

Approved _____ Date _____

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

8:00 a.m./~~p.m.~~ on April 9, 1987 in room 529-S of the Capitol.

All members were present except:

Senators Strick and Harder - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Art Thompson, Kansas Bar Association
Claire McCurdy, Kansas Insurance Department
Bill Pitsenberger, Blue Cross/Blue Shield
Gary Sherrer, Fourth Financial Corporation
Susan Seltsam, State Treasurer's Office

The minutes of April 8 were approved.

The hearing began on HB 2564 dealing with prepaid service plans with the brief testimony of Ron Smith, Kansas Bar Association, in support. He said they had requested the introduction of this bill in conjunction with the Insurance Department. He introduced Art Thompson also with the Kansas Bar Association for further testimony. Mr. Thompson said the reason for the bill is that legal prepaid plans are becoming mor prolific, and they feel these plans should be regulated by the state. He said there was a legal prepaid plan in Wichita that went under with no protection for the consumer or creditors. He requested three amendments and referred to a balloon of the bill in his explanation of them. (See Attachment I.) The balloon did not use the most current bill and so Mr. Thompson corrected the lines on which they are found--lines 71, 152, and 185.

Sen. Werts questioned the amendment on line 71 as to the clarity of those that are neither prohibited or provided being included. Mr. Thompson said he did not know how this could be dealt with, but Claire McCurdy of the Insurance Department said that it seems as if it would fit everything. Sen. Werts said it would only if all is specifically included in the bill. Mr. Thompson said the intent was to provide a disclaimer saying nothing would be covered. Sen. Werts and the chairman agreed that this would be the case without the amendment.

Claire McCurdy of the Kansas Insurance Department followed with testimony in support of HB 2564. (See Attachment II.) The chairman asked who pays the fees and the amount, and Ms. McCurdy said ~~is~~ by individuals or employers. As to the amount of the fees, she said they are as low as \$6 and as high as \$20 per month. With regard to Ms. McCurdy's statement in her testimony that these organizations are not involved with insurance companies, but PPO's are; staff said that these are not different as both are not involved with insurance companies. Ms. McCurdy replied that the plans under HB 2564 involve routine services such as cleaning of teeth so she feels these are not insurance.

Bill Pitsenberger, Blue Cross/Blue Shield, said he has no problem with setting up regulations for these plans, but he has problems with dental plans in competition with them. Insurance companies are regulated, but there are no provision for dental plans. He feels they should be treated as insurance. This concluded the hearing on HB 2564.

The hearing on HB 2498 dealing with public monies followed. Gary Sherrer, Fourth Financial Corporation of Wichita, testified in support of the bill. He said this is a technical bill because it allows multibank holding companies to do what they were set up to do. It does two things: (1) it allows competitive bidding for public funds which is to the benefit of the taxpayer, and (2) it says a successful bid ought to be well secured, but it does not change the security.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 8:00 a.m./~~PM~~ on April 9, 1987

The chairman summarized the bill saying that it would permit a bank that is a member of a multibank holding company to borrow assets from another bank in the holding company to secure a bid. Mr. Sherrer said the assets are not really borrowed because that bank still holds the security and clarified further that if a bank which has money pledged for public funds goes under, the FDIC makes this good.

Sen. Werts began a discussion regarding the possibility of a pledging bank losing its securities and the protection of minority stockholders from being penalized.

Susan Seltsam of the State Treasurer's Office gave final testimony on HB 2498. She said it does provide a more liberal provision for pledging monies, however, her office sees potential problems with the selling of securities other than owned by a failed bank. She wants to insure state funds would be exempt in the case of bank failures. They have requested an opinion from the FDIC as of March 25 but have not received a reply as yet. Therefore, she asked for a delay of the bill until the response is received determining if the state will be protected. With this, the hearing on HB 2498 was concluded.

Attention was returned to HB 2564. Sen. Werts made a motion to adopt the suggested amendments minus the one regarding benefits not provided on page two of the bill, Sen. Burke seconded, and the motion carried.

Sen. Werts made a motion to report HB 2564 favorable as amended, Sen. Burke seconded, and the motion carried.

The committee began discussion of HB 2498 as to whether to delay action or not. Sen. Werts suggested amending it so that it would be thrown into a conference committee until the information is received by the State Treasurer's Office. After further discussion, Sen. Werts made a conceptual motion that authority for such pledging by a third party be limited to those whose ownership is identical with the holding company, Sen. Kerr seconded, and the motion carried.

Short discussion followed as to how to delay action on the bill, and Sen. Burke said it could be held on the Calendar until the response from FDIC is received.

