

Approved \_\_\_\_\_  
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Dale Sprague at \_\_\_\_\_  
Chairperson

3:30 ~~xx~~ a.m./p.m. on February 27, 1990 in room 531-n of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

see attached list

The meeting was called to order at 3:40 p.m. and hearings began on HB 3012.

HB 3012 -- an act relating to insurance; concerning accident and sickness insurance and the regulation of the rates thereof by the commissioner of insurance; amending K.S.A. 1989 Supp. 40-2215 and repealing the existing section.

Chris Courtwright, Legislative Research Department gave an overview of the bill and explained that it would require the Insurance Commissioner to regulate group health insurance rates with the exception of disability income, hospital confinement, indemnity, specified diseases or accident only coverage. All risk classification and premium rates for health insurance would have to be filed the with the Commissioner before the policies are issued or delivered. Mr. Courtwright also noted that the Commissioner would then be required to approve or disapprove the rate filings unless he determines they are unreasonable, excessive or unfairly discriminatory or do not comply with provisions of the law.

Jim Braden, Speaker of the Kansas House of Representatives provided testimony (Attachment 1) in support of HB 3012. Rep. Braden explained that this bill would require insurance companies to justify policy and rate changes which meet the requirements of this proposed legislation and not be unreasonable, excessive or unfairly discriminatory in rate structure. He noted that without regulation of insurance rates insurance companies are free to change rates without any review.

Dick Brock, Insurance Department provided testimony (Attachment 2) supporting HB 3012. Mr. Brock stated that the bill proposes a prior approval type of rate regulation for individual and group policies issued by traditional insurance companies that is similar or identical to that which currently applies to mutual nonprofit hospital and medical service corporations and health maintenance organizations.

There were no others wishing to testify and hearings on HB 3012 were closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 ~~xx~~ m./p.m. on February 27, 1990.

Hearings began on HB 2768.

HB 2768 -- an act concerning insurance; relating to certain policies, contracts or certificates issued, renewed or delivered within or outside this state; amending K.S.A. 1989 Supp. 40-2,103 and repealing the existing section.

Chris Courtwright, Legislative Research Department gave an overview of the bill and explained that it would extend the mandate in an extraterritorial fashion for alcohol, drug abuse or nervous or mental conditions, to all insurance delivered or renewed either in or out of the state, for use in the state, by residents or someone who works in the state.

Copies of testimony in support of HB 2768 were distributed to the Committee from Representative Donna Whiteman (Attachment 3).

Paul Klotz, Community Mental Health Association provided testimony (Attachment 4) in support of HB 2768. Mr. Klotz explained that current law only requires coverage for those groups and individuals who had their master contract issued in Kansas and that this proposed legislation would provide coverage for psychiatric, alcohol and drug conditions regardless of where a policy is issued. He noted that coverage would be required for insured persons who are employed or reside in Kansas.

Gene Johnson, Kansas Alcoholism and Drug Addiction Counselors Association provided testimony (Attachment 5) supporting HB 2768. Mr. Johnson expressed that any company entering the insurance market in the State of Kansas should be held accountable for our insurance laws and be required to provide the same benefits as those companies that are licensed to operate in the State of Kansas and have offices in the State.

Next appearing in support of HB 2768 was Gigi Felix, National Association of Social Workers. Ms. Felix provided testimony (Attachment 6) stating that this bill would correct an existing double standard of care within the insurance community to allow all Kansans be entitled to mandated coverages wherever the policy itself is written.

There were no others wishing to testify on HB 2768 and the hearings were concluded.



TESTIMONY BY SPEAKER BRADEN  
HOUSE INSURANCE COMMITTEE  
HOUSE BILL 3012  
February 27, 1990

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today.

In recent years, rates for health insurance have skyrocketed. In response, the legislature has enacted a variety of measures designed to ease health care cost increases. Specifically, we have passed legislation to control medical malpractice insurance premiums which have been partially responsible for driving up health care costs.

However, as you are aware there is a lot of work yet to be done.

House Bill 3012 is another step on the road to providing affordable health care for Kansas consumers. This proposal will require that group accident and sickness insurance policies and rates be approved by the Insurance Commissioner before they can be presented to a policy holder.

