Approved 1/29/91
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE.

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

9:00 a.m./p.m. on THURSDAY, JANUARY 24, 1991 in room 529-S of the Capitol.

All members were present except:

Senators Francisco, Kerr, McClure, Moran, Parrish, Reilly, Strick, and Yost.

Committee staff present:

Bill Wolff, Research Department
Fred Carman, Revisors Office
Louise Bobo, Secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Nancy Zogleman, Blue Cross Blue Shield
Dick Brock, Administrative Assistant, Insurance Department
Donald Horttor, Delta Dental Group

The meeting was called to order by Chairman Bond at 9:10.

Jim Maag, Kansas Bankers Association, was recognized by the Chairman for the purpose of requesting introduction of a bill. Mr. Maag explained that this bill is an amendment to K.S.A. 60-726 relating to garnishment proceedings. (Attachment 1)

Senator Kerr made a motion to allow the bill to be introduced. Senator Strick seconded the motion and the motion carried.

SB 16 - Relating to boards of directors of nonprofit medical corporations.

SB 17 - Concerning conversion of nonprofit medical corporations to mutual insurance companies.

Chairman Bond informed the committee that we would consider these bills at the same time and that they both came out of the Interim Committee. He then requested Dr. Wolff to present an overview of the bills. Dr. Wolff explained that SB 17, as recommended by the Interim Committee, specified that corporations should be able to convert to mutual insurance companies. Further, he told the committee that SB 16 stipulated that the boards of directors of certain nonprofit medical corporations be provided for in the bylaws of those corporations rather than in the statutes.

Nancy Zogleman, Blue Cross Blue Shield, offered a twenty minute slide presentation which explained, for the committee, how and why Blue Cross Blue Shield was created and also how the health care industry had changed during the 50 years of the existence of Blue Cross Blue Shield. She then introduced Tom Miller, President of Blue Cross Blue Shield, who informed the committee that his company continued to operate under enabling legislation authorized by the Kansas Legislature but that maybe the time had come for the Company to join other Blue Cross Blue Shield plans by becoming a mutual nonprofit insurance company. He explained that becoming a mutual company would allow them to operate on the same "playing field" with other companies providing health insurance in Kansas. He explained that, currently, his company's contracts and rates are subject to prior approval by the Insurance Department. Mr. Miller added that Blue Cross Blue Shield also supports SB 16 explaining that proliferation of more providers to the board of directors would not be in the best interest of the health care consumers. (Attachment 2)

Discussion followed with a committee member inquiring about the liability of the subscribers. Mr. Miller replied that the subscribers had no liability protection under the current plan but would have to take care of their own bills should the company become insolvent. Another committee member asked about HMO. Mr. Miller stated that HMO was started by BCBS and was the best cost containment program they had established.

Dick Brock, Assistant Commissioner of Insurance, rose in opposition to SB 16. Mr. Brock explained that it was a misconception to think that if BCBS were made a mutual company, there would be no control over the board of directors. He said this was not true as Kansas statutes have specific provisions concerning the composition of the board of directors. Mr. Brock further advised that if SB 16 were enacted, it might result in no public and no subscriber respresentation on the board. (Attachment 3)

In response to questioning by the Chairman, Mr. Brock replied that the Insurance Department has a problem with SB 17 and is still struggling with it, therefore, has taken no stance at the present time.

Discussion ensued with a committee meeting inquiring if a board of director got paid. Mr. Miller replied that a board member received about $150.00 per meeting and they had about 5 meetings a year. In addition, compensation is paid for several committee meetings a year.

Donald Horttor, Delta Dental Group, appeared in opposition to SB 16. He stated that the concept of his organization was similar to that of BCBS, the difference being that their sole membership is made up of dental providers. He further stated that board members from the general public have been valuable members and keep them in touch with the consuming public. He added that the enabling legislation has worked well for Delta Dental Group and, therefore, they requested that their group be removed from SB 16. Mr. Horttor also added that his client maintained no position on SB 17.

Chairman Bond announced to the committee that we will resume hearings on SB 16 and SB 17, Tuesday, January 29, 1991, at 9:00.

Minutes of the January 23, 1991 meeting were submitted for approval. Senator Strick made a motion to accept the minutes as written. Senator Reilly seconded the motion. The motion carried.

The meeting adjourned at 10:00 a.m.