Sen. Werts made a motion to report HB 2498 favorable as amended, Sen. Gannon seconded, and the motion carried.

Consideration of a bill previously heard began, SB 415 which amends the UCCC regarding finance charges. The chairman reminded the committee that it includes retail sales contracts and a 30 day notice provision, that Mr. Lind and Mr. Maag had suggested that it be made to include all credit transactions, and that Sen. Gannon had suggested to include a sunset provision rather than making it permanent. Sen. Gannon reiterated that he feels the sunset should be left in.

Sen. Gannon made a motion to include a three year sunset provision in SB 415 for closed end retail sales and open ended retail credit at 21% alternate rate and make the 30 days notice provision permanent, Sen. Karr seconded, and the motion carried.

The chairman asked for suggestions on consumer loans. Sen. Werts made a motion to restore 21% on line 194 to give leaway to the creditor, Sen. Gordon seconded. Sen. Gannon began a short discussion concerning this as being more of a problem for retail than licensed lenders and the advisability of doing this. On a call for a vote on the motion, the motion failed.

Sen. Werts made a motion to recommend SB 415 favorable as amended, Sen. Burke seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
49	Lam Sjöholm	Topeka	Kansas Ins. Dept
	Ulure McCurdy	Topeka	Ks. Insurance Dept.
	Janice Schwart	"	4th Fed Corp.
	Chuck Stones	"	KS Bankers Assoc
	Gary Shenen	Wichita	Fourth Financial Corp.
	Robert Jettner	Wichita	Bank 10
	Jimina M...	"	"
	Steve Hirsch	Topeka	State Treasurer
	Dusan Dittson	"	"
	BOB GRANT	TOPEKA	KCCI
	Ron Smith	"	KBA
	Art Tomasco	"	KBA
	Lynn Van Galst	"	KLSI
	William P. Zemberger	"	Blue Cross-Blue Shield
	JACK ROBERTS	"	" "
	Stan Lind	KCRS.	Ks. Assn. of Fin. Serv.

HOUSE BILL No. 2564

By Committee on Appropriations

3-16

0017 AN ACT relating to prepaid service plans; concerning regulation
0018 thereof; imposing certain requirements; certificates of regis-
0019 tration; prohibitions; prescribing powers, duties and functions
0020 for the commissioner of insurance.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. As used in this act, unless the context requires
0023 otherwise:

0024 (a) "Prepaid service plan" means any person, company, cor-
0025 poration, partnership or other legal entity who collects periodic
0026 fees on a prepaid basis from residents of this state in connection
0027 with for-profit legal, dental, optometric or medical coverage
0028 other than: (1) An employer on behalf of its employees or the
0029 employees of one or more subsidiary or affiliated corporations of
0030 such employer, (2) a union or association on behalf of its mem-
0031 bers or (3) an organization transacting business in this state
0032 pursuant to articles 18, 19, 19a, 19b, 19c or 32 of chapter 40 of the
0033 Kansas Statutes Annotated, including their sales representatives
0034 when engaged in the performance of their duties as such.

0035 (b) "Provider" means any attorney, dentist, medical doctor,
0036 ophthalmologist or optometrist currently licensed and in good
0037 standing in this state who enters into a provider agreement as
0038 defined in this act.

0039 (c) "Member" means an individual or person on behalf of a
0040 group of individuals who enters into a membership agreement
0041 with a prepaid service plan which agrees to provide legal, dental,
0042 medical or optometric services to the member: (1) For a prede-
0043 termined monthly membership fee; (2) at a reduced rate in
0044 exchange for such a monthly membership fee; or (3) a combina-
0045 tion of both a predetermined monthly fee and a reduced rate in

0046 exchange for such a monthly membership fee.

0047 (d) "Membership agreement" means the written contract
0048 between the member and the prepaid service plan.

0049 (e) "Provider agreement" means the written contract be-
0050 tween the provider and the prepaid service plan.

0051 Sec. 2. (a) A prepaid service plan shall not operate in Kansas
0052 without entering into a provider agreement with the provider
0053 and a membership agreement with each member in accordance
0054 with the provisions of this section.

0055 (b) Each provider agreement shall be retained as part of the
0056 official records of both the provider and the prepaid service plan
0057 for the duration of the agreement and five years thereafter. Each
0058 provider agreement shall contain provisions which include the
0059 requirements of sections 3 through 7 and shall include a guaran-
0060 tee for the provision of services to the member for the duration of
0061 the membership agreement regardless of whether the prepaid
0062 service plan ceases doing business for any reason.

