

Approved March 14, 1989
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Dale Sprague Chairperson at

~~3:30~~ ~~xx~~ a.m./p.m. on February 27, ~~19~~ ~~89~~ in room 331-n of the Capitol.

All members were present except:

Representative Marvin Littlejohn, absent
Representative Michael Sawyer, absent

Committee staff present:

Chris Courtwright, Research Department
Emalene Correll, Research Department
Bill Edds, Revisor of Statutes
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Others present: see attached list

The Chairman called the meeting to order at 3:30 p.m.

Bill Wolff, Legislative Research Department, provided the Committee with a summary of all of the Health Care Stabilization Fund (HCSF) bills (Attachment 1.) Mr. Wolff explained that the Committee requested Dani and Associates to prepare a report based on preliminary work showing the cost of phasing out the Fund under two new plans (Attachment 2), and provided the actuary report from Dani & Associates which includes a table outlining the funding options (Attachment 3.)

The Committee began discussion on HB 2501 and HB 2504.

HB 2501 -- An Act relating to medical malpractice claims; amending the supplementing the health care provider insurance availability act; providing for reduced levels of coverage by the health care stabilization fund and providing for the eventual termination of the fund; repealing certain statutes limiting awards in medical malpractice actions; amending the Kansas tort claims act with respect to claims against governmental entities or employees thereof.

HB 2504 -- An Act concerning medical malpractice liability claims; relating to the health care stabilization fund; liability thereof.

Bill Wolff, Legislative Research Department, gave a brief overview of the Bills explaining that primarily HB 2501 is Option 1 of the actuary report provided by Dani & Associates, whereas, HB 2504 reflects Option 2 of the report.

The Chairman directed the Committee in some policy questions regarding whether the Fund should be abolished and follow the terms of HB 2047, or to initiate a type of Phase down of the Fund.

A motion was made by Representative Hoy, seconded by Representative Wells that the Fund be phased down as in Option 1. The motion carried.

The Chairman asked the Committee to discuss whether to include a \$1,000,000 default option as described in HB 2504 which would require that if the physician does not choose an option, he is automatically given the default.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 ~~XX~~ a.m./p.m. on February 27, 1989.

It was the Committee's decision to make it mandatory that physicians choose the \$100,000, \$300,000, or \$ 800,000 option and that a default option not be included.

The Committee began discussion on the options available concerning tail coverage: (1) the situation of the \$3,000,000 current tail carried forward and then paid out over the five year period; (2) the tail that is being created during the phase down, if physician chooses the \$800,000 level, they are creating an \$800,000 tail; or (3) to say that if you buy \$800,000 of coverage, you are actually buying a lesser amount of tail coverage for the future.

At the present time if you have purchased on June 30, 1989 or before, you have the \$3,000,000 level, but on July 1, 1989 you select your option and create a new tail from there.

Representative Wells made a motion to require physicians pay for their tail coverage if they chose to leave the state and that the Fund be authorized to issue policies of tail coverage for those instances. Representative Hoy seconded. The motion carried.

Representative Gross asked that the Committee reconsider the motion on the basis that this should not apply to existing physicians but only to physicians entering the state after July 1, 1989.

A motion was made by Representative Wells to amend the motion. Representative Hoy seconded. The motion carried.

There was no further discussion on tail coverage and the Chairman explained to the Committee that at the end of five years the requirement in current law requiring purchase of mandatory insurance would be dropped. The Committee agreed to abolish the requirement of mandatory insurance.

The Chairman then asked Bill Edds, Revisor of Statutes to take the bill he felt most appropriate and balloon out the conceptual amendments.

Representative Brown made a motion that the concept in HB 2501, Sec. 9, creation of an Advisory Board, be added to this balloon draft. Representative Allen seconded. The motion carried.

The meeting was adjourned at 6:00 p.m.

MEMORANDUM

Attachment 1

February 27, 1989

To: House Committee on Insurance
FROM: Kansas Legislative Research Department
RE: Medical Malpractice Bills

Senate Bill No. 18

S.B. 18 would amend several sections of the Health Care Provider Insurance Availability Act to allow the private practice corporations or foundations and their full-time faculty employed by the University of Kansas Medical Center to "self-insure" for the basic \$200,000/\$600,000 medical malpractice insurance with the State General Fund reimbursing the Health Care Stabilization Fund for losses it pays out as those losses are incurred. Excess coverage provided by the Fund would continue to be paid for by the health care providers themselves through surcharges levied by the Insurance Commissioner.

(Passed the Senate; referred to House Committee on Insurance.)