GUEST LIST

COMMITTEE: FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE DATE: Thurs Jan 24, 91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Sneed	Topeka	HIDA
Nancy Zogleman	Topeka	BC/BS of Ks
Thomas Miller	Topeka	BC/BS of Ks
Bill Petsenberger	Topeka	BCBSK
Jim Magg x	"	KBA
Don Cooper	"	Private citizen
Joe FURJANIC	TOPEKA	KCA
GARY Robbins	Topeka	Ks Optometric Assn
Stephen George	Topeka	Ins. Department Staff
Dick Brock	"	Ins Dept
Don Hostos	Topeka	Delta Dental
Rosa Jaga	Topeka	Service Solutions
Rebecca Rice	Topeka	Ks Pharmacists
Tom Bell	"	Ks Hosp Assn.

60-726. Garnishment of funds held by financial institution; amount withheld; forms. (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 1½ times the amount of the plaintiff's claim, in the case of prejudgment garnishment, or 1½ times the amount of the judgment, in the case of postjudgment garnishment.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 1½ times the amount of the plaintiff's claim or 1½ times the amount of the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order of garnishment is not to exceed $_____."
(amount stated in direction)

(d) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the defendant which I shall hold shall not exceed $_____."
(amount stated in order)

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) No order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company shall be issued except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor.

(g) This section shall be part of and supplemental to the Kansas code of civil procedure.

History: L. 1984, ch. 215, § 3; L. 1986, ch. 216, § 1; July 1.

, and unless the party seeking the order deposits a nonrefundabl
fee, not to exceed $50, for each order of garnishment which shal
be forwarded to the financial institution with each order o
garnishment.

7 I & I
1/24/91
Attachment 1

Blue Cross
Blue Shield
of Kansas

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Thomas L. Miller
President and
Chief Executive Officer

Testimony in Favor of Senate Bill 16 and Senate Bill 17
Before the Senate Financial Institutions and Insurance Committee

January 24, 1991

by
Thomas L. Miller

First of all, I want to thank the Chairman, Vice Chairman and members of this Senate Committee on Financial Institutions and Insurance for providing me with this opportunity to testify on behalf of Senate Bill 16 and Senate Bill 17.

As noted in the slide presentation Blue Cross and Blue Shield of Kansas has a form of corporate organization that is unique among insurance companies. It is neither a stock company owned by shareholders nor a mutual company owned by policy holders, but operates under unique enabling legislation authorized by the Kansas Legislature. The reasons for this singular corporate form are clear when one understands the history of Blue Cross and Blue Shield of Kansas and of the Blue Cross and Blue Shield movement in general.

These historical reasons for this organization's uniqueness, however, may no longer be valid in the current health insurance environment. Therefore, it may be time for Blue Cross and Blue Shield of Kansas to join twelve other Blue Cross and Blue Shield Plans in other States that are now organized as mutual non-profit insurance companies.

I want to point out that we are <u>not</u> here in support of SB 17 to become a mutual insurance company in order to escape rate regulations. We support SB 17 for other reasons. Before I get into the reasons why we support this permissive legislation to become a mutual insurance company I would like to describe the differences from my perspective between the statutory regulations that Blue Cross and Blue Shield of Kansas operates under today versus the way in which Blue Cross and Blue Shield of Kansas would operate under the statutes as a mutual insurance company.

FI&I
1/24/91
attachment 2

Blue Cross and Blue Shield Plans nationally are required to be non-profit organizations in order to utilize the Blue Cross and Blue Shield symbols. As a mutual insurance company we would be able to continue to use the trademarks and service marks known as Blue Cross and Blue Shield since we would continue to meet the association membership requirements.

Under our current structure Blue Cross and Blue Shield of Kansas is a member corporation. Membership corporations are very similar to associations in that members elect the governing body of the corporation. However, unlike most membership corporations, the only members that Blue Cross and Blue Shield of Kansas has are the Board Members themselves. That is, no person other than the Board Members have the ability to vote for persons to serve on the governing body. Blue Cross and Blue Shield Plans when they were first organized weren't considered ordinary insurance plans but were classified as prepaid service plans promising services rather than indemnifications to subscribers. They weren't stock corporations or mutual insurers. Typically the early Boards were agents of medical societies and hospital association. Many legislators were concerned that without special enabling legislation, Blue Cross and Blue Shield Plans might violate the State prohibitions on the corporate practice of medicine. Thus the Enabling Act under which we operate applies rules to the corporation substantially different than the rules that apply to mutual insurance companies.

A mutual insurance company resembles a membership corporation in some ways and a stock corporation in others. Many mutual insurance companies were formed through an association of persons in a common industry or with some other common affiliation. It has been said that a mutual insurance company is one in which the members are both insurers and the insured. Insurance companies are mutual when there is no entity but its policyholders who have an interest in it or power over it.

