

Approved February 13, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:05 a.m./~~pm~~ on February 3, 1992 in room 526-S of the Capitol.

All members were present except:

Rep. Dick Edlund - excused
Rep. Susan Wagle - excused

Committee staff present:

Jim Wilson, Revisor of Statutes
Jerry Donaldson, Principal Analyst
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Bill Morrissey, acting Director, Kansas Division of Workers' Compensation

The meeting was called to order at 9:05 a.m., by Committee Vice-chairman, Rep. Darrel Webb.

Vice-chairman Webb stated the purpose of the meeting was to continue the presentation by Bill Morrissey, acting Director, Kansas Division of Workers' Compensation, regarding the medical fee schedule and other issues.

Mr. Morrissey referred to the computer printout he handed out to the committee last week. He reiterated that the printout indicates that the proposed medical fee schedule will increase fees over and above the charges allowed by insurance carriers which write workers' compensation insurance in Kansas. He stated that he could not approve the proposed medical fee schedule in its present form.

Mr. Morrissey handed out a bill draft which proposes to abolish the Medical Fee Schedule panel and authorizes the director of workers' compensation to establish a medical fee schedule. He explained that the bill draft would also bring vocational rehabilitation vendors under the medical fee schedule (attachment #1).

Mr. Morrissey answered questions from several members of the committee.

In the absence of the vice-chairman, Rep. Al Lane, ranking minority member, introduced Chip Wheelen, Kansas Medical Society. Mr. Wheelen handed out and spoke to material regarding the Society's opposition to the establishment of a medical fee schedule (attachment #2). He then answered questions from committee members.

The committee chairman, Rep. Anthony Hensley, returned at 9:40 a.m., and announced that he would entertain a motion to introduce the proposed legislation presented to the committee by Mr. Morrissey. Rep. Webb moved to introduce a bill as per Mr. Morrissey's request. The motion was seconded by Rep. Darlene Cornfield. Motion carried.

The meeting was adjourned at 9:40 a.m.

1 **44-510.** Except as otherwise provided therein, medical
2 compensation under the workers compensation act shall be as
3 follows:

4 (a) It shall be the duty of the employer to provide the
5 services of a health care provider, and such medical, surgical and
6 hospital treatment, including nursing, medicines, medical and
7 surgical supplies, ambulance, crutches, and apparatus, and
8 transportation to and from the home of the injured employee to a
9 place outside the community in which such employee resides, and
10 within such community if the director in the director's discretion
11 so orders, as may be reasonably necessary to cure and relieve the
12 employee from the effects of the injury.

13 (1) The director shall prepare and adopt rules and
14 regulations which establish a schedule for the state ~~approved by~~
15 ~~the advisory panel,~~ or schedules ~~approved by the advisory panel~~
16 which are limited to defined localities, fixing the maximum fees
17 for medical, surgical, hospital, dental, nursing, vocational
18 rehabilitation or any other treatment or services provided or
19 ordered by health care providers and rendered to employees under
20 this section. Each such schedule shall include provisions and
21 review procedures for exceptional cases involving extraordinary
22 medical procedures or circumstances and shall include costs and
23 charges for medical records and testimony.

24 (2) The schedules of maximum fees shall be reasonable, shall
25 promote health care cost containment and efficiency with respect to
26 the workers compensation health care delivery system, and shall be

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27 sufficient to ensure availability of such reasonably necessary
28 treatment, care and attendance to each injured employee to cure and
29 relieve the employee from the effects of the injury.

30 (3) (A) In every case, all fees, transportation costs and
31 charges under this section and all costs and charges for medical
32 records and testimony shall be subject to approval by the director
33 and shall be limited to such as are fair, reasonable and necessary.

34 ~~(B) There is hereby created an advisory panel to assist the~~
35 ~~director in establishing schedules of maximum fees as required by~~
36 ~~this section. The panel shall consist of the commissioner of~~
37 ~~insurance and seven members appointed as follows: (i) One person~~
38 ~~shall be appointed by the Kansas medical society, (ii) one member~~
39 ~~shall be appointed by the Kansas association of osteopathic~~
40 ~~medicine, (iii) one member shall be appointed by the Kansas~~
41 ~~hospital association, (iv) one member shall be appointed by the~~
42 ~~Kansas chiropractic association, and (v) three members appointed by~~
43 ~~the secretary. One member appointed by the secretary shall be a~~
44 ~~representative of employers recommended to the secretary by the~~
45 ~~Kansas chamber of commerce and industry. One member appointed by~~
46 ~~the secretary shall be a representative of employees recommended to~~
47 ~~the secretary by the Kansas AFL-CIO. One member appointed by the~~
48 ~~secretary shall be a representative of entities providing~~
49 ~~vocational rehabilitation services pursuant to K.S.A. 1989 Supp.~~
50 ~~44-510g and amendments thereto. Each appointed member shall be~~
51 ~~appointed for a term of office of two years which shall commence on~~
52 ~~July 1 of the year of appointment.~~