Without regulation of insurance rates insurance companies are free to change rates without any review. Many consumers are left with little choice but to pay the higher rates. We need to provide this measure of protection for citizens in Kansas.

Before rates are increased, a company should be required to justify policy and rate changes. All filings must meet the requirements of this legislation and not be unreasonable, excessive or unfairly discriminatory in rate structure.

Currently, Blue Cross and Blue Shield is the only company required to file group rates and policies with the Commissioner. Although they are the largest health insurance provider in Kansas, there are a lot of other Kansans who deserve this measure of protection.

I appreciate the committee including this proposal as a part of your comprehensive review of health insurance delivery in Kansas.

Thank you for your consideration. I would be happy to answer any questions.

Kansas Insurance Department  
Testimony Before the  
House Insurance Committee  
on House Bill No. 3012  
Presented by Dick Brock

House Bill No. 3012 is a natural and appropriate response to some of the increases that have taken place recently in connection with accident and sickness insurance. It proposes a prior approval type of rate regulation for individual and group policies issued by traditional insurance companies that is similar or identical to that which currently applies to mutual nonprofit hospital and medical service corporations and health maintenance organizations.

As the Speaker noted when he requested this committee to introduce this bill, he was very surprised to discover that such rate regulatory authority was not an existing law and I suspect he was right when he surmised that some of you were equally amazed. At the same time, however, you should be aware of the fact that legislative consideration has been given to general accident and sickness insurance rate regulation before, but has obviously not been enacted and, in fact, has not even received favorable action by this committee. Those were, of course, somewhat different days when health insurance costs and availability had not yet achieved the priority status they occupy today. So the fact that this legislation has not been enacted despite previous opportunities to do so does not necessarily mean it is without merit or that public policy needs don't change. Nevertheless, the previous lack of legislative enthusiasm is an obvious indication that some negative considerations were also present.

I can recall a couple of problems raised by opponents at previous hearings. One was the fact that it is not unusual for a group accident and health policy to be issued to a non-resident policyholder and be governed by the laws of the policyholder's state of residence even though

the coverage may extend to a number of Kansas employees. Thus, the fact that Kansas might have a rate regulation law does not mean the rates for accident and sickness insurance covering all Kansans would be regulated.

Another argument raised by opponents was the fact that accident and sickness insurance is often a subject of negotiations between labor and management. In such situations, negotiators are placed in an untenable position. Either the rates and forms to be used are already filed with and approved by the Commissioner, in which case there is little to negotiate or the negotiators don't know from one offer to the next whether it will be approved by the regulator. On the other hand, the regulator is probably not oblivious to the havoc he or she can cause by disapproving a "done deal".

These are simply two arguments previously used to oppose passage of bills similar to House Bill No. 3012. They have some validity and would make the rate regulation envisioned less effective and applicable to fewer Kansas insureds than contemplated, but I raise these points simply so you will know there are some short-comings, not as an opponent to enactment.

However, there is another shortcoming which is much more serious, and that is I'm afraid the bill won't correct the problems some people face because of tier rating - people like the Speaker's constituent. Tier rating is nothing more than a system of risk classification. It is also a product of the fragmentation of the group concept you have heard several express concerns about during the course of the past several weeks. However, there is nothing in current law to prevent it and, more important, there is nothing in House Bill No. 3012 to prevent it either unless the risk classifications proposed were clearly and demonstrably unfairly discriminatory.

Another potential problem with the bill, or at least with any expectations that the insurance department might be able to utilize its

provisions to disapprove rating classifications that result in very significant, even traumatic rate increases for some members of a group, is caused by a 1980 decision of the Kansas Supreme Court. The portion of the decision you need to be aware of is a sentence which reads as follows: "The Commissioner should not substitute his judgment for that of the directors of Blue Cross and Blue Shield of Kansas when it comes to grouping and classifying risks for the purpose of establishing rates on individual policies or on group policies." This decision overturned our disapproval of a rate filing submitted by Blue Cross and Blue Shield of Kansas (BCBSK), but the language of the rate regulation act applicable to that organization is nearly identical to House Bill No. 3012. The fact that BCBSK is a creation of the legislature and is a nonprofit entity may have had a bearing on the Court's decision, but I wouldn't rely on this possibility.