Senate Bill No. 147

S.B. 147 would limit the liability of the Health Care Stabilization Fund to provide tail coverage only to those providers who participated in the Fund for ten years prior to leaving the state or becoming inactive health care providers. Health care providers who participated in the Fund prior to the effective date of this act will continue to have tail coverage under the Fund. Further, any provider who becomes disabled under certain circumstances and discontinues the practice of medicine because of the disability, will have tail coverage from the Fund.

(S.B. 147 has been referred to the Senate Committee on Financial Institutions and Insurance.)

Senate Bill No. 223

S.B. 223 would change existing medical malpractice law in two ways:

1. The bill would limit the liability of the Health Care Stabilization Fund to a maximum \$1 million or to an optional amount chosen by the provider for excess coverage from the Fund. Optional levels would include \$100,000, \$300,000, \$800,000, or other amount allowed by the Insurance Commissioner in rule and regulation. If providers did not choose an option by July 1, 1989, it would be presumed that the maximum \$1 million coverage had been selected.
2. The bill would limit claimant's attorney fees from any recovery from the Health Care Stabilization Fund to 25 percent of the

Attachment 1

first \$500,000 recovered from the Fund; 20 percent of the next \$500,000 recovered from the Fund; and 15 percent of any amount recovered from the Fund which exceeds \$1,000,000. This section of the bill would be effective upon publication in the Kansas Register.

3. On July 1, 1989, when all the provisions of the bill would be in effect, and thereafter, the Insurance Commissioner would be directed to levy a lower surcharge, based upon reasonably prudent actuarial standards, on those providers who elect optional coverage than on other providers. (See also H.B. 2504 and H.B. 2511.)

(S.B. 223 has been referred to the Senate Committee on Judiciary.)

House Bill No. 2047

H.B. 2047 would: abolish the Health Care Stabilization Fund on July 1, 1989; create a new fund to be funded by the providers to pay off the existing liabilities of the Fund, including the tail coverage for all providers covered by the Fund on January 1, 1989; and would repeal the mandate that all health care providers purchase liability insurance.

(H.B. 2047 has been referred to the House Committee on Insurance.)

House Bill No. 2050

H.B. 2050 would remove "municipal hospitals" from the definition of "health care provider" in the Health Care Provider Insurance Availability Act thereby removing those facilities from the requirement for liability insurance and includes "municipal hospitals" under the Tort Claims Act thereby limiting the liability of those institutions and their employees to \$500,000.

(H.B. 2050 has been referred to the House Committee on Insurance.)

House Bill No. 2145

H.B. 2145 would direct the Health Care Stabilization Fund to pay attorney fees and any judgment or settlement costs arising out of the rendering of or failure to render professional services by a graduate of the University of Kansas Medical Center, in addition to those residents already covered by the Fund, who are engaged in a postgraduate program of residency training at a medical care facility in this state approved by the Board of Healing Arts.

(H.B. 2145 has been referred to the House Committee on Insurance.)

House Bill No. 2158

H.B. 2158 would create new law, The Health Equity Liability Plan Act, effective until July 1, 1994. The Act would require every insurance company

doing business in Kansas to pay a tax of 1/2 of 1 percent of all premiums received into a Premium Equity Payment Fund. The Insurance Commissioner would be authorized to reduce the surcharge for health care providers and self-insurers, under certain conditions, and to use the Fund dollars, up to \$15,000 per provider and self-insurers, but not to exceed \$10 million in the aggregate, to subsidize the Health Care Stabilization Fund for its reduced income from surcharges. (See also H.B. 2498.)

(H.B. 2158 has been referred to the House Committee on Insurance.)

House Bill No. 2181

H.B. 2181 would make permanent the joint underwriting authority (JUA) created by the Legislature to make basic medical malpractice insurance available to all health care providers required to carry such insurance. The authority for the JUA will expire on July 1, 1989.

(H.B. 2181 has been referred to the House Committee on Insurance.)

House Bill No. 2304

H.B. 2304 would direct the Health Care Stabilization Fund to pay attorney fees and any judgment or settlement costs, on claims made within five years of completion of a residency program, arising out of the rendering of or failure to render professional services by a graduate of the University of Kansas Medical Center, other than those residents already covered by the Fund, who engaged in a postgraduate program of residency training at a medical care facility in this state approved by the Board of Healing Arts. Upon payment of any costs, the Health Care Stabilization Fund would be reimbursed by the State General Fund.

(H.B. 2304 has been referred to the House Committee on Insurance.)

