Approved January 23, 1992
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Representative Larry Turnquist at
Chairperson

3:40 ~~a.m.~~/p.m. on Wednesday, January 22, 1992 in room 531-N of the Capitol.

All members were present except:

Representative Cornfield - Absent
Representative Ensminger - Excused

Committee staff present:

Mr. Fred Carman, Revisor
Mr. Chris Courtwright, Research
Mrs. Nikki Feuerborn, Secretary
Dr. Bill Wolff, Research

Conferees appearing before the committee:

Ms. Cheryl Sanders, Kansas Alliance for the Mentally Ill

The meeting was called to order at 3:40 p.m. by Representative Turnquist.

Ms. Cheryl Sanders of the Kansas Alliance for the Mentally Ill introduced herself and provided the committee with a handout regarding the mission of the Alliance. (See Attachment 1).

All guests in the room introduced themselves and gave the name of their sponsoring companies or agencies.

Dr. Bill Wolff of the Research Department gave a comprehensive annual report on the Health Care Stabilization Fund Oversight Committee. (See Attachment 2). Questions from the members and audience were fielded by Dr. Wolff and Mr. Bob Hayes of the Insurance Department. Despite a variance in the two actuarial companies estimate of equity (surplus), the Fund currently enjoys a surplus balance. Alternatives for phasing-out the fund have been explored as well as continuing the Fund as it is currently managed. Wakely and Associates, Inc., was asked to explore preliminarily the concept of privatisation and found it not to be of advantage to the State at this time. The Committee recommends that the 1992 Legislature take no action to phase out the Fund. It also recommends that Wakely and Associates, Inc., be retained for at least an additional year and perform a third annual evaluation of the Fund. The Committee does not recommend legislative action on either a margin account or privatisation at this time and will, if necessary, explore both areas in its 1992 study.

Representative Helgerson moved for the approval of the minutes of the January 21st meeting. Representative Cozine seconded the motion. Motion carried.

Meeting adjourned at 4:30 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

GUEST LIST

COMMITTEE: Insurance DATE: Jan. 22

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Lee Wright	Overland Park	Farmers Ins. Group
Dave Hanson	Topeka	Ks Assoc P&C Cos
Dick Brock	"	Ins Dept
Gary Robbins	"	Ks Opt assn
Bob Hayes	"	KS Ins. Dept.
Jim Oliver	"	PIAK
Bill Rein	"	KDHE
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Chuck Walker	Topeka	Dept of SRS
Larry Magill	"	I.I.A.K.
Chip Wheelen	Topeka	Ks Medical Soc.

KANSAS ALLIANCE FOR THE MENTALLY ILL

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TESTIMONY
January 22, 1992

TO: Members, House Insurance Committee
FROM: Terry Larson, Executive Director, Kansas Alliance for the Mentally Ill
PRESENTED BY: Sheryl Sanders, Administrative Assistant, Kansas Alliance for the Mentally Ill

Thank you for the opportunity to come before this committee. I had sincerely looked forward to being here in person, but circumstances did not cooperate.

Included in Kansas AMI's 1992 legislative agenda is its support for provisions mandating that private health insurance plans cover treatment for biologically based brain diseases such as schizophrenia and affective disorders (manic-depression and depression) the same as they cover any other physical brain disorders such as Parkinson's Disease or multiple sclerosis. Kansas AMI believes that mandated mental health insurance should continue. However, treatment for severe and persistent mental illness should be equal to that for other physical disorders and not be a part of mental health.

Treating schizophrenia and affective disorders the same as Parkinson's and multiple sclerosis for insurance purposes is being done on a limited basis in several states. In Texas, for example, this type of coverage is mandated for state employees only. California has a law in place, but its ambiguous language necessitated that the legislature amend the law. It did so but the governor vetoed the clarifying bill.

Insurance interests and some employers have been the biggest opponents to this type of coverage and can be credited with the California veto. However, a major study (copies will be provided to members upon receipt in the Kansas AMI office) indicates that our proposal would add $6 a year to the insurance costs of any individual on a nationwide basis.

More importantly, we must ask what impact fair and adequate insurance coverage for major mental illnesses has on the public (i.e. that which is supported by taxpayers) mental health system costs.