Consequently, regardless of the action taken on House Bill No. 3012, a direct prohibition against the establishment of risk or rate classifications within a group policy is the most certain means of preventing the rate variations created by tier rating. Such a prohibition would, however, pose a different problem. Tier rating is a device used by insurers as a means of retaining as many "good" risks in a group as possible. The alternative would be to exclude the less healthy people from the group. As a result, any proposal to prohibit the establishment of rate or risk classifications within a group should probably be accompanied by a prohibition against individually underwriting the members of a group. These are significant steps that would go far toward reinstating the original intent of the group concept. It could, however, produce an adverse reaction from the group insurance market by a general withdrawal from Kansas. Thus, even though conferee after conferee has lamented the fragmentation of the group concept, a return to the "good old days" should be approached with caution and the reaction of people who are knowledgeable about the marketplace should be obtained before any final decisions are made.

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

DONNA L. WHITEMAN  
MINORITY WHIP  
REPRESENTATIVE, 102ND DISTRICT  
RENO COUNTY  
401 W FIRST P O BOX 1224  
HUTCHINSON, KANSAS 67504-1224

HUTCHINSON NUMBER (316) 669-0467  
TOPEKA: (913) 296-7630  
1-800-432-3924

COMMITTEE ASSIGNMENTS  
MEMBER JUDICIARY  
LABOR AND INDUSTRY  
JOINT COMMITTEE ON AGRICULTURE  
RULES AND REGULATIONS  
CALENDAR AND PRINTING  
LEGISLATIVE JUDICIAL AND  
CONGRESSIONAL AFFAIRS  
GOVERNOR'S ADVISORY COMMITTEE  
ON JUVENILE OFFENDERS

TO: Members - House Insurance Committee

FROM: Rep. Donna Whiteman *DW*

DATE: February 27, 1990

RE: House Bill 2768

Chairman Sprague and Members of the Insurance Committee:

Attached please find copies of the correspondence from Charles Hyter, The Kansas Insurance Department and Mr. Hyter's Insurance carrier explaining why House Bill 2768 is needed.





STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

FLETCHER BELL  
Commissioner

October 13, 1989

Mr. Charles K. Hyter  
2206 Westminster Court  
Hutchinson, KS 67502

Department File No. 08904805  
K.S.A. 40-2,105

Dear Mr. Hyter:

Your letter of October 6, 1989, was received in our office on October 12, 1989.

We have enclosed a copy of our Assistant Commissioner's letter dated October 5, 1989, to Senator Kerr which provides additional background with regard to the captioned statute. Hopefully, the enclosed information and this letter will provide you with a clearer understanding of our position. As Mr. Todd indicated, this Department has both proposed and supported numerous legislative proposals in the past that would apply the so-called "extra territorial" laws to group policies issued in other states. As you know, our office does not have authority to enact legislation as such public policy determinations are within the purview of the legislative branch of government.

Our letter of September 22, 1989, attempted to identify interests which compete with your position that additional benefits should be mandated for extra territorial contracts. We did not intend to give you the impression that we would not support an amendment to K.S.A. 40-2,103 to provide for broader application of Kansas mandated benefits and other insurance laws. Quite honestly, such an amendment would probably solve a number of administrative problems for this Department; particularly with regard to consumer complaints such as yours. Nevertheless, we are obligated to enforce and administer the law as it now stands rather than what we might like it to be. Thus, we are unable to require Time to change its position on your step-daughter's claim in view of the information in our file.

With regard to your assertion that all Kansans are not being treated equally, there are countless variations in coverage provisions between even Kansas policies. We believe it is important to keep in mind the notion of "freedom of contract" generally provides persons with the opportunity to obtain contracts which fit their particular needs. You may be interested in knowing we receive several complaints on the fact that K.S.A. 40-2,105 mandates certain benefits for Kansas contracts.

**INSURANCE DEPARTMENT**

Topeka

Mr. Charles K. Hyter

Page 2

October 13, 1989

Such complaints typically assert that the insured is being forced to pay premiums for coverage which they do not need nor desire. The purchase of an extra territorial policy provides such persons with an option to obtain coverage more consistent with their needs and desires.

