Approved April 6, 1990
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 March 27, 90 in room 531-n of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

see attached list

The Chairman called the meeting to order at 3:40 p.m.

Representative Littlejohn made a motion to approve the Minutes of March 26, 1990. Representative Bryant seconded. The motion carried.

The Committee began discussion and possible final action on previously heard bills.

SB 605 -- An Act concerning replacement and contestation of life insurance policies covering debtors of a creditor.

Representative Gross made a motion to recommend SB 605 favorable for passage. Representative Wells seconded. The motion carried.

SB 637 -- An Act authorizing purchase of insurance for volunteers participating in family foster care program; amending K.S.A. 1989 Supp. 74-4702 and repealing the existing section.

Bill Edds, Revisor of Statutes suggested a technical amendment in Sec. 2 of the bill which would reconcile with the various bills passed into law this session. Mr. Edds also recommended changing the effective date to read as published in the statute book.

Representative Hoy made a motion to recommend SB 637, as amended by changing Sec. 2 and the effective date to read statute book as opposed to Kansas register, favorable for passage. Representative Bryant seconded. The motion carried.

HB 3068 -- An Act authorizing school district and community college boards to act as a self-insurer in providing certain employee and dependent benefits; amending K.S.A. 72-8414 and repealing the existing section.

Representative Helgerson made a motion to recommend HB 3068 favorable for passage. Representative Wells seconded.

Representative Brown made a substitute motion to amend HB 3068 by appropriately striking the references to community college boards. Representative Wells seconded. The motion carried.

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 ~~xx~~a.m./p.m. on March 27, ~~19~~00.

A motion was made by Representative Helgerson to recommend HB 3068 as amended, favorable for passage. Representative Wells seconded. The motion carried.

SB 587 -- An Act amending the Kansas municipal group-funded pool act; concerning purposes for which municipalities may pool their liabilities; amending K.S.A. 1989 Supp. 12-2617, 12-2618 and 12-2621 and repealing the existing sections.

The Chairman provided a balloon amendment (Attachment 1) which was drafted by the Insurance Department and would take the basic principals of community rating vs. tier rating as passed in HB 3012, and apply it to pools. He explained that it would provide the nondiscriminatory aspects of the rating classifications.

Representative Gross made a motion to accept the balloon amendment. Representative Allen seconded. The motion carried.

Representative Turnquist made a conceptual motion that the existing mandates, both provider and service mandates, be applied to SB 587. Representative Brown seconded. The motion failed.

A motion was made by Representative Allen to recommend SB 587, as amended, favorable for passage. Representative Hoy seconded. The motion carried. Representative Brown wished to be recorded as voting no.

SB 547 -- An Act relating to insurance; concerning adverse underwriting decisions with respect to life insurance coverage under certain circumstances; amending K.S.A. 1989 Supp. 40-2,112 and repealing the existing section.

Representative Campbell distributed a balloon amendment (Attachment 2) which would clarify the language in the bill by starting the 10 day clock upon delivery to the proposed insured and clarifies the expiration date of 30 days from the time the offer is extended.

Representative Campbell made a motion to accept the balloon amendment. Representative Gross seconded. The motion carried.

Representative Cribbs made a motion to recommend SB 547, as amended, favorable for passage. The motion carried.

SB 747-- An Act concerning insurance; amending the health care provider insurance availability act; relating to coverage of liability for certain act; amending K.S.A. 40-3408 and K.S.A. 1989 Supp. 40-3403 and repealing the existing sections.

The Chairman provided an amendment (Attachment 3) which would define the language dealing with sexual activity.

Representative Wells provided a balloon amendment (Attachment 4) which would provide for recovery for expenses of attorneys fees.

Representative Wells made a motion to adopt the balloon amendment. Representative Brown seconded. The motion carried.

Representative Gross made a motion to adopt the amendment defining the language of sexual activity. Representative Helgerson seconded. The motion carried.

A motion was made by Representative Bryant to recommend SB 747, as amended, favorable for passage. Representative Brown second. The motion carried.