When I was in my twenties I experienced extreme mood shifts. I would literally become housebound for weeks at a time. When I "normalized," I would often work. But it was never for prolonged periods of time as I would always become incapacitated by the depression again. I got by with this because I had a marriage to hide behind. Otherwise, I would have then become part of the "system." As it was, my only cost to the system was lost productivity.

In my thirties, I got my degree and went to work. Depressive episodes were less severe for awhile, allowing me to function at an acceptable level. Then, in 1981 when I was 35, "it" hit. I came close to quitting a job I loved. I wanted to die. My self-esteem was shot. I hated myself. I thought I was a rotten person. Lacking anything resembling energy, I went to my doctor thinking I had some sort of flu. The doctor pronounced me to be sound of body. I wondered how I could feel so awful if I was so healthy.

He prescribed an anti-depressant. I was skeptical. After all, I was defective. How could a pill take care of that?

Nevertheless, within several weeks the fog began to lift. Now, ten years later, I know what it is like to feel like a fully functioning person for extended periods of time. I stayed at that job I had nearly quit for 8½ years.

Insurance and a fortunate situation have combined to allow me to receive proper treatment and not become dependent upon public assistance. Further, in the past ten years my taxable income equalled approximately $214,000.

Finally, we at Kansas AMI wish that our proposal could be adopted simply on its merits - that is, because it's the right thing to do. But we are practical enough to know that isn't enough. We therefore urge this committee to also base its considerations on the overall benefits to the taxpaying public and to society as a whole.

Thank you.

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Health Care Stabilization Fund Oversight Committee

RE: Annual Report

Background

1989 Legislation. The Health Care Stabilization Fund Oversight Committee was created by the 1989 Legislature through passage of S.B. 18 (K.S.A. 40-3403b). The 11 member Committee consisted of four legislators, four health care providers, one insurance industry representative, one person from the public at large with no affiliation with health care providers or with the insurance industry, and the Insurance Commissioner or the Commissioner's designee. The law charged the Committee to report its activities to the Legislative Coordinating Council and to make recommendations to the Legislature regarding the Health Care Stabilization Fund. The first report of the Committee was submitted in December, 1990, and is available through the Division of Administrative Services and is on file in the Legislative Research Department.

1991 Legislation. The Health Care Stabilization Fund Oversight Committee recommended in its report that the Committee be continued as constituted and that the contract for actuarial services with Wakely and Associates, Inc., be renegotiated and extended. Among other things, 1991 S.B. 38 enacted those recommendations and, purs uant to the terms of the law, the Committee continued its activities and submits the following report.

Committee Activity

Shortly after entering into a new contract in August, 1991, Wakely and Associates, Inc., began gathering the data necessary to perform its second examination and evaluation of the Health Care Stabilization Fund. In brief, the actuary was asked to replicate the study performed for the Council and the Committee in 1990 and present its findings in October, 1991. The actuary's report, in two volumes (an executive summary and a technical appendix), is on file in the Legislative Research Department and also is available through the Division of Administrative Services.

Based on its analysis of the experiences of the Health Care Stabilization Fund (HCSF or Fund) through June 30, 1991, the actuary submitted the following conclusions:

1. As of June 30, 1991, the estimated discounted liability of HCSF is approximately $128 million assuming a 7.5 percent annual investment return. The corresponding assets of the fund are estimated to be $147 million. It is concluded that HCSF has an indicated equity (surplus) of $19 million as of June 30, 1991 (assuming a 7.5 percent annual investment return).

2. The assumed annual investment return of 7.5 percent per annum utilized in (1) is based on HCSF's recent experience and is identical to that utilized in our analysis of the Fund as of June 30, 1990 and also to that utilized by HCSF's actuary in the determination of current surcharge rates. However, given the recent large decreases in interest rates, it is prudent to consider reducing the assumed investment return. Accordingly, we have reestimated liabilities assuming a 5.0 percent rather than a 7.5 percent investment

Attachment 2
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return and have noted the change causes the estimated liabilities to increase to $135 million and the indicated equity (surplus) to reduce to $12 million . . . .

3. The current estimates of ultimate losses and loss adjustment expenses imply that the Fund had an indicated equity (surplus) of $1 million as of June 30, 1990 (assuming a 7.5 percent annual investment return. . .). **Thus, the current estimates confirm the conclusions of our earlier study that HCSF was essentially adequately funded as of June 30, 1990.** (Emphasis added.)

