

MINUTES OF THE \_\_\_\_\_ HOUSE COMMITTEE ON \_\_\_\_\_ INSURANCE \_\_\_\_\_

The meeting was called to order by REPRESENTATIVE DALE SPRAGUE at  
Chairperson

3:30 XX a.m./p.m. on MARCH 16, 1988 in room 531-N of the Capitol.

All members were present except:

Representative Rex Hoy, excused  
Representative Delbert Gross, excused

Committee staff present:

Chris Courtwright, Research Department  
Bill Edds, Revisor of Statutes Office  
Nancy Wolff, Secretary

Conferees appearing before the committee:

Senator Gaines  
Senator D. Kerr  
Ron Todd, Kansas Insurance Department  
James Schwartz, Kansas Employers Coalition on Health  
Jerry Slaughter, Kansas Hospital Association  
Wayne Stratton, Kansas Hospital Association  
Ted Fay, Health Care Stabilization Fund

The meeting was called to order by the Chairman.

Hearings were scheduled on Senate Bill 538, relating to nonprofit medical and hospital service corporations and conversion coverage of the same; and Senate Bill 630, dealing with subrogation rights on accident, health or sickness insurance coverage.

The only conferee to appear on Senate Bill 538 was Ron Todd of the Insurance Department. He appeared as a proponent of the legislation and presented the cover memorandum from the original bill request of the Department for the review of the members. (Exhibit I) There were no opponents to the Senate Bill 538.

Senator Gaines appeared to present testimony in support of Senate Bill 630 which he co-authored with Senator Dave Kerr. He stated that 38 other states have adopted legislation similar to the proposal for Kansas and that Kansas would make the 39th state to approve legislation of this type. (Exhibit II & Exhibit III) He also proposed an amendment to be made in line 42 of the bill due to duplicative language.

Senator Dave Kerr, co-author of Senate Bill 630 also testified in support of the legislation. He stated that he felt it was time that the citizens of Kansas decide which of the three alternatives they were going to support double payment system, collateral source, or subrogation.

Jim Schwartz, Kansas Employer Coalition on Health, Inc., testified in support of Senate Bill 630. (Exhibit IV)

Jerry Slaughter, representing the Kansas Medical Society, testified in opposition to Senate Bill 630. He testified that should the committee decide to pass this bill, he proposed amendments outlined in the balloon copy presented to the committee. (Exhibit V) Representative Sprague questioned Mr. Slaughter as to whether he would be here in opposition if the bill if the bill exempted medical malpractice from subrogation. He stated he would not be testifying in opposition to the bill.

Wayne Stratton, legal counsel for the Kansas Medical Society, also testified, briefly, in opposition to Senate Bill 630. He stated that he felt the legislation would increase liability insurance costs in Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE,  
room 531, Statehouse, at 3:30 Xa.m./p.m. on MARCH 16, 1988.

Ron Todd, Kansas Insurance Department gave a brief explanation as to the need for this legislation. He then introduced Ted Fay, Kansas Insurance Department, who spoke briefly with regard to a case in Wichita where a jury awarded a woman \$11 million and if collateral source had been in place the jury would more than likely not have made that large an award.

The meeting was adjourned.

VISITORS TO HOUSE INSURANCE COMMITTEE

DATE: March 16, 1988

NAME

REPRESENTING

Bob Carls  
~~Steve~~  
 Bob Spulger  
 Bill P. Seuburger  
 JACK ROBERTS  
 Richard Mason  
 Michael West  
 Matt Lynch  
 Cheryl Dillard  
 Jeffrey O. Ellis  
 Ted Fay  
~~Steve~~  
~~W. G. Holt~~  
 Ron Todd

A T H A  
 Mapleville Co. Co.  
 Mapleville E.D.C.  
 Blue Cross & Blue Shield of Kansas  
 " " "  
 K T C A  
 "  
 Judicial Council  
 Kaiser Permanente  
 Kmo Assn  
 KIP  
 KMS  
 KUH/KMS  
 INS. Dept.

Explanatory Memorandum For  
Legislative Proposal No. 6

*Senate*

This proposal would require all mutual nonprofit hospital and medical service corporations doing business in this state to offer an additional conversion option to persons who are terminated from a group accident and sickness contract. The conversion option presently required entitles terminated group members to adequate coverage but the cost is quite high. The additional option that would be required by enactment of Legislative Proposal No. 6 would still permit the terminated group members to obtain meaningful insurance protection but the deductible and copayment provisions would enable them to do so at a lower cost.