HB 3090 -- An Act amending the health care provider insurance availability act with respect to certain persons engaged in residency training; amending K.S.A. 1989 Supp. 40-3402, 40-3403, 40-3404 and 40-3414 and repealing the existing sections.

The Committee discussed the balloon amendment offered by Jerry Slaughter, Kansas Medical Society (Attachment 5) which suggests reinserting the original language on page 12, lines 18-22.

Representative Helgerson made a motion to adopt the balloon amendment. Representative Hoy seconded. The motion carried.

Bill Edds, Revisor of Statutes recommended reinserting the language on page 11, which was stricken in lines 32-37, so as to be consistent with the reinsertion of language on page 9.

Representative Turnquist made a motion to reinsert the language in subsection 4. Representative Turnbaugh seconded. The motion carried.

The Chairman reminded the Committee of the proposed amendment (Attachment 6) offered by Mary Ellen Conlee, Wichita Center for Graduate Medical Education which would correct language and assure that the Wichita residents shall be self-insured by the State of Kansas.

Representative Gross made a motion to adopt the proposed amendment. Representative Sawyer seconded. The motion carried.

Bill Edds, Revisor of Statutes recommended an conceptual amendment which would address the premium amount apportioning and how the premium is being paid. He explained that the premium amount would be based on the assumed aggregate amount of $400,000 and that it be apportioned among the various facilities based on the number of residents in residents the previous year.

A motion was made by Representative Bryant to conceptually amend the bill to raise the aggregate premium from $300,000 to $400,000 apportionally on a per capita basis. Representative Helgerson seconded. The motion carried.

Representative Bryant made a motion to apportion the premiums based on percapita residents and their specialty rate. Representative Helgerson seconded. The motion carried.

Representative Helgerson made a motion to recommend HB 3090, as amended, favorable for passage. Representative Cribbs seconded. The motion carried.

SB 576 -- An Act relating to insurance holding companies; concerning notices, hearings, and administrative costs; amending K.S.A. 40-3301 and K.S.A. 1989 Supp. 40-3304 and repealing the existing sections.

Representative Helgerson made a motion to recommend SB 576 favorable for passage. Representative Littlejohn seconded.

Representative Wells provided an amendment (Attachment 7) which would clarify that the Insurance Department would have some expenses, and that the notices would not have to go out, saving the company $3 million. She state that more encompassing language is needed about the cost being recoverable and spreadable by the Department in the judgement over the parties covering more than the recording and publishing costs.

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 ~~xx~~ a.m./p.m. on March 27, ~~19~~90.

Representative Helgerson withdrew his previous motion and made a motion to adopt the amendment. Representative Littlejohn seconded. The motion carried.

Representative Helgerson made a motion to recommend SB 576, as amended by new section 3. Representative Wells seconded. The motion carried.

HB 3082 -- An Act relating to insurance companies and fraternal benefit societies; excluding certain assessments to pay claims of insolvent insurers from the retaliatory taxation, penalty and fee structure; amending K.S.A. 40- 253 and repealing the existing section.

The Committee was reminded that this bill was heard previously in the exact form of HB 2812 and that HB 3082 had been tabled at the request of the Committee.

Representative Gross made a motion to bring HB 3082 back to the table. Representative Helgerson seconded. The motion carried.

Representative Gross made a motion to recommend HB 3082 favorable for passage. Representative Cribbs seconded. The motion carried.

The Committee was adjourned at 5:10 p.m.