0063 (c) Each membership agreement shall contain the terms of
0064 the agreement, including a list of the benefits to be provided.

0065 Sec. 3. Every prepaid service plan authorized to do business
0066 in this state shall register each individual who solicits member-
0067 ships on its behalf by listing such individuals on a form provided
0068 by the commissioner of insurance. On January 1 and July 1 of
0069 each year, the prepaid service plan shall advise the commis-
0070 sioner of insurance of additions or deletions from this list since
0071 the last reporting date.

0072 Sec. 4. Whenever a member utilizes the services of a prepaid
0073 service plan under the terms of a written contract as required in
0074 section 2, the payment to the provider of any amount by or on
0075 behalf of the member by the prepaid service plan shall be
0076 deemed payment to that provider when received. Nothing in this
0077 act shall limit any right of the provider against the prepaid
0078 service plan resulting from its failure to make payments to the
0079 provider.

0080 Sec. 5. For the duration of the written agreements referred to
0081 in section 2 and for five years thereafter, every prepaid service
0082 plan shall maintain at its principal administrative office adequate

AND A LIST OF SERVICES NOT TO BE
PROVIDED.

0083 books and records of all transactions between the prepaid service
0084 plan and the providers and members thereof. Such books and
0085 records shall be maintained in accordance with prudent stan-
0086 dards of insurance recordkeeping. The commissioner of insur-
0087 ance shall have access to such books and records for the purpose
0088 of examination, audit and inspection. Any trade secrets con-
0089 tained therein, including but not limited to the identity and
0090 addresses of members, shall be confidential, except that the
0091 commissioner may use such information in any proceedings
0092 instituted against a prepaid service plan.

0093 Sec. 6. A prepaid service plan may only use a provider's
0094 name in advertisements and promotional materials after obtain-
0095 ing the provider's approval.

0096 Sec. 7. All membership fees collected by a prepaid service
0097 plan on behalf of members shall be held by the prepaid service
0098 plan in a fiduciary capacity and shall be deposited promptly after
0099 receipt in a bank account established and maintained by the
0100 prepaid service plan. The prepaid service plan shall maintain
0101 records clearly recording the deposits in and withdrawals from
0102 such account on behalf of or for each member. The prepaid
0103 service plan shall keep copies of all such records.

0104 Sec. 8. The compensation paid to the prepaid service plan
0105 shall in no way be contingent on claim experience. This section
0106 shall not prevent the compensation of a prepaid service plan
0107 from being based on membership fees collected or number of
0108 claims paid or processed.

0109 Sec. 9. (a) No person shall act as or hold such person out to
0110 be a prepaid service plan in this state unless such person holds a
0111 certificate of registration as a prepaid service plan issued by the
0112 commissioner of insurance. An application for such certificate
0113 may be made to the commissioner of insurance on a form pre-
0114 scribed by the commissioner and shall be accompanied by a
0115 filing fee of \$100. The certificate of registration may be contin-
0116 ued for successive annual periods by notifying the commissioner
0117 of such intent and paying an annual continuation fee of \$50.

0118 (b) The certificate of registration shall be issued to or con-
0119 tinued for a prepaid service plan by the commissioner of insur-

0120 ance unless the commissioner of insurance, after due notice and
0121 hearing, determines that the prepaid service plan is not compe-
0122 tent, trustworthy, financially responsible or of good personal and
0123 business reputation, or has had a previous application for a
0124 certificate of registration denied for cause since the effective
0125 date of this act or within five years of the date of application,
0126 whichever is later.

0127 Sec. 10. (a) Failure to hold the certificate required by section
0128 9 or to comply with any of the requirements of this act, shall
0129 subject the prepaid service plan to a civil penalty of not more
0130 than \$500 unless such prepaid service plan knew or reasonably
0131 should have known that such failure was a violation of this act in
0132 which case the civil penalty shall not be more than \$5,000.

0133 (b) After reasonable notice and hearing and a finding that the
0134 prepaid service plan violated any of the requirements of this act
0135 or that the management of the prepaid service plan is not com-
0136 petent, trustworthy or financially responsible, or does not have
0137 good personal and business reputation, the commissioner may:
0138 (1) Impose a civil penalty as provided in subsection (a); (2)
0139 revoke or suspend such certificate; or (3) impose such a civil
0140 penalty and revoke or suspend such certificate.