Blue Cross  
Blue Shield  
of Kansas

1133 Topeka Avenue  
P.O. Box 239  
Topeka, Kansas 66629

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OR  
PLAN 65 CLAIMS

In Topeka  
913 232-1000

In-State  
1-800-432-0216

Out-of-State  
1-800-468-1216

February 24, 1988

CLAIMS OR MEMBERSHIP

In Topeka  
913 232-1622

In-State  
1-800-432-3990

Senator Frank Gaines  
Capitol Building

Senator Dave Kerr  
Capitol Building

RE: SENATE BILL NO. 630

Senator Gaines & Senator Kerr:

STATE EMPLOYEES

In Topeka  
913 234-0495

In-State  
1-800-332-0307

If Blue Cross and Blue Shield could discuss subrogation as an issue of principal at the committee hearings on SB 630, it would appear as a proponent.

Unfortunately, the availability of subrogation in health insurance policies has, perhaps needlessly, become a part of the "tort reform" or "medical malpractice insurance reform" issue. We have no particular stance on tort reform and while we have a great deal of concern for the impact on health care providers of increasing medical malpractice insurance rates, the debate on medical malpractice insurance reform has become so polarized that we, as an organization, have little of value to contribute to that debate.

BOEING EMPLOYEES

1-800-223-0529

We say that the subrogation issue may have needlessly become a part of the medical malpractice insurance reform debate with a specific purpose, in reference to one of Senator Gaines' constituents. That man, the owner of a business in Augusta, had an employee who was involved in a tragic car wreck. Blue Cross paid the medical expense of that employee under the owner's group health insurance policy. It is likely that the insurance company of the other driver involved in the accident will also pay the medical expense for that employee under the other driver's liability policy. The employer's reaction was that to charge his claims experience with a duplicated recovery, and to increase his group's health insurance rates because of that duplicated recovery, was improper.

FEDERAL EMPLOYEES

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In-State  
1-800-432-0379

FARM BUREAU MEMBERS

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It may be improper as a policy matter, but Kansas insurance regulations currently prohibit health insurance companies from subrogating -- from recovering their claims payments from persons at fault in situation of loss.

The important point of the employer's story, for your committee and SB 630, is that it has nothing to do with medical malpractice insurance reform. Subrogation is a practice which applies in all circumstances of other party liability, and to blend subrogation into the medical malpractice insurance reform debate tends to obscure that fact.

It is worth observing to your committee that 38 states permit subrogation in health insurance; Kansas is among the 12 states which do not. That is, 38 states have determined that subrogation in health insurance is an appropriate means to avoid duplicate recoveries.

As a matter of principal, Blue Cross and Blue Shield believes duplicate recoveries of medical expense is improper. Whether that is avoided best by abrogation of the collateral source rule or by a subrogation right in health insurers is a matter of policy.

In considering the policy, your committee should consider this: probably half of all Kansans are or could be covered under a health care program containing a subrogation right.

Why?

° Medicare has a right of subrogation, and more than 10% of the state's population is covered by Medicare.

° Some percentage of Kansans are covered by Medicaid, which also has a subrogation right.

° A large number of Kansans are covered by self-insured programs which are not subject to the Kansas insurance regulation prohibiting subrogation. Such self-insured programs can and do include subrogation provisions. Nationally, some sources estimate that 50% of employees are covered by self-insured arrangements. In Kansas, Blue Cross has identified that the fact that, for example, at least 30% of persons in Sedgwick County are covered by self-insured arrangements.

°A fair-sized percentage of Kansans are covered by insurance contracts issued outside of Kansas in states where subrogation is allowed. That is, these are employees who work for a national employer with its headquarters in another state. Because the Kansas regulation addresses only contracts issued in Kansas, such employees' coverage frequently includes a subrogation provision. For example, if K-Mart provides benefits for its employees under an insurance contract, subrogation is allowed in Michigan in health insurance contracts as it is in 37 other states. Thus, a K-Mart employee in Topeka or Wichita or Hays has a subrogation provision in his health insurance coverage.

Who does this leave without a right of subrogation? Kansas employers too small to self-insure.