# GUEST LIST

COMMITTEE: Ins & Land DATE: 3/27/20

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| Bill Sneed | TOPEKA | State Farm |
| Lisa Getz | WICHITA | ST FRANCIS REG MED CENTER |
| Mary Ellen Conlee | Wichita | WCGME |
| Katrina Dysart | Wichita | USA 2019 |
| Bill Curtis | Topeka | KASB |
| Ben BRADLEY | TOPEKA | KS Assoc of Counties |
| David Hanson | Topeka | KS LIFE Assoc |
| [illegible] | Topeka | [illegible] |
| JIM OLIVER | TOPEKA | JIA |
| Lee WRIGHT | Overland Park | FARMERS INS. GROUP |
| [illegible] | Concordia | KCVA |
| Brenda Byl | Topeka | Jane C. Stormont Vision Health Center |
| Charlotte Peake | [illegible] | KSNA |
| [illegible] | Topeka | Kansas PO |
| Marlee Renn | | KU Med Ctr |

the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

(j) Any other relevant factors the commissioner may deem necessary.

*Sec. 3. K.S.A. 1989 Supp. 12-2621 is hereby amended to read as follows: 12-2621. (a) With respect to the categories of coverage described in subparagraphs (d)(1) through (4) of K.S.A. 1989 Supp. 12-2618, and amendments thereto, premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool shall use rules, classifications and rates as promulgated by the national council on compensation insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.*

*Premium contributions to any pool providing life insurance or any pool providing group sickness and accident insurance as described in K.S.A. 1989 Supp. 12-2617, and amendments thereto, shall be based on sound actuarial principles and shall not discriminate against any individual eligible for participation in the pool or establish rating classifications within the pool except those based on criteria solely and directly relevant to recognition of rating differences attributable to the marital status of the pool's members and persons eligible for dependent's benefits.*

*(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.*

*(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year. Any such refund shall be paid only to those members who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.*

Sec. *3* 4. K.S.A. 1989 Supp. 12-2617 ~~and~~, 12-2618 *and 12-2621* are hereby repealed.

Attachment 1

ignated health care provider, whichever the insurance company or agent prefers.

(c) The obligations imposed by this section upon an insurance company or agent may be satisfied by another insurance company or agent authorized to act on its behalf.

(d) The company or the agent, whichever is in possession of the money, shall refund to the applicant or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision, *except ~~in the case of life insurance where, along with the notice of the adverse underwriting decision, an insurer includes an offer of coverage to the insured under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have ten business days in which to notify the company of acceptance of the counter-offer, during which time coverage will be deemed to be in effect. The insurer shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer.~~ such refund obligation shall not apply if:*

*(A) Material underwriting information requested by the application for coverage is clearly misstated or omitted and the company attempts to provide coverage based on the proper underwriting information; or*

*(B) the company includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have* ~~ten~~ 10 *business days ~~in which~~ after receipt thereof to notify the company of acceptance of the counter-offer, during which time coverage will be deemed to be in effect under the terms of the policy for which application has been made, but such coverage shall not extend beyond 30 calendar days following the date of issuance of the counter offer by the insurer or upon expiration of such 30 calendar day period, whichever occurs first. The insurer shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer.*

(2) If coverage is not in effect and payment therefor is in the possession of the company or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party

Attachment 2

SB 747

## DEFINITION OF SEXUAL ACT OR ACTIVITY

A sexual act or sexual activity is that sexual conduct which constitutes a criminal or tortious act under the laws of the State of Kansas.

Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto.

*(n) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall in no event be liable for any claims against any health care provider based upon or relating to the health care provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim.*

, provided that the fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

Sec. 2. K.S.A. 40-3408 is hereby amended to read as follows: 40-3408. The insurer of a health care provider covered by the fund or self-insurer shall be liable only for the first $200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, subject to an annual aggregate of $600,000 for all such claims against the health care provider. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

If any inactive health care provider has liability insurance in effect which is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

Notwithstanding anything ~~herein~~ *in article 34 of chapter 40 of the Kansas Statutes Annotated* to the contrary, an insurer that provides coverage to a health care provider may exclude from coverage any liability incurred by such provider:

*(a)* From the rendering of or the failure to render professional services by any other health care provider who is required by K.S.A. 40-3402 and amendments thereto to maintain professional liability insurance in effect as a condition to rendering professional services as a health care provider in this state; *or*