House Bill No. 2481

H.B. 2481 would require that on and after July 1, 1989, health care providers paying a surcharge into the Health Care Stabilization Fund be experienced rated according to a system established under rules and regulations adopted by the Insurance Commissioner. Further, the experience rating system for providers of obstetrical or surgical services would be in direct proportion to the number of deliveries or surgeries performed. Finally, with respect to basic coverage required of all health care providers, every premium for such policies also must be charged in accordance with an experience rating system established by rules and regulations of the Commissioner and that system for obstetrician and surgeons must be based upon the number of deliveries and surgeries.

(H.B. 2481 has been referred to the House Committee on Insurance.)

House Bill No. 2458

H.B. 2458 would exempt a health care provider insured by a risk retention group from maintaining a basic liability insurance policy providing \$200,000/\$600,000 in coverage. Also, and unlike self-insurers, it would appear that members of a risk retention group would not pay a surcharge into the Health Care Stabilization Fund.

(H.B. 2458 has been referred to the House Committee on Insurance.)

House Bill No. 2494

H.B. 2494 would allow the Insurance Commissioner to object to the attorney selected by an insurance carrier in any action involving the Health Care Stabilization Fund. One half of the cost of a new attorney would be paid by the Insurance Commissioner. If the insurer refused to change attorneys upon the objection of the Commissioner, the Fund would not be liable for payment of any judgment, expense, or cost; rather, the insurer would be liable for all such amounts.

(H.B. 2494 has been referred to the House Committee on Insurance.)

House Bill No. 2496

H.B. 2496 would create new law allowing the Insurance Commissioner to issue certain qualified physicians a certificate entitling them to claim a tax credit equal to the amount paid for professional liability insurance in excess of 15 percent of the gross revenues derived from the claimant's practice reduced by the amount that the sum of such amount added to the claimant's net income from such claimant's practice exceeds \$75,000.

The tax credit would be applicable to all taxable years commencing after December 31, 1989 and before January 1, 1994.

(H.B. 2496 has been referred to the House Committee on Taxation.)

House Bill No. 2498

H.B. 2498 would create new law, The Physicians' Premium Reduction Act, effective until July 1, 1994. The Act would require every medical care facility to charge and collect from every patient a \$5 surcharge to be deposited into The Physician's Premium Reduction Fund. The Insurance Commissioner would be authorized to reduce the surcharge for health care providers and self-insurers, under certain conditions, and to use the Fund dollars, up to \$15,000 per provider and self-insurer, to subsidize the Health Care Stabilization Fund for its reduced income from surcharges. (See also H.B. 2158.)

(H.B. 2498 has been referred to the House Committee on Insurance.)

House Bill No. 2499

H.B. 2499 would relieve the Health Care Stabilization Fund from any liability to any health care provider or inactive health care provider against whom a claim has been made who, without good and valid justification, fails to attend depositions, hearings, or trials as necessary to give evidence and otherwise cooperate in the defense of the claim.

(H.B. 2499 has been referred to the House Committee on Insurance.)

House Bill No. 2500

H.B. 2500 would create new law enacting the Medical Accident Compensation Act, a new and exclusive remedy for any civil action against a health care provider arising out of the delivery or the failure to deliver health care to a patient.

(H.B. 2500 has been referred to the House Committee on Insurance.)

House Bill No. 2501

H.B. 2501 would amend the Health Care Provider Insurance Availability Act to phase out the Health Care Stabilization Fund and to repeal the mandatory provision that health care providers carry professional liability insurance. From July 1, 1989 and before July 1, 1990, the liability of the Fund would be \$1 million/\$3 million; on and after July 1, 1990 and before July 1, 1991, the liability of the Fund would be \$500,000/\$1.5 million; and on and after July 1, 1991 and before July 1, 1994, the liability of the Fund would be \$300,000/\$900,000. The Insurance Commissioner would be directed to determine and levy a surcharge sufficient to achieve a Fund balance on July 1, 1994, equal to the liability of the Fund for claims filed or which may be filed in the future.

Further, the statute creating the joint underwriting authority would expire on July 1, 1994; a Health Care Stabilization Fund Oversight Committee would be created to review the progress toward the Fund phase out; the exemption under the Tort Claims Act for health care providers would expire on July 1, 1994; and any balance in the Fund remaining after the phase out would be paid to the State General Fund and any insufficiency in the Fund would be paid from the State General Fund.

(H.B. 2501 has been referred to the House Committee on Insurance.)

House Bill No. 2504

H.B. 2504, on July 1, 1989, would limit the liability of the Health Care Stabilization Fund to a maximum \$1 million or to an optional amount chosen by the provider for excess coverage from the Fund. Optional levels would include \$100,000, \$300,000, \$800,000, or another amount allowed by the Insurance Commissioner in rule and regulation. If providers did not chose an option by July 1, 1989, it would be presumed that the maximum \$1 million coverage had been selected.

