

Approved

1/25/89
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:07 a.m./~~p.m.~~ on WEDNESDAY, JANUARY 18, 1989 in room 529S of the Capitol.

All members were present ~~except~~

Committee staff present:

Bill Edds, Revisors Office
Bill Wolff, Research Department
Myrta Anderson, Research Department
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Alan Conroy, Legislative Research Department
Marlin Rein, Associated Director for Business Affairs, KUMC
Dr. Kay Clawson, Executive Vice Chancellor, KUMC
Chip Wheelen, Kansas Medical Society

The meeting was called to order by Chairman Richard L. Bond at 9:07 a.m.

Senator Bond recognized Alan Conroy who presented a brief summation of SB 18, Proposal 50, the Health Care Provider Insurance Availability Act as it relates to full-time physician faculty employed by the University of Kansas Medical Center. SB 18 is the result of an interim study by the Special Committee on Ways and Means/Appropriations.

Mr. Conroy stated that, because of increasing medical malpractice premiums, the financial stability of Kansas University Medical Center (KUMC) is threatened. SB 18 was introduced by the special committee to address these problems. The bill would amend current law to allow the full time medical faculty at KUMC to be self-insurers for purposes of basic coverage under the Health Care Provider Insurance Availability Act.

SB 18 would also amend current law to provide that the Health Care Stabilization Fund be responsible for the payment of all costs for defending a full time physician faculty member employed by KUMC and for any judgment or settlement rendered by the courts in a malpractice suit against such a faculty member. (attachment 1)

Chairman Bond recognized Marlin Rein. Mr. Rein stated that SB 18 is similar to SB 741, introduced and passed by the Senate during the 1988 session but never scheduled for a hearing in the House. Mr. Rein continued by saying that in order for the Committee to make a judgment it was necessary for them to understand the organization of the School of Medicine--that the relationship of school and faculty is basic to the issue.

Mr. Rein introduced Dr. Kay Clawson, Executive Vice Chancellor, KUMC. Dr. Martin Pernall, recently appointed Executive Dean of KUMC. Dr. Clawson continued his remarks by stating that it was through the efforts of their faculty in agreeing to and seeing patients that patients were brought into the university hospital. They have an apartheid mission in that they are expected to (1) be educators and teachers, (2) stay at the forefront of their field, and (3) also take care of patients. According to Dr. Clawson, the insurance companies are charging the same for part time faculty at KUMC as they are for physicians who are in full time practice. In addition, the faculty at the Medical Center is expected to take care of Medicaid and indigent patients who take a great deal of time yet produce no income.

Dr. Clawson stated that they would like to continue to expand the partnership that has developed between the Legislature, the Governor's office,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529S, Statehouse, at 9:07 a.m.~~p.m.~~ on WEDNESDAY, JANUARY 18, 19 89

SB 18, Proposal 50 -- continued

and the clinical faculty. He hoped that the state could help pay the cost for the time the faculty is engaged in non-income producing work and the doctors will continue to pay the same as any full time practicing physicians when they are working in an environment that generates fees. The way SB 18 is written, it is probably 50/50 sharing and that is probably acceptable. According to Dr. Clawson, Colorado, Oregon, and Nebraska all have more favorable laws than Kansas in respect to this issue.

Committee discussion followed the conclusion of Dr. Clawson's remarks.

Chairman Bond recognized Chip Wheelen who expressed the support of his organization for SB 18. One of the primary reasons for endorsing this bill is to improve the University's ability to recruit and retain faculty members. According to Mr. Wheelen, this is a difficult task because of the high premiums for liability insurance in Kansas.
(attachment 2)

Committee discussion followed the conclusion of Mr. Wheelen's remarks.

The meeting adjourned at 10:00 a.m.

RE: PROPOSAL No. 50 -- KUMC HEALTH CARE PROVIDER INSURANCE*

The Special Committee on Ways and Means/Appropriations was directed to review and study the policy and fiscal implications of the Health Care Provider Insurance Availability Act as it relates to full-time physician faculty employed by the University of Kansas Medical Center (KUMC).

Background

The cost for medical malpractice insurance in recent years has continued to escalate. One aspect of the increased costs unique to educational institutions, according to officials at KUMC, is that physicians serve dual roles as teachers and as clinicians. The clinical faculty serve as a model for teaching students and for residents the role is one of supervised responsibility. To keep up their own skills, the physicians who compose the clinical faculty have continued clinical contact with patients. Students, during the development of their knowledge and technical skills to become fully competent, are supervised by these faculty. In addition, clinical faculty at KUMC provide a center for tertiary services to patients across the state.