*(b) based upon or relating to the health care provider's sexual acts or activity, but in such cases the insurer may provide reasonable and necessary expenses for attorney fees incurred in defending against such claim.*

, provided that the insurer may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

Sec. 3. K.S.A. 40-3408 and K.S.A. 1989 Supp. 40-3403 are

Attachment 4

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 27, 1990

TO: House Insurance Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: HB 3090; Concerning Professional Liability Insurance for Persons Engaged in Residency Training

The Kansas Medical Society appreciates the opportunity to appear in support of HB 3090, which would extend self-insurance provision for the basic coverage layer to residents-in-training at Wichita. Currently, all residents at KUMC are under a similar provision which was enacted by the Legislature previously. We believe that all residents in the state should be treated alike, and if the state is going to self-insure one group, then others wishing to avail themselves of the same protection, should have the opportunity.

While we do support this legislation, we also should point out that it will reduce the amount of premium dollars going into the Health Care Stabilization Fund next year by approximately $1 million. Testimony received by the Special Committee on Ways and Means/Appropriations this summer indicated that the Wichita area hospitals last year paid approximately $2.38 million to insure their residents. Of that amount, approximately $1.4 million was paid to the Health Care Stabilization Fund. Under the current provisions in HB 3090, the combined premium for residents at the Wichita area hospitals would be approximately $400,000, with all of that going into the Fund. Obivously, when there is a revenue shortfall in the Fund, other participating providers must make up that difference. That burden will fall largely on the practicing physicians of this state. Nevertheless, we do believe the Wichita area residents should be treated the same as those in Kansas City, and so we do support HB 3090.

We would like to suggest a couple of amendments which we believe are not controversial. The first is on page 9, lines 10-19. By deleting this language, the Legislature would make an about-face on the policy it adopted only a year ago to provide tail coverage for all residents upon completion of their training, so that their first year premium in active practice would be at the 1st-year claims made rate. We have attached a suggested amendment which would revert to the original language, plus the addition of language from HB 2977 that is intended to correct a technical problem created with the passage of SB 18 last year. We found that some residents who elected the first option from the HCSF could have a problem with tail coverage when they enter active practice because of a technical flaw in SB 18. The underscored portion of our suggested amendment would correct that problem, without making a substantive change in policy.

Attachment 5

Finally, on page 12, lines 18-22, the language in HB 3090 would mandate all residents carry Option 3 from the Fund. While, as a practical matter, the residency programs may choose to do that, it does not seem prudent to force all residents to carry the highest level of coverage. There may be, for example, some specialties that simply do not need the highest coverage amount. Our amendment would reinsert the original language in that section.

We appreciate the opportunity to testify today, and to offer our support for HB 3090. Thank you.

JS:nb

Attachment

death arising out of the rendering of or the failure to render professional services by such health care provider; (12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center; ~~and~~ (13) reasonable and necessary expenses for the development and promotion of risk management education programs; ~~(14) notwithstanding the provisions of subsection (m), any amount owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection, who was engaged in a postgraduate program of residency training approved by the state board of healing arts; and (15) reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in clause (14) of this subsection~~.

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is $300,000 or more, it shall be paid, by installment payments of $300,000 or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within 60 days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in full. Any attorney fees payable from such installment shall be similarly prorated.

(e) In no event shall the fund be liable to pay in excess of $3,000,000 pursuant to any one judgment or settlement against any one health care provider relating to any injury or death arising out of the rendering of or the failure to render professional services on and after July 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all judgments or settlements arising from all claims made in any one fiscal year in the amount of $6,000,000 for each provider.

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the health care provider pursuant to subsection (l) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

(g) A health care provider shall be deemed to have qualified for

(14) notwithstanding the provisions of subsection (m), any amount, but not less than the required basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection, who was engaged at the time of the occurrence in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program; and (15) reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in clause (14) of this subsection.