We hope the above and enclosed information provides you with a better understanding of some of the relevant issues with regard to your complaint. Please feel free to contact the undersigned if you wish to further discuss this matter.

Very truly yours,

Fletcher Bell  
Commissioner of Insurance

Timothy G. Elliott, CPCU  
Supervisor & Attorney  
Consumer Assistance Division

TGE:dbc

cc: The Honorable Dave Kerr  
P.O. Box 2620  
Hutchinson, KS 67504

The Honorable Dale Sprague  
Box 119  
McPherson, KS 67460

The Honorable Jesse Harder  
Box 208  
Buhler, KS 67522

↙ The Honorable Donna Whiteman  
P.O. Box 11  
Hutchinson, KS 67504

Ron Todd  
Assistant Commissioner

3649

Charles K. Hyter  
2206 Westminister Ct.  
Hutchinson, KS 67502

October 6, 1989

Kansas Insurance Department  
Attn: Timothy G. Elliott  
420 S.W. 9th  
Topeka, KS 66612-1678

Re: 08904805  
K.S.A. 40-2,105

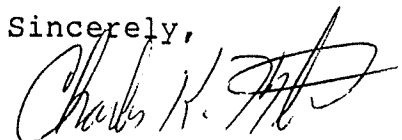
Dear Tim:

I am in receipt of your letter dated September 22nd., a copy of which is enclosed for your ready reference. I will be the first to acknowledge that health care costs have escalated - one becomes painfully aware of that fact when there is no insurance.

I do not understand the position of your Department. It would seem that all Kansans should be treated the same. However, that is not the case. If one has Kansas BC/BS, then K.S.A. 40-2,105, is applicable. But, if one is covered by TIME, which is issued in Mississippi, then the above statute does not apply.

I am writing Rep. Sprague this evening, but I would like to see your Department take a position where all Kansans and Kansas insurance companies are treated equally.

Sincerely,



Charles K. Hyter

cc: Sen. Dave Kerr  
Rep. Jesse Harder  
Rep. Dale Sprague  
Rep. Donna Whiteman



STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
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Division calls only

FLETCHER BELL  
Commissioner

September 22, 1989

Mr. Charles K. Hyter  
2206 West Minister Court  
Hutchinson, KS 67502

Department File No. 08904805  
Time Insurance Company

Dear Mr. Hyter:

As indicated in our postcard of August 25, 1989, we have contacted the captioned insurer and requested their position with regard to the concerns expressed in your letter of August 9, 1989. We have enclosed a copy of the company's response dated September 11, 1989, for your information.

Unfortunately for your situation, it appears the insurer's legal position is in compliance with the relevant Kansas insurance statutes and regulations. With regard to your suggestion that we propose an amendment to K.S.A. 40-2,103 to include the mandated benefits of K.S.A. 40-2,105, please be advised this issue has received careful consideration. The problem with such a proposal is the fact that the general attention of the legislature appears to be focused on the cost of health insurance, rather than increasing the scope of mandated benefits. Obviously, insurance premiums rise as additional benefits are mandated so these interests generally compete for legislative attention. As we are sure you are aware, the dramatic escalation in health care costs represent one of our nation's most serious problems which has also intensified attention on cost containment efforts and other ways to reduce claim costs.

If you would like to discuss this issue with a legislator directly, we suggest you contact Representative Dale Sprague, Chairman of the House Insurance Committee at Box 119, McPherson, Kansas 67460.

We regret our report was not more favorable for your situation, but appreciate this opportunity to provide the above information. If you would like to further discuss this matter, please feel free to contact the undersigned.

Very truly yours,

Fletcher Bell  
Commissioner of Insurance

Timothy G. Elliott, CPCU  
Supervisor and Attorney  
Consumer Assistance Division

TGE:11ca/5308

2-5

TIME INSURANCE COMPANY

West Wells  
P. O. Box 624  
Milwaukee, WI 53201  
Telephone: (414) 271-3011



September 11, 1989

Mr. Donald W. Bond, CIE  
Consumer Assistance Division  
Kansas Insurance Department  
420 Southwest Ninth  
Topeka, KS 66612-1678

Dear Mr. Bond:

File 08904805  
Case 70488-24  
Claimant: Charles K. Hyter

We have reviewed Mr. Hyter's complaint and have been advised by our Legal Department that our denial of the expenses incurred by his stepdaughter, Kally Peterson for outpatient therapy for OCD was correct.

