

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 28, ~~89~~ in room 331-n of the Capitol.

All members were present except:

Representative Delbert Gross, 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.

A motion was made by Representative Cribbs to approve the minutes of February 20, 21, 22, and 23, 1989. Representative Bryant seconded. The motion carried.

The Committee began hearings on HB 2304 and HB 2499.

HB 2304 -- An Act amending the health care provider insurance availability at; concerning liability of the health care stabilization fund; amending K.S.A. 1988 Supp. 40-3403 and repealing the existing sections; also repealing K.S.A. 1987 Supp. 40-3403, as amended by section 123 of chapter 356 of the laws of 1988.

Chris Courtwright, Legislative Research Department, gave the Committee a brief overview of HB 2304 which would amend the health care provider insurance availability act to provide the Health Care Stabilization Fund be responsible for the payment of certain malpractice claims for any individual who would receive post graduate medical residency training approved by the State Board of Healing Arts at a medical care facility within the state.

Representative Larry Turnquist testified in support of HB 2304 including an amendment on line 129. Representative Turnquist explained that he sponsored the bill after being contacted by Smoky Hill Family Practice Center describing the disparity between the rates of malpractice insurance paid for residents who remain in the state and those who leave the state. He feels this Bill would operate to alleviate this degree of disparity, and encourage doctors to remain in our state (Attachment 1.)

Victoria Thomas, University of Kansas Medical Center (KUMC), provided testimony (Attachment 2) supporting HB 2304 which addresses the issue of tail coverage for persons who complete residency training programs at medical care facilities in the state of Kansas and who remain in the state to practice medicine. Ms. Thomas suggested the Committee amend line 129 of the Bill in order to cover those persons in programs at mental health centers in the state, as well as amending lines 133 and 134.

Appearing briefly in support of HB 2304 was Harold Reihm, Kansas Association of Osteopathic Physicians.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance
room 531-N, Statehouse, at 3:30 ~~xx~~ a.m./p.m. on February 28, ~~89~~

Jerry Slaughter, Kansas Medical Society, provided testimony in support of HB 2304 and that passage of this bill will help encourage residents to stay in our state at a reduced premium. (Attachment 3.)

Ron Todd, Insurance Department, testified before the Committee on HB 2304. Mr. Todd explained that the Department has some concerns with the language in the Bill. The State currently administers the settlements of claims for the University of Kansas Medical Center residents. The Department does not oppose adding coverage for residents at all residency programs, it is however, unclear as to the language on line 131, relating to covering the claims if the claim is made within a five year period after they have completed their training. This language is in conflict to the provision enacted last year for residents at KUMC.

Representative Turnquist stated that he would not object to changing the language in line 131 on the Bill.

There were no others wishing to testify and the hearings on HB 2304 were closed.

The Committee began hearings on HB 2499.

HB 2499 -- An Act amending the health care provider insurance availability act; relating to the defense of claims; amending K.S.A. 40-3411 and repealing the existing sections.

Chris Courtwright, Legislative Research Department, gave a brief overview of HB 2499, that the Health Care Stabilization Fund shall have no obligation to make any payment if the health care provider or inactive health care provider, without giving good and valid justification, fails to attend depositions, hearing, or trials as necessary to give evidence.

Jerry Slaughter, Kansas Medical Society, appeared in support of HB 2499 and provided testimony (Attachment 4) explaining that this bill is at the Medical Society's request to require health care providers defended by the Fund to cooperate in the defense of the claim.

Ron Todd, Insurance Department, briefly appeared before the Committee supporting HB 2499.

Appearing in opposition to HB 2499 was Robert Frey, Kansas Trial Lawyers Association (KTLA). Mr. Frey explained that the KTLA proposes the HCSF continue their responsibility to defend the case, but that they could go into the court and ask for the right of surrogation against the physician if judgement is ultimately granted, and that the Fund could go back against that physician for being noncooperative to the extent that the judgement was granted to that physician in the first place. This way the injured party is not put in the position of possibly having nothing more than an empty judgement with no ability to collect it and the Fund would have the opportunity being much more capable of pursuing subrogation the the physician.

There were no other conferees wishing to testify on HB 2499 and the hearings were concluded.

The Chairman directed the Committee to discussion and action on HB 2222.

A motion was made by Representative Hoy that HB 2222 be passed favorably and place on the Consent Calendar. Representative Turnquist seconded. The motion carried.

The meeting was adjourned at 4:30 p.m.