KMS
KANSAS MEDICAL SOCIETY
1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

(l) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection which shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on the effective date of this act or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the commissioner and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. ~~Such election Option 3 shall be made elected for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state~~ by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. Such options shall be as follows:

Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state

(1) *OPTION 1.* The fund shall not be liable to pay in excess of $100,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $300,000 for such provider.

(2) *OPTION 2.* The fund shall not be liable to pay in excess of $300,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $900,000 for such provider.

(3) *OPTION 3.* The fund shall not be liable to pay in excess of $800,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $2,400,000 for such provider.

(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive health care providers who first qualify as an inactive health care provider on or after July 1, 1989, unless such health care provider

# WICHITA CENTER FOR GRADUATE MEDICAL EDUCATION

M E M O

TO: HOUSE INSURANCE COMMITTEE

FROM: MARY ELLEN CONLEE

RE: HB 3090

Attached please find testimony presented on February 22, 1990 in support of HB 2570. Please enter this testimony in support of HB 3090, which has been designed as a compromise proposal.

Concern was raised during the discussion of HB 2570 that the $375,000 fiscal note which would result from the University of Kansas Medical School payment of a contribution to the Health Care Stabilization Fund might undermine passage of the bill. Consequently, the 3 teaching hospitals in Wichita; St. Francis, St. Joseph and HCA Wesley, the component parts of WCGME, agreed to pay the HCSF contribution. HB 3090 separates the University of Kansas Medical Center assumed premium ($600,000) from the UKSM-Wichita assumed premium ($300,000).

It was understood by the Wichita participating hospitals when WCGME was created as an affiliate of the University of Kansas Medical Center that the Wichita residents could be treated in an equitable manner vis-a-vis the Med Center residents.

These residents account for a very low risk to both the State General Fund and the Health Care Stabilization Fund. Over the past 8 years settlements and judgments have averaged only $31,000 per year.

This legislation is particularly important to us right now because:

1) The federal government is reducing support for physician training programs

2) The elimination of MediKan will cost the participating hospitals $4 - $5 million

3) As hospital costs shift to paying patients, the cost of health care insurance continues to escalate

Mr. Edds, research staff, has prepared an amendment to correct language on page 13, Sec. 4. The new language assures that the Wichita residents become part of the State of Kansas self-insurance program that covers the Kansas City residents.

Thank you.

1010 N. KANSAS • WICHITA, KANSAS 67214-3199 • 316-261-2665 Attachment 6

# WICHITA CENTER FOR GRADUATE MEDICAL EDUCATION

HOUSE INSURANCE COMMITTEE

February 22, 1990

RE: HB 2570 - Participation in the state self-insurance program for UKSM-Wichita residents

I am LeRoy Rheault, President and CEO of St. Joseph Medical Center, speaking on behalf of the three private teaching hospitals in our community. Jim Biltz, President and CEO of HCA Wesley, Sam Henderson, General Counsel, St. Francis Regional Medical Center, Bob O'Brien, Executive Vice President and Chief Operating Officer, St. Joseph Health Corporation, and Dr. Joseph Meek, Program Director for Internal Medicine, UKSM-W. We are before you today to discuss graduate medical education in Wichita and specifically to request your support for House Bill 2570.

WHY WCGME (The Wichita Center for Graduate Medical Education)?

July 1, 1989, WCGME was formed as a non-profit corporation organized to administer the graduate medical education programs of Wichita hospitals affiliated with the Kansas Medical Center. There were several reasons for this change.

1. There is general recognition around the country that residents' programs not under the umbrella of a university will begin to incur problems with accreditation.

2. A coordinated graduate medical educational program encompassing Kansas City and Wichita residents will assist in identifying long-term medical manpower needs in our state.

3. As Medicare and Medicaid reimbursements continue to fall short of meeting the actual hospital costs, hospitals will need to evaluate costs and funding for all programs. The teaching hospitals in Wichita believe by joining our residency programs together under the umbrella of the University of Kansas Medical School, we will have a stronger vehicle for seeking grants and other outside funding.