On July 1, 1989, and thereafter, the Insurance Commissioner would be directed to levy a lower surcharge, based upon reasonably prudent actuarial standards, on those providers who elect optional coverage than on other providers. (See also S.B. 223.)

(H.B. 2504 has been referred to the House Committee on Insurance.)

House Bill No. 2511

H.B. 2511 would limit claimant's attorney fees from any recovery from the Health Care Stabilization Fund to 25 percent of the first \$500,000 recovered from the Fund; 20 percent of the next \$500,000 recovered from the Fund; and 15 percent of any amount recovered from the Fund which exceeds \$1,000,000. In writing, a claimant could elect to pay for the attorney fees on a mutually satisfactory per diem basis. (See S.B. 223.)

(H.B. 2511 has been referred to the House Committee on Insurance.)

MEMORANDUM

February 27, 1989

TO: House Committee on Insurance

FROM: Kansas Legislative Research Department

RE: Health Care Stabilization Fund Phase Out Costs

In December, at the direction of the Department of Insurance and the interim Special Committee on Commercial and Financial Institutions, DANI & Associates, actuaries, prepared projections regarding the costs associated with the phase out of the Health Care Stabilization Fund (Fund). You will recall that three optional methods were reported upon by the Actuary for phasing out the fund or, simply, ending it on July 1, 1989.

I remind you of the earlier report because the latest response of the Actuary to this Committee's request for additional information builds upon that earlier data (see Attachment). In January, this Committee asked the Actuary to prepare a report showing the cost of phasing out the Fund under two new plans: a staged reduction in the liability of the Fund, first to \$1 million, then down to \$500,000 on July 1, 1990, down to \$300,000 on July 1, 1991 to July 1, 1994 at which time the coverage limits of the Fund would be zero (0); the second option would offer health care providers three levels of coverage from which to choose -- \$800,000, \$300,000, and \$100,000.

Under new option one, the staged reduction plan, the Actuary projects, **based upon very preliminary work**, a discounted Fund liability of \$354,298,000 down from \$454,298,000 -- a reduction of about 22 to 25 percent.

Under new option two, the three-level plan, the Actuary projects, **based upon very preliminary work**, a discounted Fund liability of \$274,298,000 down from \$454,298,000 -- a reduction of about 40 to 45 percent.

To date, no projection has been received regarding the surcharge percentage that would have to be levied to achieve the necessary Fund balance on July 1, 1994. However, over the five-year phase out, there should be a reduction from the surcharge percentages projected by the Actuary in December. Any reduction probably would not be recognized until late in the phase-out period since there will be claims in the pipeline at the older and higher liability limit of the Fund.

Finally, the preliminary report of the Actuary does not contain a projection on the cost of tail coverage. In the December report, the discounted liability of the Fund for tail coverage was projected to be \$490,037,000 on July 1, 1994. It is anticipated, but not demonstrated at this time by the Actuary, that there will be a savings in the cost of tail coverage perhaps comparable to the percentage reductions noted above for each of the two plans: plan one, 22-25 percent or roughly \$367,528,000 and for plan two, 40-45 percent or \$220,517,000.

If that level of reduction proves to be possible, the liability of the Fund, including tail coverage, could be in the range of \$495 million to \$722 million on July 1, 1994.

insmem.wgw/sls

DANI Associates Inc.

Attachment 3

Actuarial Consultants

26 Woodshire Drive • Erial, New Jersey 08081

(609) 784-3334

February 8, 1989

Mr. Robert D. Hayes
Supervisor
Professional Liability Section
Kansas Insurance Department
420 South West 9th
Topeka, Kansas 66612

Re: Speculative Estimates of Effects of House Insurance Committee Proposals
Upon HCSF Fiscal Year 1989/90 Through 1993/94 Total Liabilities

Dear Bob:

In confirmation of our phone conversation on Monday, February 6th, it is our educated guess that the first and third requests of Representative Dale Sprague's February 1st letter to the Commissioner would result in approximate 25% and 45% average savings in HCSF fiscal year 1989/90 through 1993/94 accrual liabilities, respectively. In light of current amortization schedules for the accrual of prior fiscal year liabilities (which would be unaffected by these occurrence triggered proposals), savings in total HCSF liabilities would be expected to be slightly less. Upon further reflection, and contrary to our phone conversation, it is our opinion that Representative Sprague's three year phaseout request would most likely result in slightly less relative savings than those which would otherwise be realized in the first three years of the five year phaseout request. A reduction seems appropriate mainly due to the need to accelerate prior fiscal year accrual amortization schedules.