4. The current $19 million equity position and the prior $1 million equity imply a $18 million strengthening during the fiscal year. The $18 million increase in the Fund's equity position occurred mainly because the actual surcharge rates for the 1990-1991 fiscal years significantly exceeded the estimated cost of providing coverage. **This observation is again consistent with the conclusion of our earlier study.** (Emphasis added.)

5. The estimated average surcharge for the 1991-1992 fiscal year for coverage under existing law is 70 percent assuming a 7.5 percent investment return or 76 percent assuming a 5.0 percent investment return. These estimated surcharge rates have not been reduced to reflect the estimated equity (surplus) existing as of June 30, 1991. Both of the estimates are significantly less than the average surcharge rate of 95 percent that is currently being charged. **All other things remaining the same, it is therefore projected that HCSF's equity (surplus) will increase further during the prospective fiscal year . . . .** (Emphasis added.)

6. If current law is revised to provide for the phase out of HCSF with provision for all liabilities of active and inactive providers (*i.e.*, tail coverage), a substantial amount of funds beyond those contemplated in the surcharge rates discussed in (5) . . . would need to be accumulated. There are two distinct coverage strategies which could be used to phase out HCSF. Under the first, all coverage would be extended on a first-dollar basis, consistent with coverage currently offered to inactive providers. The estimated costs associated with phasing out the HCSF under this approach are $98 million and $110 million for phase out dates of June 30, 1994 and June 30, 1996, respectively (at an assumed investment yield rate of 7.5 percent).

   The second alternative is to extend coverage on an excess basis, consistent with coverage currently offered to active providers. The estimated costs under this approach are $44 million and $51 million for phase out dates of June 30, 1994 and June 30, 1996, respectively (at an assumed investment yield rate of 7.5 percent).

   If HCSF is to be phased out with tail coverage, partial sources of the funds required are the indicated equity (surplus) existing as of June 30, 1991, noted in (1) and (2) and the indicated redundancy in the current surcharge rates noted in (5).

As in 1990, the Insurance Department had used a separate actuary, Tillinghast, to assist the Insurance Commissioner in determining the surcharge rates to be charged on and after July 1, 1991. Whereas the Department's actuary found the Fund to be deficient by about $19 million as of June 30, 1990, the actuary reported that "the Fund balance as of June 30, 1991 is expected to be approximately $140 million. Tillinghast's estimated accrued liabilities of the Fund as of that date are approximately $139 million, resulting in a slight funding surplus." While there continues to be a difference between the two actuarial firms regarding the ultimate liabilities of HCSF, both agree that the Fund currently enjoys a surplus balance.

In 1990, conferees representing the various health care providers appearing before the Committee supported the notion of phasing out HCSF provided that a "large measure of caution" was used in the implementation of the phase-out. S.B. 38, introduced by the Committee, positioned the Legislature to phase out the Fund in 1994 but did not make a commitment to that target. Amendments attached to the bill tied the phase-out to the Committee's recommendation and the Legislature's enactment of provisions to address: residual market mechanisms (Joint Underwriting Authority (JUA)); coverage for the University of Kansas Medical School faculty and residents; and the apportionment of any balance in the Fund after all liabilities have been paid.

After hearing the report of the actuary on the soundness of the Fund, an unofficial polling of the Committee members reflected the strong, though not unanimous, opinion that the Fund should not be phased out at this time, although that prospect might be considered in the future. That opinion was supported by the representative of the Kansas Medical Society who recalled that, while the membership of the Society was divided in 1990 on the issue of phasing out the Fund, a majority supported a cautious phase-out. Now, in 1992, he explained that, while the membership is still split on the issue, the majority seems to be changing to favor the continuation of the Health Care Stabilization Fund.

The Committee was pleased to note that both actuaries conclude that the Fund is in a surplus position; however, that positive achievement also was a concern to some members. Since the purpose of the Fund is to insure the liabilities of health care providers paying the surcharges, some members took the view that those charges should be no larger than necessary to ensure payment of the Fund's obligations.