We have observed that the collateral source rule legislation permits a judge to prevent a jury from hearing about health insurance payments where the payor has a right of subrogation. That is, that legislation recognizes the existence of subrogation rights in some health coverages. It therefore seems to us that regardless of the efficiency or inefficiency of subrogation compared to abrogation of the collateral source rule, to have a situation where only health insurers are prohibited from using subrogation clauses while Medicare, Medicaid, self-insurers, and insurers issuing policies outside of Kansas can exercise subrogation rights has an unequal impact, an impact which appears to fall largely upon small Kansas employers.

We want to recognize at this point as we did at the beginning of this letter that many persons are adversely affected by medical malpractice insurance premium levels. The plight of the community with an insufficient supply of OB/Gyn's, for example, cannot be ignored. At the same time, we do not believe that whether health insurers have a right to subrogation, in view of the widespread existence of other forms of health coverage having a right of subrogation, is an integral part of tort reform or medical malpractice insurance reform.

If, then, we have a position on SB 630, it is as follows:

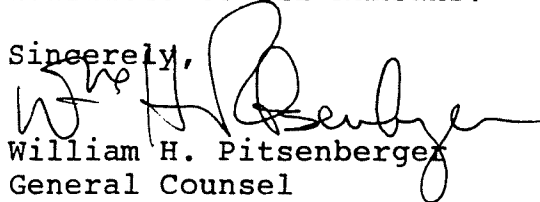
°Subrogation in health insurance should be divorced as a matter of public policy from tort or medical malpractice insurance reform.

°The ability to engage in subrogation, and the benefits which result from avoidance of duplicate recoveries on health care program premiums, should be extended to what may well be the minority, the Kansas employers who are too small to self-insure.

We would observe to the committee that subrogation is not a panacea for containing health insurance costs. Because of the existence of no-fault (the benefits of which Kansas insurers can exclude), the comparative fault doctrine (which contains recoveries where both parties share in fault), and the fact that most cases are settled (which reduces the recoveries and requires compromises on the part of all interested parties), the claims savings from subrogation provisions in health insurance policies would be limited -- but only to the same extent that claims savings for Medicare, Medicaid, self-insureds, or multi-state employer contracts currently containing subrogation provision are limited.

Apart from tort reform or medical malpractice insurance reform, we think that subrogation -- if available to some to help reduce their health care premiums -- should be available to all Kansans.

Sincerely,

  
William H. Pitsenberger  
General Counsel

WHP:kr





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Blue Shield  
of Kansas

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P.O. Box 239  
Topeka, Kansas 66629

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1-800-468-1216

February 29, 1988

Senator Frank Gaines  
Capitol Building  
Topeka, Kansas

CLAIMS OR MEMBERSHIP

In Topeka  
913 232-1622

In-State  
1-800-432-3990

Senator Dave Kerr  
Capitol Building  
Topeka, Kansas

RE: SENATE BILL 630

STATE EMPLOYEES

In Topeka  
913 234-0495

In-State  
1-800-332-0307

Gentlemen:

I felt I should offer one additional comment to you following my February 24 letter on the above subject.

There is no reason why passage of Senate Bill 630 would suggest adverse action on the House-passed bill abrogating the collateral source rule. That bill contains an exception, permitting non-disclosure of collateral sources when a subrogation right exists in the collateral source. Since there already exist third-party payors of medical expense which have subrogation rights, that bill would be no less valid with passage of Senate Bill 630 than without it.

BOEING EMPLOYEES

1-800-223-0529

Sincerely,

William H. Pitsenberger  
General Counsel

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WHP:mm

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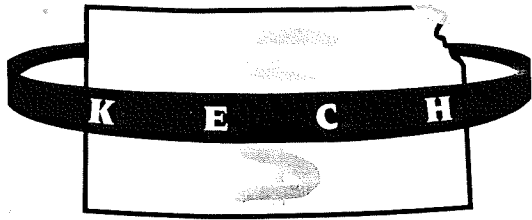
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## Kansas Employer Coalition on Health, Inc.

1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

March 11, 1988

Senator Frank D. Gaines  
Senate Judiciary Committee  
State Capitol Building  
Topeka, KS 66612

Dear Senator Gaines:

Enclosed is this organization's Resolution stating our position in favor of subrogation of insurance claims recoveries. In case you're not familiar with the Kansas Employer Coalition on Health, I've enclosed a brochure to help familiarize you with our goals and activities.

Presently the coalition consists of 107 employers across the state of Kansas. Those employers purchase health care for over 300,000 Kansans.