4. Through a balanced educational program we can better evaluate course content and equalize benefit packages.

5. The three teaching hospitals provide a clinical setting necessary for a community-based medical education in Wichita. The University of Kansas Medical School scope of training is clearly enhanced through these 225 residencies provided under the umbrella of WCGME.

HOUSE BILL 2570 - Medical Malpractice Insurance for All Residents

House Bill 2570 was introduced late in the 1989 session at the request of the Wichita teaching hospitals and the University of Kansas Medical Center. The bill amends the Health Care Provider Insurance Availability Act by redefining the term "person engaged in residency training". Currently, a "person engaged in residency training" is defined as an individual engaged in a post-graduate training program approved by the State Board of Healing Arts who is employed by and is studying at the University of Kansas Medical Center. The current statutory definition applied to the three hundred and seventeen (317) U.K.M.C. residents, two hundred and eighty-five (285) on the Kansas City campus, and thirty-five (35) at the Wichita campus.

House Bill 2570 would expand the definition of eligible residents to include "a person engaged in post-graduate training approved by the State Board of Healing Arts who is employed by a non-profit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the Kansas Medical Center or who is employed by an affiliate of the Medical Center". Consequently, WCGME residents would be eligible for the state self-insurance program. The 35 Wichita residents who were insured by the state program are now considered WCGME employees. Their insurance costs must be assumed by one of the participating hospitals.

The amended definition excludes extra-curricular, extra-institutional medical service for which such person receives extra compensation unless such activities have been approved by the CEO of the non-profit corporation and the executive vice-chancellor of the University of Kansas Medical Center. Such "moonlighting" activities would be allowed only if approved by a medical school action. This procedure would mirror the procedure currently used for residents at the University of Kansas Medical Center.

By expanding the definition, Wichita residents employed by WCGME and contracting to HCA Wesley, St. Francis and St. Joseph will be allowed to be self-insured under the Health Care Provider Insurance Availability Act as are those individuals currently defined as being engaged in residency training in Kansas City.

Resident Liability Risk/Cost Analysis

The attached Exhibit "A" analyzes the cost of medical malpractice insurance for residents at the Wichita teaching hospitals from 1982-1989. In reviewing this data, I would note several things:

1. The cost of insuring residents has increased nearly 10 times since 1982-1983 from approximately $260,000 to $2,400,000.

2. Basic coverage plus the surcharge for the Health Care Stabilization Fund has a current cost of approximately $2.4 million, while the total judgments and settlements for the 1988-1989 year equalled only $85,000.

3. The average judgments and settlements per year over the past seven years average $31,376.00.

This data clearly shows that the cost for providing medical malpractice insurance for the Wichita residents greatly exceeds any potential liability to the State of Kansas. The reason for the relatively low dollar figure for judgments and settlements against residents is that in nearly every instance, the resident is working under the direction of another insured physician. As a result, residents are generally removed from the lawsuit at some point.

The University of Kansas Medical Center assumes an aggregate premium of $600,000 for its 300+ residents. In its budget request the University of Kansas Medical Center has increased the assumed aggregate premium to $900,000 to cover the cost of self-insuring approximately 225 Wichita residents under the program. The University of Kansas Medical Center must make a contribution to the Health Care Stabilization Fund for each self-insured resident. To cover the increased 225 residents who would be added to the self-insurance fund from the Wichita campus, the

University has submitted a budget request of $300,000. (Exhibit "B")

* * * * * *

We ask for your support for House Bill 2570. As the Wichita residents become part of the U.K.M.C. program, we believe that they should be treated equally. From 1980 to 1989, 623 UKSM-W affiliated residents completed training in Wichita through rotations in Wichita hospitals. Of the 623 doctors, 281 (45%) are practicing in Kansas. Safeguards were invoked in this research to avoid duplication in the counting process. Clearly, our programs provide needed physicians for communities throughout the state.

The cost to the hospitals for insuring residents through the private sector far exceeds any potential liability. The aggregate premium which is suggested by the University of Kansas Medical Center budget proposal appears to be in line with actual and potential judgments and settlements. The consequent savings to the Wichita hospitals will be significant and will assist our hospitals in holding the line on heath care costs.