At KUMC, the estimated 256 teaching physicians form partnership foundations by specialty to practice of medicine. KUMC enters into three- to four-year contracts with the foundations to pay a portion of the salaries and a small amount of other operating expenses, and, in return, the foundations provide the educational program and the clinical practice necessary for teaching. Medical malpractice premiums traditionally have been paid by the foundations. The physician faculty generally acquire malpractice insurance through a commercial package along with payments to the state Health Care Stabilization Fund (HCSF). The HCSF provides medical malpractice insurance coverage to a maximum of \$3 million and is financed by a surcharge (currently 125 percent) on whatever rate doctors pay for their basic coverage, which is the first \$200,000 in liability insurance. However, regardless of whether a physician practices 10 percent or 50 percent of the time, the medical malpractice premium insurance rate is the same as for a physician practicing 100 percent of the time. The insurance rates have more than doubled this past fiscal year, from approximately \$1 million in FY 1987 to \$2.2 million paid in FY 1988; the FY 1989 estimate is \$4.9 million.

* S.B. 18 accompanies this report.

Sen. Fin. Sub. & Ins.
1/18/89
Attachment 1

Committee Activity

Committee hearings provided interested parties the opportunity to appear before the Committee. The following is a summary of the principal testimony and recommendations of the conferees.

University of Kansas Medical Center. Dr. Kay Clawson, Vice-Chancellor, KUMC, addressed the Committee on the funding problems created for the Medical School by the cost of medical malpractice liability insurance. Dr. Clawson noted that funding for a medical school is derived from three components: state support, clinical practice income, and research grants. The key to success, according to Dr. Clawson, is maintaining a balance, so that there is incentive for the faculty to practice and still give sufficient time to teaching. The Vice-Chancellor testified that the cost of malpractice insurance is threatening the survival of five to seven foundations at the Medical Center. In addition, the financial stability of the foundations is being affected by at least three other factors: escalating salaries and competitive recruiting; changes within the medical profession, *i.e.*, shorter hospital stays, third-party reimbursement policies, competition; and care of the indigent. Dr. Clawson stressed that the Medical School was reliant on strong foundations.

Mr. Marlin Rein, Associate University Director, KU, noted that three years ago the Legislature enacted self-insurance for residents at the Medical Center (300 residents at Kansas City and 24 residents at Wichita). Mr. Rein stated that the estimated savings on malpractice insurance premiums for residents over the three-year period are in excess of \$4 million. He also noted that the risk exposure of the clinical faculty of KUMC would be much greater than that of the residents. Mr. Rein stated that last Session, S.B. 741 was introduced to enact self-insurance for the clinical faculty. However, this legislation was not enacted into law. The 1988 Legislature appropriated \$400,000 to buffer the impact of increased malpractice premiums.

Kansas Medical Society. Mr. Chip Wheelen, Director of Public Affairs, Kansas Medical Society, testified that the Kansas Medical Society Council adopted a motion endorsing the position that additional financial assistance should be provided physician faculty members at KUMC to offset medical malpractice insurance premiums. He noted that over a period of three to four years, while the Health Care Stabilization Fund was capped artificially at \$10 million, the physicians at KUMC

benefitted from lower payments. A debt resulted from that cap, and according to Mr. Wheelen, it would be unfair to the medical community to relieve the physicians and KUMC of participation in payment of that debt.

Conclusions and Recommendations

The Committee expresses its concern as to the impact of medical malpractice insurance premiums on KUMC. The increasing medical malpractice insurance premiums are having a serious negative impact on the financial stability of the medical foundations that are crucial to quality patient care at KUMC.

The Committee recommends S.B.18 to address the current medical malpractice insurance difficulties at KUMC. The bill would amend current law to provide that the medical foundations composed of full-time physician faculty employed by KUMC be self-insurers for purposes of basic coverage under the Health Care Provider Insurance Availability Act. Full-time physician faculty employed by KUMC would continue the current practice of paying a premium surcharge for excess medical malpractice insurance above the basic coverage to the Commissioner of Insurance for credit to the Health Care Stabilization Fund.

S.B. 18 also would amend current law to provide that the Health Care Stabilization Fund be responsible for the payment of all costs for defending a full-time physician faculty member employed by KUMC and for any judgement or settlement rendered by the courts in a malpractice suit against such a faculty member. Therefore, in the case of full-time physician faculty members, the Health Care Stabilization Fund would be responsible for payment of both basic and excess coverage. However, S.B. 18 would provide that transfers be made in an amount equal to the costs included in the basic coverage liability for other self-insurers, thereby indirectly financing basic coverage for medical faculty with State General Fund resources. The exact amount of the State General Fund transfer in a given year is difficult to estimate due to variables in the number of claims made against the full-time medical faculty, the awards involved in those claims, and the court costs associated with such claims.