While these estimates are based upon our familiarity with the HCSF and similar past legislative proposals and enactments, they are, nonetheless, speculative in nature. The results of a detailed actuarial analysis of the proposals may differ from these estimates.

Bob, please let us know if you require further information regarding the proposals. We appreciate the opportunity to be of continuing assistance to you and the Kansas Insurance Department.

Sincerely,



Anthony T. Valenti
President

ATV/gap

cc: Ms. K. P. Valenti

Attachment 3

KANSAS HEALTH CARE STABILIZATION FUND

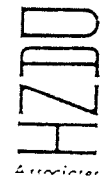
Scenario II
 Summary of Fund Accrual Liabilities and Balances *
 (Predicated Upon Existing HCPIAA Requirements)

	Hypothetical Sunset Date of Fund		Medical	Stepped-Down
	July 1, 1989	July 1, 1994	Society	Coverage Levels
			July 1, 1994	July 1, 1994
(1) Estimated Undiscounted Ending Fund Liability				
(a) Pre 7/1/84 Occurrence Accruals **	\$ 15,491	\$ 0		
(b) Post 7/1/84 Occurrence Accruals **	142,784	610,003		
(c) Total Loss and LAE Liability (1a)+(1b)	\$158,275	\$610,003		
(2) Estimated Discounted Ending Fund Liability				
(a) Pre 7/1/84 Occurrence Accruals **	\$ 12,501	\$ 0		
(b) Post 7/1/84 Occurrence Accruals **	106,325	454,298		
(c) Total Loss and LAE Liability (2a)+(2b)	\$118,826	\$454,298	\$354,298	\$274,298
3) Estimated Ending Fund Balance	\$ 87,432	\$457,294	(Less 25%) ***	(Less 45%) ***
4) Indicated Fund Out-of-Balance (3)-(2c)	\$-31,394	\$ 2,996		
5) Relative Fund Out-of-Balance (4)/(2c)	-26.4%	+0.7%		

***While these estimates are based upon our familiarity with the HCSF and similar past legislative proposals and enactments, they are, nonetheless, speculative in nature. The results of a detailed actuarial analysis of the proposals may differ from these estimates.

* All dollar values in thousands.
 ** Based on Fund loss and expense experience and Fund surcharge receipts compiled through 11/18/88, DANI's July 15, 1988, Final Report, and an interest rate of 7.5%.

Comments from attached letter



Estimated Costs of Funding Option
If the Health Care Stabilization Fund is discontinued

Funding Option One

Repeal Health Care Provider Insurance Availability Act, terminate all existing Fund responsibility for inactive health care provider tail coverage.

Discontinue As of	Estimated HCSF Liabilities		Estimated HCSF Balance
	Undiscounted	Discounted at 7.5%	
7-1-89	\$131,361,000	\$100,693,000	\$ 65,466,000
7-1-94	\$501,490,000	\$381,836,000	\$391,057,000

Funding Option Two

HCSF closed out based on its current claims-made excess coverage and inactive tail coverage requirements.

Discontinue As of	Estimated HCSF Liabilities		Estimated HCSF Balance
	Undiscounted	Discounted at 7.5%	
7-1-89	\$158,275,000	\$118,826,000	\$ 87,455,000
7-1-94	\$610,003,000	\$454,298,000	\$454,298,000

(1) Projected Based on Medical Society Plan \$354,298 (Est. - 25%) ***

Coverage Limits:

7/1/89	\$1m/\$3m
7/1/90	\$500,000/\$1,500,000
7/1/91	\$300,000/\$900,000
7/1/94	\$0

(2) Projected Based on Stepped Down Coverage Levels with Options \$274,298 (Est. - 45%) ***
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Coverage Limit:

7/1/89	\$800,000
Optional Limits:	(a) \$300,000
	(b) \$100,000

***While these estimates are based upon our familiarity with the HCSF and similar past legislative proposals and enactments, they are, nonetheless, speculative in nature. The results of a detailed actuarial analysis of the proposals may differ from these estimates.

above comments from actuarial letter dated February 2, 1989

Funding Option Three

Revise the HCPIA Act to provide "tail" coverage for all health care providers. (Following amounts must be added to the liabilities in Funding Option Two).

Discontinue As of	Additional Estimated HCSF Liabilities	
	Undiscounted	Discounted at 7.5%
7-1-89	\$159,184,000	\$109,201,000
7-1-94	\$714,340,000	\$490,037,000