Under a mutual insurance company the contract holders are given the power to directly elect the governing body of the corporation. They also have the right to participate in the net earnings of the corporation through dividends. The theory behind a mutual insurance company is one of a number of persons coming together to insure one another through a corporation, something like a cooperative. The assets of a mutual insurance company ultimately belong to the insureds. This might be in contrast to a stock insurance company where the assets belong to stock holders and where an insured has no voice in the governance of the corporation. A stock insurer is ultimately organized for the economic benefit of the share holders while a mutual insurance company is ultimately organized for the benefit of its policy holders.

During the last half of the 1930's, to resolve questions about health insurance, a pattern arose across the United States leading to enabling legislation which subjected a Blue Cross Plan or Blue Shield Plan to regulation by the insurance regulatory officials and to specifically recognize the form of corporate organization used.

The establishment of Blue Cross of Kansas was in 1941 and Blue Shield of Kansas in 1945. These reflected this pattern of enabling acts that were used in other States across the U.S.A. The term enabling act refers to the legislature enabling the entity or organization to be formed and such acts were necessary because of the prevailing view that Blue Cross and Blue Shield Plans were not stock or mutual insurers as provided for in the insurance code but rather were insurers controlled by members of the corporation who were not the insureds. The reason for enabling acts in the first place was not the uniqueness or purpose of Blue Cross and Blue Shield, but rather as a purely legal matter.

During the 1970's, largely as a result of increases in the cost of health insurance, concerns became widespread that providers were in control of Blue Cross and Blue Shield Plans. As a result, during this period of time Blue Cross and Blue Shield Plans were included in an investigation by the Federal Trade Commission (FTC) which resulted in a recommendation by the Federal Trade Commission that Blue Cross and Blue Shield Plans, if controlled by a majority of providers of health care, would be considered suspect in anti-trust terms. The FTC further stated that a level of provider control of 35% or less would be necessary to avoid any FTC concerns. Primarily because of the FTC considerations, Blue Cross and Blue Shield enabling acts were changed. First the acts were changed to require that subscribers constitute a majority of the Board of Director positions. Then in 1981 following a Blue Cross and Blue Shield Association initiative, legislation was enacted which permitted Blue Cross and Blue Shield to merge into a single corporation. The merger authorized under those laws occurred in 1983. In 1985, the Board of Directors at its own initiative reduced the provider representation and increased the subscriber representation from a bare majority to a two-thirds majority (ten subscribers out of the 15 member Board of Directors).

After all this explanation, the question may still remain "Why would we want to mutualize?" First of all we would like to have the authority to mutualize in order to be on a level playing field with other companies providing health insurance to Kansans. Health insurance is a highly competitive and rapidly changing field. Until 1985 the insurance laws in Kansas were interpreted so that only Blue Cross and Blue Shield and not other insurers could contract with health care providers for specified rates of payment. In 1985, the legislature passed Senate Bill 19 which allows all insurers to contract with health care providers for favorable rates of payment. Because of this legislation our competitors now have the same ability that we do to contract with providers. However, our contracts with providers are subject to prior approval by the Insurance Department while those of commercial insurers are not.

Also all of our rates (including group rates) are subject to approval by the Insurance Department whereas commercial insurers are not subject to rate approval for group coverage. Then in 1986, the Federal Government eliminated our Federal tax exempt status so we now pay Federal income tax. We pay a privilege fee (Premium Tax) to the State of Kansas. For calendar year 1990 this amounted to well over $4 million. We also pay over $1 million in local property and real estate tax.

Other health insurers have no statutory operating expense or contingency reserve requirements, but limits apply to Blue Cross and Blue Shield in this area.

As a mutual insurance company our subscribers would be able to vote directly for the persons that make up the Board of Directors. In addition as a mutual insurer we would be required to belong to and pay assessments into a guarantee association fund. This is a fund established through assessment of all insurers to make good on the claims of insolvent insurers. While the assessment would add to our cost this would be a minimal addition. The point of this guarantee association fund is that our subscribers would gain some protection that they do not currently have. Because a mutual insurance corporation is ultimately in the hands of the policy holder our current mission which is to provide Kansans with products that add value to the dollars they spend on health care would not change. We would still be operating in the best interest of the public.

Senate Bill 17 would permit Blue Cross and Blue Shield of Kansas to become a mutual insurance company but not require us to do so. We would convert only if it is in the best interest of the corporation and with approval by our Board of Directors. Again, we are not supporting SB 17 to escape rate regulation. It is fine with us to be regulated but we do believe that if we are to be rate regulated that others offering health insurance in the State of Kansas should also be rate regulated.