Until recently, the full-time medical faculty at KUMC received a teaching discount on their medical malpractice insurance premiums. This discount recognized the importance and the quality of medical educators at KUMC. The Committee requests that the Commissioner of Insurance

explore the possibility of reinstating faculty malpractice insurance teaching discounts at KUMC and report such findings to the appropriate standing committees of the 1989 Legislature.

Respectfully submitted,

November 29, 1988

Rep. Rochelle Chronister, Chairman
Special Committee on Ways and
Means/Appropriations

Sen. Gus Bogina, Vice-
Chairman
Sen. Ross Doyen
Sen. Frank Gaines*
Sen. Michael Johnston
Sen. Dave Kerr
Sen. Merrill Werts

Rep. William Brady
Rep. Harold P. Dyck
Rep. Duane Goossen
Rep. Henry Helgersen
Rep. Martha Jenkins
Rep. Kenneth King
Rep. Jack Shriver
Rep. Burr Sifers
Rep. George Teagarden
Rep. Thomas Walker

* Ranking Minority Member



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

DATE: January 18, 1989
TO: Senate Financial Institutions and Insurance Committee
FROM: Kansas Medical Society *Chip W. Juelen*
SUBJECT: Senate Bill 18, As Introduced

Thank you for this opportunity to express our endorsement of the University of Kansas' proposal to self insure the basic layer of professional liability insurance coverage for full-time physician faculty members. Important features of the proposal include provisions to continue participation in the Health Care Stabilization Fund by paying the annual surcharge and basing the surcharge amount on the rates charged by the Health Care Providers Insurance Availability Plan.

The reason for this proposal is obvious - to improve the University's ability to recruit and retain faculty members. This is a difficult task when Kansas premiums for liability insurance exceed all of the states in the central plains region (see attachment).

It may be noteworthy that SB18 amends the law governing the Health Care Stabilization Fund which is very likely to be the subject of other discussions during the 1989 Session. This is, in part, attributable to the fact that a provision of current law found at lines 361-369 in the bill has been declared void by the Kansas Supreme Court. The Committee may wish to consider these related concerns during its deliberations.

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Attachment

*Sen. Fin. Inst. & Ins.
1/18/89
Attachment 2*

COMPARISON OF MEDICAL MALPRACTICE INSURANCE PREMIUMS
October, 1988

The following table compares premiums charged by principal insurers of physicians among the respective states. There are two major insurers in Missouri. Premium rates listed are mature rates for the lowest risk class and highest risk class for \$1 million per occurrence claims made policies, except the last two. In Oklahoma and New Mexico, occurrence policies are sold rather than claims made. Therefore, those two states are listed separately rather than arrayed. Furthermore, the New Mexico premium is for only \$500,000 coverage.

The Kansas premiums listed are not actual. A 105% Health Care Stabilization Fund surcharge rate was used in order to adjust the amounts downward for comparison. That was the surcharge based on \$1 million per occurrence coverage before the Supreme Court decision in June required the exposure to be increased to \$3 million and the surcharge to be increased accordingly. Actual Kansas premiums range from \$8,114 to \$85,192.

<u>Claims-Made</u>		
<u>State</u>	<u>Lowest Risk Class</u>	<u>Highest Risk Class</u>
Kansas ¹	\$ 7,392	\$77,619
Missouri	\$ 7,406	\$83,309
Missouri	\$ 5,582	\$55,804
Texas	\$ 3,000	\$63,495
Colorado ²	\$ 5,648	\$61,912
Montana	\$ 4,084	\$57,064
N&S Dakota	\$ 3,974 ³	\$52,404 ⁴
Minnesota	\$ 3,868 ³	\$50,770 ⁴
Iowa	\$ 3,492	\$50,068
Wyoming	\$ 4,296	\$48,504
Louisiana ⁵	\$ 4,025	\$43,473
Nebraska	\$ 4,186	\$37,156
Arkansas	\$ 1,414	\$15,259
<u>Occurrence</u>		
New Mexico ⁶	\$ 2,578	\$21,490
Oklahoma	\$ 1,839	\$11,963

- 1) Premiums adjusted downward to \$1 million coverage for comparison purposes.
- 2) Premiums are scheduled to be reduced in 1989 because of tort reforms enacted in 1988.
- 3) Includes \$1,755 capitalization fee.
- 4) Includes \$18,088 capitalization fee.
- 5) First \$100,000 is commercial. \$400,000 excess coverage by state fund. Additional \$500,000 excess is commercial.
- 6) Premiums reflect only \$500,000 coverage because that is maximum available (cap on awards).

SOURCE: Telephone survey conducted by staff of the Kansas Medical Society.