KSA40-2, 105 requires policies issued in Kansas to provide certain benefits for treatment of mental illness and substance abuse. Since the law does not apply to policies issued outside Kansas, and our MET policies are issued in Mississippi, we do not comply with it.

Mr. Hyter is correct in that KSA40-2, 103 makes certain sections of the Kansas Insurance Code applicable to residents of Kansas, regardless of where the master policies were issued. However, 40-2, 105 was not one of those sections. We are in compliance with the sections that were made extra territorial by KSA40-2, 103. We hope this information will be sufficient to resolve this problem.

Sincerely,

A handwritten signature in cursive script that reads "Mrs. Karen A. Kierzek".

(Mrs.) Karen A. Kierzek/JA  
Senior Examiner/Unit Leader  
EB--Trust Benefit

KAK/JA:u3



STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

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FLETCHER BELL  
Commissioner

October 5, 1989

The Honorable Dave Kerr  
Senator, Thirty-Fourth District  
P.O. Box 2620  
Hutchinson, Kansas 67504

RE: Letter of August 9, 1989  
from Charles Hyter

Dear Senator Kerr:

This is in reply to your note of August 11, 1989 and our brief conversation relative thereto. I regret that my reply has taken so long since I do know the background of Mr. Hyter's question, but I have had a difficult time sitting down and writing out the details. These statutes all relate to so-called "mandated" health insurance benefits and all of them have had a somewhat "stormy" legislative and legal past.

Mr. Hyter's understanding is correct that K.S.A. 40-2,105 only requires the coverage for alcoholism, drug abuse or nervous or mental conditions to apply to policies issued within the state of Kansas. If a group health policy is issued outside the state, such policy does not have to comply with Kansas statutes even if certificates of insurance that reference such master policy are issued to residents of this state. The foregoing has long been the law of the land through court decisions and the decision in the Sims Case merely confirmed prior decisions. The only way to alter this legal fact is to change our law to specifically apply to contracts issued outside the state as was done in 1984 to K.S.A. 40-2,103. Then we would have a fight in court because many insurance companies would claim such a law was unconstitutional. This happened in 1984 and the case went to both Federal District Court and to the Court of Appeals. However, we did win.

The debate in the legislature always centers on the "cost" of any such mandated benefits as well as whether or not such language is constitutional because of its extra-territorial applications. K.S.A. 40-2,103 was enacted in 1984 mostly on the theory of freedom of choice of a health care provider (mostly the Chiropractors vs. the Medical Doctors). Then, in 1986, K.S.A. 40-2,105 was enacted on a mandatory basis without any serious attempt to make it apply to out-of-state contracts.

*Our file is in the legislative inquiry folder in  
my drawer*

INSURANCE DEPARTMENT

TOPEKA

The Honorable Dave Kerr  
October 5, 1989  
Page 2

This Department has both proposed and supported numerous legislative proposals in the past that would apply the so-called "extra territorial" laws to group policies issued in other states, but have only been successful in regard to K.S.A. 40-2,103 - and I think that was because of the limited application to "freedom of choice" of a health care provider.

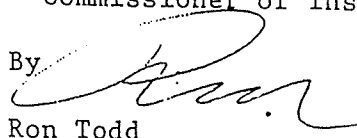
I am also enclosing a copy of our Department's reply of September 22, 1989 to Mr. Hyter's letter of August 9, 1989.

Please let me know if we can provide any further background or assistance.

Sincerely,

Fletcher Bell  
Commissioner of Insurance

By

  
Ron Todd  
Assistant Commissioner

RT:vf  
Enclosure

EXTRATERRITORIALITY  
H.B. 2768  
Association of CMHCs of Kansas, Inc.  
February 27, 1990

CONTACT: Paul M. Klotz 913-234-4773

In 1986, legislation was passed and signed into law amending K.S.A. 40-2, 105. These amendments required that insurance policies issued in Kansas include coverage for psychiatric, alcohol and drug conditions. Mike Hayden, then Speaker of the House was a primary sponsor of this important legislation. However, the legislation did not afford all insured individuals and groups equal protection or coverage for these conditions.