Exhibit "A"

## RESIDENT LIABILITY RISK/COST ANALYSIS*

| Year | (1) # of Residents | (2) Basic Coverage Cost $ | (2) Surcharge $ | (3) # of Claims (Incl. suits) | Total Amount Judgments & Settlements $ |
|---|---|---|---|---|---|
| 82/83 | 225 | 249,330 | 7,201 | 6 | 30,000 |
| 83/84 | 227 | 353,256 | 176,664 | 8 | 8,600 |
| 84/85 | 238 | 503,094 | 335,664 | 14 | 1,030 |
| 85/86 | 223 | 641,362 | 705,507 | 6 | 5,000 |
| 86/87 | 228 | 803,964 | 723,950 | 19 | 65,000 |
| 87/88 | 209 | 793,511 | 824,767 | 10 | 25,000 |
| 88/89 | 219 | 976,506 | 1,423,619 | 4 | 85,000 |

(1) Resident class ending 6/20/83; 6/30/84; etc.

(2) Cost for basic coverage premiums and surcharge is stated 5/1/82 to 4/30/83; 5/1/83 to 4/30/84; etc. (Source: Commissioner of Insurance)

(3) Claims information is stated 7/1/82 to 6/30/83; 7/1/83 to 6/30/84; etc.

* Aggregate date for HA Wesley, St. Francis Regional Medical Center and St. Joseph Medical Center.

Exhibit "B"

University of Kansas Medical Center
Budget Request

Education and Research
Wichita
Program 2400
RESIDENT MALPRACTICE INSURANCE - WICHITA

A. SUMMARY

Of the 225 housestaff in programs conducted by the Wichita campus of the School of Medicine, only 30 have been currently covered by the State self-insurance program for malpractice liability insurance. Eligibility for the current program has been limited to residents in Pediatrics and Psychiatry as current law limits eligibility to residents employed by the University. The University established these two residency programs since residency programs in these two specialties did not exist in Wichita at the time the campus was created. Over the ensuing years, the School of Medicine has assumed responsibility for the remaining programs, the result being that all programs are conducted in a similar manner. There is little justification for continuing this inequity. This $300,000 request is the estimated cost for the surcharge to the Health Care Stabilization Fund for the additional residents.

B. BUDGET

| | FY 91 Program Costs |
|---|---|
| OTHER OPERATING EXPENSES | |
| OOE - Surcharge to Stabilization Fund | $300,000 |

PROPOSED AMENDMENT TO
SENATE BILL 576

ON PAGE 7 STRIKE ALL LINES 29 THRU 33 AND ADD THE FOLLOWING:

New Sec. 3

(a) The costs incurred by the Department of Insurance in conducting any hearing authorized by law shall be assessed against the parties to the hearing in such proportion as the Commissioner of Insurance may determine upon consideration of all relevant circumstances including: (1) the nature of the hearing; (2) whether the hearing was instigated by, or for the benefit of a particular party or parties; (3) whether there is a successful party on the merits of the proceeding; and (4) the relative levels of participation by the parties.

(b) For purposes of this section costs incurred shall mean the hearing officer fees, cost of making a record and publishing notices, and travel expenses of Department of Insurance officers and employees; provided however, that costs incurred shall not include hearing officer fees or cost of making a record unless the Department has retained the services of independent contractors or outside experts to perform such functions.

(c) The Commissioner shall make the assessment of costs incurred as part of the final order or decision arising out of the proceeding; provided, however, that such order or decision shall include findings and conclusions in support of the assessment of costs. This section shall not be construed as permitting the payment of travel expenses unless calculated in accordance with the applicable travel regulations of the State of Kansas. The Commissioner as part of such order or decision shall require all assessments for hearing officer fees and cost of making a record, if any, to be paid directly to the hearing officer or court reporter by the party(s) assessed for such costs.