Testimony before the House Insurance Committee

February 28, 1989

Ann Victoria Thomas
General Counsel
University of Kansas

I am appearing today on behalf of the University of Kansas in support of House Bill No. 2304. This bill addresses the issue of tail coverage for persons who complete residency training programs at medical care facilities in the state of Kansas and who remain in the state to practice medicine. Currently, those persons are treated differently than persons who complete residency training programs in the state and then leave the state to practice medicine. The health care stabilization fund provides tail coverage for persons who leave the state because they become inactive health care providers. Persons who stay in the state to practice medicine after completing a residency training program (with the exception of those who complete a program at the University of Kansas School of Medicine) must provide their own tail coverage in connection with the malpractice policies which they purchase. That has the effect of increasing their medical malpractice insurance costs. They then have some incentive to leave the state to practice medicine because tail coverage is provided for them in that situation.

Last year the Legislature amended the provisions of K.S.A. 40-3403 to provide tail coverage through the health care stabilization fund for persons engaged in residency training at the University of Kansas Medical Center. The provisions of the bill before you today would extend that tail coverage to persons in the residency training programs at medical care facilities other than the University of Kansas, for example, those in programs at Wesley Medical Center, St. Joseph and St. Francis hospitals in Wichita. While these programs are affiliated with the University of Kansas School of Medicine,

residents employed by those medical care facilities are not covered by current legislation.

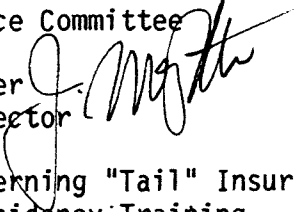
We do have several suggestions for amendments to the bill. Line 129 makes the tail coverage provisions applicable only to those persons engaged in postgraduate programs of residency training at a medical care facility in the state. We believe that this language would exclude those persons engaged in postgraduate programs of residency training at certain family practice residency training programs such as those affiliated with the University of Kansas at Smokey Hill. The language also excludes persons in programs at mental health centers in the state which are not defined as medical care facilities, such as the Menninger Clinic. We suggest that the same rationale for inclusion in the legislation applies to these persons, and that the Committee should strike the words "at a medical care facility in this state" in line 129 in order to also cover those persons.

Finally, we are concerned about the requirement that persons must render professional services continuously in the state from the time they complete their residency training in order to be provided tail coverage. While we agree that the intent of the bill should be to encourage persons to remain in Kansas to practice medicine, the bill as now drafted at lines 133 and 134 appears to exclude persons who complete residency training and then leave the state for any period of time, such as to complete a fellowship or to receive further specialized training, even if those persons then return to practice in Kansas.

**KANSAS MEDICAL SOCIETY**1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
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February 28, 1989

TO: House Insurance Committee

FROM: Jerry Slaughter 
Executive Director

SUBJECT: HB 2304; Concerning "Tail" Insurance for Persons
Engaged in Residency Training

The Kansas Medical Society appreciates the opportunity to appear today on HB 2304, which would extend "tail" coverage to persons engaged in a residency training program if such person practiced continuously in the state upon completion of their training. The bill provides further that the State General Fund would pay any claims related to such tail coverage.

➤ We support the concept in HB 2304, which would provide state-funded tail insurance for residents if they practiced in this state continuously after completion of their training. We believe such legislation, which is similar to a provision enacted last year for residents at KUMC, will encourage residents to stay in our state and practice, since they will be able to enter the state following training at a year one claims-made rate, instead of a mature claims-made rate.

⊗ There are a couple of technical considerations which I don't believe should hold up the bill, but should be looked into: 1) since the fiscal impact of the state is probably minimal from this change, it may be unnecessary to require that a person be continuously in practice to get state-paid tail insurance. An option would be to just have the state pay all tail insurance for residents at all residency programs, much as we already do for those at KUMC; 2) any change in coverage relating to the Health Care Stabilization Fund should be meshed with the action you took yesterday on the proposed phase-out.

We believe HB 2304 will help encourage residents to stay in our state and begin the practice of medicine, since it will allow them to do so at a reduced premium. While the state would assume some liability for tail exposure attributable to the years the resident was in training, we believe the benefits far outweigh the risks of exposure. It is also equitable, because of the action taken previously which applies to residents at KUMC, since we want to encourage residents of other training programs to stay in our state, as well.

We appreciate the opportunity to comment today, and urge you to report HB 2304 favorably. Thank you.


JS:nb



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February 28, 1989

TO: House Insurance Committee
FROM: Jerry Slaughter 
Executive Director
SUBJECT: HB 2499; Concerning the Health Care Stabilization Fund

The Kansas Medical Society appreciates the opportunity to appear in support of HB 2499, which was introduced at our request. The intention of HB 2499 is to put "teeth" into the law which require health care providers defended by the Fund to cooperate in the defense of any claim. This legislation is directed primarily at instances involving health care providers who move out of state, and then when sued for something which occurred in Kansas, they don't cooperate fully in preparing the defense of the claim.

We urge your favorable consideration of HB 2499. Thank you for the opportunity to appear.

JS:nb