

Approved February 5, 1991
Date.

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by Representative Turnquist at
Chairperson

3:30 ~~xx~~/p.m. on Thursday, January 31, 1991 in room 531-N of the Capitol.

All members were present except:

Theo Cribbs - excused

Committee staff present:

Mr. Bill Edds, Revisor
Mr. Chris Courtwright, Research
Mrs. Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Mr. Jim Braden, CLU
Mr. James Schwartz

Representative Sprague moved that the minutes for the January 31, 1991, meeting be approved. Motion seconded by Representative Campbell. Motion carried.

Mr. Jim Braden, CLU, a spokesperson for SS&G Administrators, Inc., expressed concern regarding escalating health insurance costs for small businesses. He stated that three professional trade associations have established health insurance plans through IRC 501(c)(9) Voluntary Employee Beneficiary Association (VEBA) trusts. These are:

1. Kansas Society of Architects, AIA
2. Kansas Dental Association
3. Community Bankers of Kansas (formerly KIBA)

These three VEBA trusts consider themselves to be "Employee Welfare Benefit Plans" as defined in Section 3(1) of ERISA. Each of these VEBA's believes it should not be deemed to be either (1) an insurance company or (2) a multiple employer welfare arrangement (MEWA) as defined in ERISA Section 3(40). In order to be in compliance with current Kansas law, the following legislation is being proposed (Attachment 1):

1. Amend K.S.A. 40-2222 to explicitly recognize a letter of approval under IRC 501(c)(9) from the IRS as a document issued by an agency of the Federal government showing the plan is subject to jurisdiction of the IRS.
2. Adopt Third Party Administrators legislation proposed by the NAIC, with certain enhancements that would assure greater integrity among licensed third party administrators.
3. Adopt legislation that deals with Multiple Employer Welfare Arrangements under the ERISA definition, that would permit the commissioner to license and monitor the operations of the MEWA.

Without the first of these requested legislative changes, these self-insured plans, which have been operating satisfactorily for nearly ten years, will be forced by the Insurance Department to purchase their insurance plans through commercial insurance companies.

Representative Wells moved for the introduction of these three bills. Representative Helgerson seconded the motion. Motion carried.

Mr. Jim Schwartz, consulting director of the Kansas Employer Coalition on Health, Inc., proposed the introduction of the following legislation (Attachment 2):

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE,

room 531-N, Statehouse, at 3:30 ~~xxx~~ p.m. on Thursday, January 31, 1991.

1. The establishment of a statewide health data commission as recommended in the report by the Governor's Commission on Health Care.
2. Make state health mandates optional for self-insured groups.
3. Support community education for change in insurance reforms.

After discussion by the Committee, it was suggested that the third request regarding community education might better be addressed by employers. A HCR could possibly be made regarding the education of people in this area.

Representative Helgerson moved that the first two requests be introduced as legislation. Representative Sprague seconded the motion. Motion carried.

Mr. Bill Edds, Revisor, stated that in 1989 K.S.A. 40-2404 was amended by two bills, the changes in which were never reconciled (Attachment 3). A bill (1990 SB 476) was introduced last year to achieve this reconciliation, but it was not enacted. The revisor's office requests the committee to reintroduce this bill regarding title insurance.

Representative Neufeld moved for the reintroduction of this bill. Representative Welshimer seconded the motion. Motion carried.

Meeting adjourned at 4:00 p.m.

PROPOSAL BEFORE THE HOUSE INSURANCE COMMITTEE

January 31, 1991

I am Jim Braden, CLU, appearing before you today on behalf of SS&G Administrators, Inc.

The escalating cost of health care is a concern of both state and federal legislators and administrators. As a former legislator and an insurance professional with 26 years experience in the life and health insurance field, I am not only aware of this concern but, as many of you know, I have put a great deal of effort in recent years into attempting to provide solutions and alternatives to this problem. As a small businessman, I am also very much aware and concerned that this has become a serious problem for the employer who wants to provide fair and adequate benefits to employees. Therefore, while I believe it is important to do everything possible to protect the consuming public, I believe we must also do everything possible to provide our small businesses with affordable alternatives and to encourage their creativity in providing for themselves and their employees.