We also support Senate Bill 16. Since we operate in a competitive environment, we believe that we should be placed on a level playing field with other insurance companies in terms of rate regulation and selection of our Board of Directors. For example, the Missouri law which controls Blue Cross and Blue Shield of Kansas City (the company that operates in Johnson and Wyandotte counties) says nothing about the Blue Cross and Blue Shield Board composition. Our subscriber Board Representatives presently control the Board and as stated earlier they have in recent years changed the bylaws to require that subscribers make up two-thirds of the Board. Last year in spite of the FTC concerns over the potential for providers to control our Board of Directors, we were mandated to change the enabling act to require the addition of two more providers to our Board, a chiropractor and a D.O. This establishes what could be a pattern for other health care providers.

As certain types of Board members begin to be mandated, the practice is then established for the proliferation of more providers to be added to our Board; such as podiatrists, optometrists, psychologists, pharmacists, social workers, speech therapists, physical therapists, audiologists, durable medical equipment suppliers, mental health centers, substance abuse centers, rehabilitation hospitals, RN's, LPN's, ARNP's, ambulatory surgery centers, pharmacies, and others.

This goes against the FTC recommendations. I have some concern that groups of providers who seek to be on the Board of Directors do so with the notion that they would be "representing" their particular profession. Governance of Blue Cross and Blue Shield of Kansas should not be a matter of representation of different providers but should represent the best interest of the corporation and the public it serves.

With a change to a mutual non-profit insurance company Blue Cross and Blue Shield would come under the same legislative regulations as other mutual insurance companies which would permit us to compete on a level playing field with other insurers. It would give us more flexibility to respond to changes being considered by the Kansas legislature concerning industry rating and benefits. For example, House Bill 3012 introduced last year would require insurance companies to set community rates based upon group size. This could become a problem merely because of the way the bill is phased if we are rate regulated and other companies are not rate regulated. This problem would occur if other companies, because of non-regulation are allowed to enroll the better risk population at rates lower than the community pool rates required for Blue Cross and Blue Shield of Kansas. Such a circumstance could require Blue Cross and Blue Shield to withdraw from the small group market it now serves or be driven into insolvency. With the passage of SB 17 we could convert to a mutual insurance company and then come under the same regulations as other insurance companies.

Finally, as a mutual non-profit insurance company, the policyholders would own any surplus funds generated from underwriting gains.

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Governance Structure of Blue Cross and Blue Shield

Why BC/BS was structured differently

• When Blue Cross and Blue Shield Plans began to be formed in the 1930's, it was clear that they had an insurance aspect to them, but the organizational form was not typical or other insurance companies. Plans were initially organized and capitalized by local medical societies or local hospital groups, and were controlled by a board of directors made up of physicians or of hospital administrators or both. The Plans were considered prepaid service plans promising services rather then indemnifications to subscribers.

• During the last half of the 1930's, to resolve these questions about organizational form, a pattern arose providing specific "enabling legislation" for Blue Cross and Blue Shield plans.

• This special "enabling legislation" was used in Kansas during the establishment of Blue Cross of Kansas in 1941 and Blue Shield of Kansas in 1945.

How BC/BS has changed

• During the 1970's, largely as a result of increases in the cost of health insurance, concern became widespread that provider controlled Blue Cross and Blue Shield Plans was resulting in charges for health care being made to insurance companies, and in health insurance premiums themselves, being higher than they should be. Because of this concern, the Federal Trade Commission (FTC) recommended that if the Plan is controlled by providers of health care it would be considered suspect in antitrust terms, and that a level of provider control of 35% or less of the Board of Directors would be necessary in order to avoid FTC concern.

• Because of similar state concerns, the Blue Cross and Blue Shield enabling acts were changed, first to require that subscribers constitute at least 50% of the Board and next to require that subscribers have majority of the director positions.

• In 1981, legislation was enacted which permitted BC/BS to merge into a single corporation. The merger authorized under those laws occurred in 1983.

• Until 1985, the insurance laws in Kansas were interpreted so that only Blue Cross and Blue Shield and not other insurers could contract with health care providers for specified rates of payment. During the 1985 Legislature, SB 19 was passed which allowed all insurers to contract with health care providers for favorable rates of payment.

• In 1985, the Board, on its own initiative, reduced the provider representation and increased subscriber representation from a bare majority (11 subscribers out of 21 directors) to a two-thirds majority (10 subscribers out of 15 directors).

• In 1986, the Federal Government eliminated our Federal tax exempt status so we now pay Federal income tax.

• During the 1990 legislature, House bill 2755 was passed which requires Blue Cross and Blue Shield to have a chiropractor and osteopath on its Board in 1991.