On the subject of a surplus in the Fund, the Committee asked the actuary whether maintenance of a reserve fund was a usual practice and was informed that margin accounts are commonplace. Considering the desirability of maintaining a margin account, the actuary pointed out a distinction depending upon whether the Fund was to be phased out or maintained. If the Fund is to be continued, the actuary said the following should be considered:

- the program can function on a sound financial basis without the presence of a margin account;
- any margin account will be funded by health care providers and will involve additional costs to the system;
- the presence of a margin account would provide greater options to policymakers should the question of the Fund's existence be reexamined at a later date;
- the presence of a large margin account may attract political attention and pressures for alternative uses; and
- the presence of a large margin account may influence attitudes in the claims settlement process and cause awards to increase.

If the Fund is to be maintained, the actuary suggested "that no explicit margin account be maintained." Rather, the actuary preferred that the Fund balance be within a range of -10 percent and +15 percent of a prudently determined actuarial estimate of liabilities. "Within the boundary of this constraint," the actuary said, "surcharge rates should be selected to be as stable as possible from year to year."

Since sentiment among several health care provider groups and among more than a majority of Committee members for a phase-out of the Fund appears to be waning, the Committee briefly considered alternatives to the phase-out and to continuation of the Fund as it is currently managed. Wakely and Associates, Inc., was asked to explore preliminarily the concept of privatization and, in response to that request, reported the following advantages that might be achieved through privatizing the Fund:

- State government would remove itself from a process that is traditionally operated by the private sector. The initial purpose for establishing the Fund was to provide a stable market for excess coverage in order to ensure that citizens in Kansas would have a significant degree of security in incidents involving medical professional liability. If it is believed that such a market now exists, the need for sustaining the Fund is diminished.

- Privatization may attract carriers who are willing to provide excess limits above those required by statute, as well as more competitors at the basic coverage level.

The following represents the actuary's list of disadvantages that might materialize as a result of privatization:

- . . . the Fund is currently operated in a very efficient manner as respects claims handling and operational expenses. It is unlikely that privatization could improve on this situation. Indeed, the private sector would necessarily (and properly) introduce a profit component to the excess layer that currently does not exist.

- The assumption of the Fund's operations into the private sector must be supported by financial capacity of commercial carriers. To the extent that such capacity does not exist, it would have to be collected from the policyholders.

- Privatizing the Fund would subject health care providers to the vagaries of the insurance industry for the excess layer of coverage. If the market becomes constrained in terms of availability or affordability, the conditions that existed for establishing the Fund in the first place may occur again.

- Privatization of the Fund would raise serious questions with regard to the appropriateness of statutory requirements for excess limits. If the state elected to continue the compulsory nature of the excess layer, some form of state mandated or supported residual market would still be necessary.

- Privatization may create a monopolistic situation for the selected carrier with little or no prospect for competition that is normally present in the private sector.

Conclusions and Recommendations

The Committee concludes, based upon actuarial findings, that the Health Care Stabilization Fund is sound and, indeed, operating with a surplus. Perhaps in part because of the equity position of the Fund, more than a majority of the members and, apparently, a growing majority of health care providers, are adopting the position that the Fund should be continued. **For now, the Committee recommends that the 1992 Legislature take no action to phase out the Fund.**

Since by statute the Committee continues in existence, the Committee **recommends that Wakely and Associates, Inc., be retained for at least an additional year and perform a third annual evaluation of the Fund.** The Committee believes that the third report should provide information to all parties sufficient to answer the questions as to whether the Fund should be phased out in 1994, or at some later date; whether the Fund should be retained and maintained in its present form; or whether some alternative method of addressing the Fund and the provision of excess liability coverage to providers should be arranged.

The Committee appreciates the comments of the actuary on the subjects of a "margin account" and on "privatization," as well as the remarks provided by other interested parties. **The Committee does not recommend**

legislative action on either a margin account or privatization at this time and will, if necessary, explore both areas in its 1992 study.

Finally, the Committee requests the understanding of the Legislative Coordinating Council for the lateness of this report. While the statute set a reporting date of September, 1991, that date did not allow sufficient time for the actuary to complete the Fund evaluation, for presentation of the findings to the Committee, and for substantive Committee discussion from which conclusions could be drawn and recommendations made to the 1992 Legislature.

92-0006/BW