company to negotiate lower rates for its insureds if they patronize a particular health care provider. Since we do not consider these plans insurance, insurance companies are not involved in contracting with the various providers. In addition, many of these plans work on an "open panel" basis which means the member chooses his or her own provider.

Finally, prepaid plans can be distinguished from the nonprofit service corporations described in Article 19 of the insurance code merely because these are for profit companies. Additionally, as previously mentioned, most prepaid plans are "open panel" which means the member chooses the provider free of the restriction that the provider be "on the list."

Types and Numbers

We currently have 63 files established for various types of prepaid plans. In 21 cases, however, there has been no activity since January 1, 1985. Of the remaining 42 plans that are operating or seeking to operate in Kansas the majority are either legal (18), or dental (17) plans. There are two optometric and two medical plans, and three others which do not fit into any of these categories.

The majority of services offered by these plans are routine and involve very little, if any, risk. For example, a legal plan may provide for review of a real estate contract or an annual update of a will. A dental plan may allow for an annual checkup, teeth cleaning or a certain number of fillings each year. Because these services do not involve a significant degree of risk and because coverage is not triggered by a fortuitous or unexpected event, prepaid service plans are not considered insurance and are not subject to our insurance laws.

Current Treatment by Kansas Insurance Department; Lack of Jurisdiction

At the current time no state agency has regulatory authority over the operation of these prepaid service plans. Because they are more like insurance than anything

else, however, the Insurance Department has received an increasing number of inquiries and some complaints from consumers. Consequently we have taken the initiative to encourage companies seeking to initiate operations in Kansas to subject their plans to a review. Although we cannot require a company to comply with a particular law or regulation we believe this review is helpful. This is because if a company were to come into Kansas and begin operating, and it was determined at some later point the product being sold was in fact insurance or a regulated plan of some kind, the company could be penalized for doing business without proper authority.

During the review process all contracts, sales brochures and other materials relevant to the solicitation and administration of the plan are scrutinized. We are particularly concerned with the way a plan is presented, and whether a consumer could be misled into believing he is buying insurance. We also consider the contractual relationships that exist between the various parties.

After this review is completed we make a decision on a case by case basis whether the plan, as it is presented to us, would constitute doing the business of insurance. If it would not, we issue what is referred to as a "no objection" letter. This letter merely states the plan is not insurance and may be offered outside the jurisdiction of the Insurance Department. If we do have concerns about the way a plan is structured, we are willing to meet with company officials and assist them in making the revisions necessary to obtain a "no objection letter".

Problems We Are Experiencing

As the number and type of these plans increases we have begun to experience various problems and inquiries throughout the state.

One plan utilizes a multi-level marketing scheme similar to Amway. Once a member has joined the plan he or she is then recruited to become a sales associate for the company. This has caused a barrage of consumer inquiries about the legitimacy of the plan. Since we have so little authority over prepaid plans all we have been able to do is monitor the company's activities. The Attorney General's office has also looked at this plan by virtue of its authority under the Kansas Consumer Protection Act.

A prepaid dental plan doing business in Kansas City had internal management problems which has since resulted in litigation. Specifically, two individuals contended they had rights to certain individuals' memberships. From the consumers' perspective since it was possible to pay the monthly fee by automatic bank draft some members' checking accounts began being debited twice a month instead of once.

Finally, a prepaid legal plan in Wichita, Kansas recently went broke leaving many bills unpaid. We have heard from several attorneys who rendered legal services to clients who were members of this plan and now have accounts receivable because of the company's inability pay.

In each of these examples, if the company had been subject to some form of regulation perhaps the problems could have been avoided and consumers protected.

What This Bill Does

This legislation gives regulatory authority over these plans to the Commissioner of Insurance, and provides a uniform set of guidelines for companies to follow. It sets out which contracts must exist and what they must contain. The bill requires a company to maintain a current list of its sales force with the Commissioner. It also requires a company to obtain a certificate of registration before beginning business. There are penalties for failing to obtain a certificate or for violating any provision of the act. Finally, the bill provides for a security deposit or bond to be filed. This deposit would be used to satisfy claims if a company became insolvent. It also gives the commissioner the power to raise the deposit or bond amount if evidence indicates the company has grown sufficiently to warrant an increase.

Conclusion

The Commissioner supports this legislation as a sound method of sufficiently monitoring the activities of a growing area of the insurance related services field, and protecting consumers in this state. We do not believe the limited regulatory requirements encompassed by House Bill No. 2564 will restrict competition or otherwise prevent prepaid service plans from offering their products to Kansas citizens.