Here in Kansas, three professional trade associations have established health insurance plans through IRC 501(c)(9)

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Attachment 1*

Voluntary Employee Beneficiary Association (VEBA) trusts.

Specifically, these are:

1. Kansas Society of Architects, A.I.A.
2. Kansas Dental Association
3. Community Bankers of Kansas (formerly KIBA)

These three VEBA trusts consider themselves to be "Employee Welfare Benefit Plans" as defined in Section 3(1) of ERISA, being established by a "group or association of employers" acting for an employer under the ERISA Section 3(5) definition of "employer." Further, the Department of Labor has established criteria for a bona fide group or association of employers to establish a "single employer" benefit plan. Each of these VEBAs believes it satisfies that criteria and should not be deemed to be either (1) an insurance company or (2) a multiple employer welfare arrangement (MEWA) as defined in ERISA Section 3(40). ERISA preempts from state insurance regulation any welfare benefit plan subject to ERISA except for self-funded MEWAs. Kansas law, as well as that of more than twenty other states which adopted the NAIC model in 1983, presumes that every plan providing health benefits is subject to Kansas insurance law unless it shows a certificate or other document issued by an agency of the federal or state government that the plan is subject to that agency's jurisdiction. The Kansas Commissioner of Insurance has recently said that IRS letters of approval for VEBA plans under IRC 501(c)(9) do not satisfy this evidence requirement.

It must be recognized that there are a large number of legitimate plans established by professional and trade associations which elect from among their own participants those persons who make all the decisions affecting benefits, claims, premium contributions, expenses, desirable insurance protection and investments of the plan. These self-insured plans truly offer the small businessman an affordable alternative to the insurance marketplace. Those that obtain exemption from tax under IRC 501(c)(9) operate on a not-for-profit basis as well.

These three programs have been operating since as early as 1980 and have afforded the participants substantial savings as compared to alternative coverages available to the individual member employers through the insurance community.

Based on the above information, we ask that the Kansas Legislature take the following actions:

1. Amend K.S.A. 40-2222 to explicitly recognize a letter of approval under IRC 501(c)(9) from the IRS as a document issued by an agency of the Federal government showing the plan is subject to jurisdiction of the IRS.
2. Adopt Third Party Administrators legislation proposed by the NAIC, with certain enhancements that would assure greater integrity among licensed third party administrators.

3. Adopt legislation that deals with Multiple Employer Welfare Arrangements under the ERISA definition, that would permit the commissioner to license and monitor the operations of the MEWA.

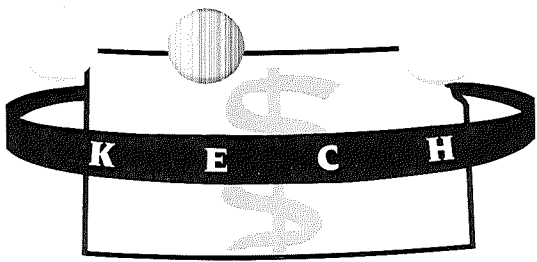
Without the first of these requested legislative changes, these self insured plans, which have been operating satisfactorily for nearly ten years will be forced by the Insurance Department to purchase their insurance plans through commercial insurance companies.

In summation, the professional trade associations involved, and their officials, believe that their plans are working well for their membership, that they are providing necessary health care benefits and employee benefits at an affordable rate and that their qualification as 501(c)(9) associations, and as "Employee Welfare Benefit Plans" as defined by ERISA should exempt them from jurisdiction of the state insurance commissioner.

We respectfully request that the committee introduce the proposed legislative changes for consideration and action by the 1991 session of the Kansas Legislature.

Respectfully submitted,

James D. Braden, CLU



Kansas Employer Coalition on Health, Inc.

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Testimony to House Insurance Committee on Requested Legislation

by James P. Schwartz Jr.
Consulting Director
January 31, 1991

I am Jim Schwartz, consulting director for the Kansas Employer Coalition on Health. The Coalition is 100 employers across Kansas who are concerned about the cost-effectiveness of group health insurance. Since 1983 we've sought ways to manage the spiraling cost of healthcare for our 350,000 Kansas employees and dependents.

Some day all Kansans will have health insurance.