0141 Sec. 11. (a) Each prepaid service plan shall deposit and
0142 maintain with the commissioner of insurance securities of the
0143 type eligible for deposit by insurers. Such securities shall have at
0144 all times a market value in accordance with the following:

0145 (1) A prepaid service plan which has transacted no business
0146 in this state prior to the effective date of this act, shall deposit an
0147 initial amount of \$50,000 with the commissioner of insurance,
0148 prior to the issuance of its certificate of registration and before
0149 receiving any membership fees;

0150 (2) a prepaid service plan transacting business in this state
0151 prior to the effective date of this act and having in force in this
0152 state less than \$300,000 of membership fees shall deposit with
0153 the commissioner of insurance a sum equal to 50% of the mem-
0154 bership fees in force or \$50,000, whichever is less;

0155 (3) a prepaid service plan transacting business in this state
0156 prior to the effective date of this act and having in force in this

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0157 state more than \$300,000 but less than \$750,000 of membership
0158 fees, shall deposit with the commissioner of insurance an amount
0159 of not less than \$75,000; and

0160 (4) a prepaid service plan transacting business in this state
0161 prior to the effective date of this act and having in force in this
0162 state \$750,000 or more of membership fees, shall deposit with
0163 the commissioner of insurance an amount of not less than
0164 \$100,000.

0165 (b) In lieu of any deposit of securities required under sub-
0166 section (a) and subject to the approval of the commissioner of
0167 insurance, a prepaid service plan may file with the commissioner
0168 of insurance a surety bond. The surety bond shall be for the same
0169 purpose as the deposit of securities for which it is in lieu thereof.
0170 The commissioner of insurance shall not approve any surety
0171 bond under the terms of which the protection afforded against
0172 insolvency is not equivalent to the protection afforded by those
0173 securities provided for in subsection (a).

0174 (c) Securities or surety bonds deposited with the commis-
0175 sioner of insurance pursuant to this section shall be for the
0176 benefit of any person or persons sustaining an actionable injury
0177 due to the failure of the prepaid service plan to faithfully perform
0178 its obligations to its members and such securities or surety bonds
0179 shall be subject to action thereon by any such person or persons
0180 for such purposes in the event of insolvency or impairment of the
0181 prepaid service plan.

0182 (d) The commissioner of insurance shall be responsible for
0183 the safekeeping of all securities deposited with the commis-
0184 sioner under this section. Such securities shall not be subject to
0185 taxation on account of being in this state, but shall be held
0186 exclusively and solely to guarantee the prepaid service plan's
0187 performance of its obligations to its members.

0188 (e) The deposit of securities or surety bond required under
0189 this section shall be maintained unimpaired as long as the
0190 prepaid service plan continues in business in this state. When a
0191 prepaid service plan ceases to do business in this state and
0192 furnishes the commissioner of insurance proof satisfactory that
0193 such prepaid service plan has discharged or otherwise ade-

— OR THEY PROVIDERS WITHWHOM THEY HAVE
CONTRACTED.

0194 quately provided for all its obligations to its members in this
0195 state, the commissioner of insurance shall release the deposited
0196 securities to the parties entitled thereto on presentation of re-
0197 ceipts for such securities or shall release any surety bond filed in
0198 lieu of such deposit.

0199 (f) The commissioner of insurance, at any time, may enter an
0200 order increasing the amount of the deposit of securities or surety
0201 bond specified under this section if the commissioner of insur-
0202 ance finds that there has been a substantial change in the facts,
0203 including an increase in the amounts of membership fees in
0204 force in this state on which the original determination was based.
0205 The prepaid service plan may request a hearing on any such
0206 increase within 30 days of the issuance of the commissioner's
0207 order. A hearing shall be held within 30 days of such a request by
0208 the prepaid service plan. Failure by a prepaid service plan to
0209 meet the new requirements ordered under this subsection
0210 within 30 days after a final decision by the commissioner of
0211 insurance or 30 days after the period for submitting a request for
0212 a hearing on the matter constitutes a ground for revocation of the
0213 certificate of registration of the prepaid service plan.

0214 Sec. 12. This act shall take effect and be in force from and
0215 after its publication in the statute book.

Presentation By
Claire McCurdy
Kansas Insurance Department
on
House Bill 2564

Senate Financial Institutions And Insurance Committee

April 9, 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 dentist or a lawyer, 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. Moreover, these plans are not limited to health care providers, but instead include lawyers and dentists.

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 44 plans that are operating or seeking to operate in Kansas the majority are either legal (20), or dental (17) plans. There are two optometric and two medical plans, and three others which do not fit into any of these categories, but in view of the amendments made in the House are unimportant to this discussion.

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 or she is buying insurance. We also consider the contractual relationships that exist between the various parties.

After this review is completed a decision is made 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.