The primary problem is that current law only requires coverage for those groups and individuals who had their master contract issued in Kansas.

House Bill 2768 would correct this problem and provide coverage for the above named conditions regardless of where a policy is issued. Rather, coverage would be required for insured persons who are employed or reside in Kansas.

This recommended amendment, sometimes referred to as "extraterritoriality" already exists in current law applying to several other health care benefits, including physicians, psychologists, social workers, etc.

H.B. 2768 would also make all insurance providers in Kansas play from common ground and would help protect against adverse selection.

The Community Mental Health Centers strongly urge your support for this legislation.

Thank you!



TESTIMONY

HOUSE BILL NO. 2768

House Committee on Insurance

February 27, 1990

Mr. Chairman and Members of the Insurance Committee:

I represent the 400 member Kansas Alcohol and Drug Addiction Counselors Association, the Kansas Association of Alcohol and Drug Program Directors of which there are some 50 member programs who provide alcohol and drug services throughout the State of Kansas and the 29 member Kansas Community Alcohol Safety Action Project Coordinators Association who provide DUI evaluations and juvenile evaluations for our 31 judicial districts in the State of Kansas. We support House Bill No. 2768 as another measure in our fight against alcoholism and drug abuse. During 1989 there were 32,934 accountable admissions to Kansas treatment programs for the treatment of alcoholism and drug addiction. Approximately 16,000 of these were treated in the private sector in which third party pay was the principle source of revenue. The costs of these treatment programs range from a minimum of \$4,000 up to \$15,000.

We feel that any foreign company who should entertain the idea of entering the insurance market in the State of Kansas, should be held accountable for our insurance laws. These companies must provide the same benefits as those companies that are licensed to operate in the State of Kansas and have offices in the State.

As we know, insurance companies operate off of a large number of individuals sharing the cost for those unfortunate few who become ill or disabled from a sickness or accident. We hope that they recognize that alcohol and drug addiction is our third leading cause of death at the present time.

However, we feel that it is a treatable disease and many of those who receive treatment are returned to a normal lifestyle which includes holding a job, providing food, clothing and homes for their loved ones and also becoming a tax paying citizen in the State of Kansas.

Respectfully,



Gene Johnson  
Lobbyist

Kansas Alcoholism and Drug Addiction Counselors Association  
Kansas Association of Alcohol and Drug Program Directors  
Kansas Community Alcohol and Safety Action Project Coordinators Association

# KANSAS NASW

National Association of Social Workers, Inc.  
Chapter Office  
817 West Sixth Street  
Topeka, Kansas 66603

Telephone: 913-354-4804  
Gigi Felix, LMSW  
Executive Director

## TESTIMONY TO HOUSE COMMITTEE

### ON INSURANCE

TUESDAY, FEBRUARY 27, 1990

RE: HB2768

Good afternoon, and thank you for giving me the opportunity to speak to you today in **support of HB2768**. As you may know, K-NASW is the professional organization for social workers in Kansas, and has over 1450 members statewide. As a professional organization we are concerned about health insurance coverage from many standpoints. First, and foremost, to give the client (a.k.a. the "consumer") the right to health services they are in need of, and be able to afford them through coverage. I myself, would not be able to afford even basic care without my insurance ... even the 20% co-payment is often a problem. Without insurance, many Kansans would not be treated for illnesses, or practice preventative care, if they had to depend on paying from their own pockets.

We also support preventative care and maintenance in both physical and mental health. We would not want to see a double standard of care set up between these two areas of health care.

HB2889 will correct an existing double standard of care within the insurance community. That is ALL Kansans will be entitled to the mandated coverages wherever the policy itself is written. No longer will some people be entitled to certain types of care because their policy is written within the state, while others are denied access to care because the policy is written extra-territorially.

Thank you for your time, I would be glad to try and answer any questions you may have.