Depending on how and when that's done, it could be a great day for all of us. If it can be done in a way that controls costs, stimulates efficiency in the healthcare system, and maintains quality of care, it will be a great day indeed. If it's done sooner, rather than later, we'll benefit by avoiding further bloating of the healthcare system to the point that no one can afford it — no matter what funding mechanism we adopt. Some would say we are at that point already.

Are these *state* issues, these twin problems of large numbers of uninsureds and soaring costs? Clearly these are national problems, and as such are probably best dealt with at the national level. The feds, though, have made it clear they're looking to the states for experiments on new systems. We have an opportunity to provide that kind of leadership, and we'd do well to take it, because the cost of waiting for a solution to be handed to us will be high. How high? For the past two years, the cost of health insurance has increased 46% on average. At that rate, by the end of the decade, health insurance will cost more than \$22,000 per worker. Even the most conservative estimates take your breath away.

Employers will keep stepping up their cost-containment efforts, but it's a losing battle. And one of the casualties, particularly in a recession economy, will be increased numbers of uninsureds. We need to change the rules that fuel the cost spiral, pushing healthcare ever farther out of the reach of many.

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Attachment 2

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May I be so bold as to suggest a possible strategy for addressing these problems on a state policy level?

First and foremost, set as a goal the comprehensive restructuring of the health insurance system within two years. Start this by stabilizing the present insurance system, making sure that no insured group or individual bears a disproportionate share of the cost. HB 2001 seems to be a big step in that direction, and we support it.

Also this year, let's develop a constituency back home that will empower us to take the bold action that's necessary. Let's acknowledge that any comprehensive reform will disrupt conventional views of healthcare funding. So I'm suggesting that the legislature actively support a grass-roots educational effort to help the public become better informed about the pressures and options for change. Oregon has already set a valuable example in this regard.

In a similar vein, we need a statewide health data commission, as recommended in the report by the Governor's Commission on Health Care. Healthcare is the biggest black box in the world. Whatever solutions we embrace will profit immeasurably from accurate, up-to-date information about utilization and prices of healthcare services. This committee may not be the best vehicle for advancing a data commission, but your support could help.

In addition, during this session and the interim session, we could further explore reform proposals, with the goal of finding the best one and advancing it in 1992. At the risk of seeming immodest, I'll add that one of the best reform proposals was hatched right here in Topeka last year by the coalition I represent. Yesterday, in recognition of that proposal, the coalition was awarded the National Leadership Award by the Washington Business Group on Health. More than likely, our proposal is better known 2,000 miles away than it is right here in town. To be sure, the KECH proposal needs further fleshing out before it could be considered a legislative initiative, but it certainly offers a sensible, middle-of-the-road strategy that already enjoys broad support.

You and I have spent a lot of time talking about state mandates for health insurance. How does that issue fit into a long-term strategy? We believe that mandates for health insurance have a place. You're surprised to hear me say that. But I'm not talking about incremental mandates for groups that voluntarily provide health insurance. I'm talking about a new, comprehensive system that includes a mandate that every Kansan be covered for basic health services, regardless of economic status. Under such a system, in which every group and individual participates at a predictable, controlled cost, mandates make sense. After all,

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somebody has to say what constitutes the coverage to which everyone is entitled. But that's not the case with the present system of voluntary coverage. Under our voluntary system, half a loaf of insurance would be better than none for many groups. Current mandates, though, say you must have a whole loaf or none at all. The result for many is no insurance. Until we can establish a comprehensive system of universal insurance, let's put an end to this sham of mandates imposed on volunteers — by repealing the mandates or making them optional with groups.

I sense we're coming to the end of an era of hand-wringing and piecemeal approaches to health insurance. As a state and nation, we're just about ready to take some meaningful steps. Kansas employers welcome the chance to be in on the ground floor of a new public/private partnership to create a viable healthcare future. Thank you for the visit today; we look forward to working with you in days to come.

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MEMO

To: House Insurance Committee
From: Revisor's Office
Re: Bill Request
Date: 1-31-91

In 1989 K.S.A. 40-2404 was amended by two bills, the changes in which were never reconciled. A bill (1990 SB 476) was introduced last year to achieve this reconciliation, but it was not enacted. The Revisor's office requests the committee to reintroduce this bill.

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Attachment 3

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