Differences between BC/BS and Commercial Insurers

• Blue Cross and Blue Shield group rates are regulated, and commercials are not.

• The Blue Cross and Blue Shield board composition is dictated by the legislature, and that of commercials is not.

• Our provider contracts are subject to prior approval by the Insurance Department, and commercials' are not.

• Our operating expenses are restricted by law, and commercials' are not.

Mutualization of Blue Cross and Blue Shield

- Board composition would not be changed by becoming a mutual insurer, only the manner of election. Instead of having a "membership meeting" prior to the May Board meeting, we would have a policy holder meeting where our subscribers would be able to vote directly for the persons that make up the Board of Directors.

- Would be required to belong to and pay assessments into a guarantee association fund. This is a fund established through assessment of all insurers to make good on the claims of insolvent insurers. This would guarantee protection to subscribers that they do not currently have.

- With a change to a mutual non-profit insurance company, Blue Cross and Blue Shield would come under the same legislative regulations as other mutual insurance companies which would permit us to compete on a level playing field with other insurers.

- Policyholders would own any surplus funds generated from underwriting gains.

TESTIMONY BY

DICK BROCK

KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

ON SENATE BILL NO. 16

JANUARY 24, 1991

FI+I
1/24/91
Attachment 3

The Kansas Insurance Department must oppose Senate Bill No. 16. The report of the 1990 Special Committee on Insurance indicates that this proposal is intended to provide a more "level playing field" in a health insurance marketplace that includes traditional insurance companies and various nonprofit health care related service corporations. However, in attempting to create a more equal competitive environment, Senate Bill No. 16 poses what we believe are some unacceptable risks to the welfare of the insuring public.

Generally, we believe the premise underlying Senate Bill No. 16 is faulty. It pertains to nonprofit corporations yet the removal of all restrictions on the composition of the boards of directors of these organizations otherwise exists in Kansas insurance laws only with respect to the for-profit capital stock insurers. As Senate Bill No. 17 suggests the special committee apparently believed these nonprofit service corporations more closely parallel mutual insurance companies which are theoretically nonprofit because they are owned by their policyholders. As a result, Senate Bill No. 17 would, if enacted, permit these nonprofit service corporations to convert to a mutual insurance company. According to the Special Committee's report, Senate Bill No. 16 is an alternative to Senate Bill No. 17 in that if one or more of these organizations do not wish to convert to a mutual company they can remain under their present organizational structure except they would have complete freedom with respect to the composition of their board of directors. A mutual insurance company does not have this freedom. Kansas statutes contain specific provisions relating to the number of directors, the manner in which they are to be selected and, most important, require that all directors shall be policyholders. If Senate Bill No. 16 is enacted, not only would the nonprofit service corporations effected no longer be required to have a majority of the board of directors consist of members of the public but could, in fact, result in no public (and no subscriber) representation whatsoever.

More specifically, this committee should be aware of a fundamental structural difference in the organization of nonprofit medical and hospital service corporations as addressed in Section 3 of Senate Bill No. 16 in comparison to the structure of nonprofit dental, optometric and pharmacy service corporations that are the subject of Sections 1, 2 and 4 respectively. As can be noted from the first sentence of each of these sections, the laws pertaining to these latter organizations make participating providers of these organizations the members. Therefore, if Senate Bill No. 16 is enacted, the "members" would presumably prescribe the by-laws which would, in turn, prescribe the number, qualifications, term and appointment of the board of directors. It should therefore be further presumed that the providers of the health care services who are paid by the nonprofit corporation on behalf of subscribers would be, at least, a majority of the board of directors and perhaps the board would be totally comprised of providers.

With respect to nonprofit medical and hospital service corporations (Blue Cross and Blue Shield) that are the subject of Section 3 of Senate Bill No. 16, it is not at all clear who would ultimately control the composition of the board of directors. It can be presumed that the current board which has a public member majority would develop the initial by-law provisions and subsequent boards would develop amendments. However, the law provides for participating providers and subscribers but, unlike the laws relating to the dental, optometric and pharmacy organizations does not actually identify which group is in control because current statutes impose this responsibility on the board of directors. Consistent with that responsibility, the law specifies the selection and composition of the board. In the absence of such statutory guidelines or requirements as proposed by Senate Bill No. 16, there is no way to predict how or who would actually manage the affairs of domestic Blue Cross and Blue Shield organizations.

For these reasons, the Insurance Department believes it is clear that enactment of Senate Bill No. 16 would not be in the best interests of the subscribers of any of the nonprofit organizations effected. Therefore, we respectfully suggest and encourage this committee to report the bill adversely.