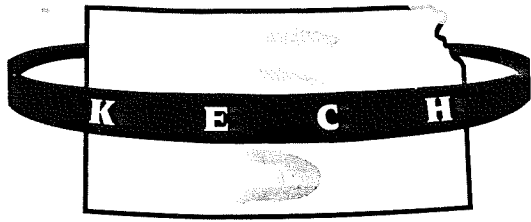
If you have any questions about this coalition or about our position on subrogation, please give me a call.

Sincerely,

James P. Schwartz, Jr.  
Consulting Director

JPS:nk

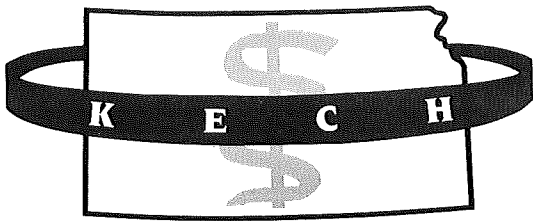
Enclosure



## **Kansas Employer Coalition on Health, Inc.**

1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

Be it resolved that the Kansas Employer Coalition on Health supports in principle the ability for all health insurers and managed health care plans to be able to subrogate, where economically feasible, claims recoveries; and the coalition is further sympathetic toward reasonable efforts respecting introduction and passage of enabling legislation to permit subrogation rights for all health care carriers operating in the state of Kansas.



## Kansas Employer Coalition on Health, Inc.

1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

### TESTIMONY TO THE HOUSE INSURANCE COMMITTEE ON SENATE BILL 630

By James P. Schwartz, Jr.  
Consulting Director

Mr. Chairman, members of the committee, I am Jim Schwartz, the consulting director of the Kansas Employer Coalition on Health. The Coalition is 107 employers across Kansas who are concerned about the cost of group health insurance. Since 1983 we have sought ways to manage the spiraling costs of purchasing health care benefits for our 300,000 Kansas employees and dependents.

At its meeting on December 3rd, 1987, our board of directors unanimously endorsed a position statement favoring subrogation in Kansas. Copies of that position statement have been mailed to members of this committee. The statement also appears on the back of this testimony.

A few days ago I saw a bumper sticker that said, "Go ahead, hit me. Make my day." The possibility of a windfall stemming from an injury is already deeply imbedded in the psyche of the public. Indeed, the idea of windfalls in general has become very popular of late: witness the success of the Kansas lottery. But there's a difference between these windfalls. The lottery ticket holder is playing with his own money. The accident victim is usually playing with his employer's money, at least as far as the medical payments are concerned. And we employers don't want to play this windfall game.

I don't know how much money this subrogation issue is worth. Employers generally don't consider it a major cause of skyrocketing health insurance costs. But then, there's no real standout among reasons for escalating health costs. Instead, there are a hundred little reasons that add up -- so that healthcare now is the fastest rising cost of doing business in America today.

Everybody knows that a dripping faucet, in time, adds up to a lot of water. Lack of subrogation is a dripping faucet. Senate Bill 630 is the washer. Let's install it.

## R E S O L U T I O N

Be it resolved that the Kansas Employer Coalition on Health supports in principle the ability for all health insurers and managed health care plans to be able to subrogate, where economically feasible, claims recoveries; and the coalition is further sympathetic toward reasonable efforts respecting introduction and passage of enabling legislation to permit subrogation rights for all health care carriers operating in the state of Kansas.

0046 expenses for medical and related health care services necessi-  
 0047 tated by the injury in question. The insurer may enforce such  
 0048 rights of subrogation in its own name or in the name of the  
 0049 person to or for whom payment has been made, as their interest  
 0050 may appear, by proper action in any court of competent jurisdic-  
 0051 tion. Attorney fees and costs shall be paid by the insurer from any  
 0052 recovery obtained by the insurer and the attorney shall have a  
 0053 lien therefor against any such recovery and may intervene in any  
 0054 action to protect and enforce such lien.

0055 Sec. 2. This act shall take effect and be in force from and  
 0056 after its publication in the statute book.

(c) Every insurer which obtains recoveries pursuant to the subrogation rights created herein shall:

(1) annually report to the Commissioner of Insurance, on a form promulgated by the Commissioner, the total amount recovered by such insurer from all such subrogation actions during the preceding year; and

(2) remit annually to the Health Care Stabilization Fund one-half of all such amounts recovered which result from an insured's medical malpractice liability action, as defined by K.S.A. 60-3401, against a health care provider as defined by K.S.A. 40-3401.

EXHIBIT V

*KMS Proposed Amendment.*