53 ~~(C)~~(B) The ~~panel~~ director shall annually review and ~~approve~~
54 the schedules of maximum fees for such reasonably necessary
55 treatment, care and attendance to each injured employee to cure and
56 relieve the employee from the effects of the injury. All fees and
57 other charges paid for such treatment, care and attendance,
58 including treatment, care and attendance provided by any health
59 care provider, hospital or other entity providing health care
60 services, shall not exceed the amounts prescribed by the schedules
61 of maximum fees established under this section or the amounts
62 authorized pursuant to the provisions and review procedures
63 prescribed by the schedules for exceptional cases. A health care
64 provider, hospital or other entity providing health care services
65 shall be paid either ~~such health care provider, hospital or other~~
66 ~~entity's~~ the usual and customary charge for the community in which
67 the services are rendered for the treatment, care and attendance or
68 the maximum fees as set forth in the applicable schedule, whichever
69 is less. In reviewing and ~~approving~~ the schedules of maximum fees,
70 the ~~panel~~ director shall consider the following:

71 (i) The levels of fees for similar treatment, care and
72 attendance imposed by other health care programs or third-party
73 payors in the locality in which such treatment or services are
74 rendered;

75 (ii) The impact upon cost to employers for providing a level
76 of fees for treatment, care and attendance which will ensure the
77 availability of treatment, care and attendance required for injured
78 employees;

79 (iii) The potential change in workers compensation insurance
80 premiums or costs attributable to the level of treatment, care and
81 attendance provided; and

82 (iv) The financial impact of the schedule of maximum fees
83 upon health care providers and health care facilities and its
84 effect upon their ability to make available to employees such
85 reasonably necessary treatment, care and attendance to each injured
86 employee to cure and relieve the employee from the effects of the
87 injury.

88 ~~(D) Members of the advisory panel attending meetings of the~~
89 ~~advisory panel, or attending a subcommittee of the advisory panel~~
90 ~~authorized by the advisory panel, shall be paid subsistence~~
91 ~~allowances, mileage and other expenses as provided in K.S.A. 75-~~
92 ~~3223 and amendments thereto.~~

93 (4) Any contract or any billing or charge which any
94 vocational rehabilitation provider, health care provider, hospital,
95 person, or institution enters into with or makes to any patient for
96 services rendered in connection with injuries covered by the
97 workers compensation act or a fee schedule adopted under this
98 section, which is or may be in excess of or not in accordance with
99 such act or fee schedule is unlawful, void and unenforceable as a
100 debt.

101 (5) The director shall have jurisdiction to hear and
102 determine all disputes as to such charges and interest due thereon
103 and shall prescribe procedural rules to be followed by the parties
104 to such disputes. In the event of any controversy arising under

105 this section, payments shall not be delayed for any amounts not in
106 dispute or controversy. Acceptance by any provider of services of
107 a payment amount under this section which is less than the full
108 amount charged for the services, shall not affect the right to have
109 a review of the claim for the outstanding or remaining amounts.

110 (6) If the director finds, after utilization review and peer
111 review, that a ~~health-care~~ provider or ~~health-care~~ facility has
112 made excessive charges or provided or ordered unjustified
113 treatment, services, hospitalization or visits, the ~~health-care~~
114 provider or ~~health-care~~ facility shall not receive payment pursuant
115 to this section from an insurance carrier, employer or employee for
116 the excessive fees or unjustified treatment, services,
117 hospitalization or visits and such ~~health-care~~ provider or ~~health~~
118 ~~care~~ facility shall repay any fees or charges collected therefor.

119 (7) The director shall develop and implement, or contract
120 with a qualified entity to develop and implement, utilization
121 review and peer review procedures relating to the services rendered
122 by a hospitals, health care providers and vocational rehabilitation
123 providers, which services are paid for in whole or in part pursuant
124 to this section. The director may contract with a private
125 foundations or organizations to provide utilization review, as
126 appropriate, of entities providing hospital services, health care
127 services and vocational rehabilitation services pursuant to this
128 section.

129 (8) By accepting payment pursuant to this section for
130 treatment or services rendered to an injured employee, a health

131 ~~health care~~ provider or ~~health care~~ facility shall be deemed to consent to
132 submitting all necessary records to substantiate the nature and
133 necessity of the service or charge and other information concerning
134 such treatment to utilization review and peer review under this
135 section. Such ~~health care~~ provider shall comply with any decision
136 of the director pursuant to subsection (a)(9).

137 (9) If it is determined by a peer review committee that a
138 ~~health care~~ provider improperly overutilized or otherwise rendered
139 or ordered unjustified ~~medical~~ treatment or services or that the
140 fees for such treatment or services were excessive, the director
141 may order the ~~health care~~ provider to show cause why the ~~health~~
142 ~~care~~ provider should not be required to repay the amount which was
143 paid for rendering or ordering such treatment or services and shall
144 provide the ~~health care~~ provider a hearing thereon if requested.
145 If a hearing is not requested within 30 days of receipt of the
146 order and the director decides to proceed with the matter, a
147 hearing shall be conducted and if a prima facie case is established
148 a final order shall be issued by the director. If the final order
149 is adverse to ~~the~~ a health care provider, the director shall
150 provide a report to the licensing board of the health care provider
151 with full documentation of any such determination, except that no
152 such report shall be provided until after judicial review if the
153 order is appealed. Any order of the director under this section
154 shall be subject to review in accordance with the act for judicial
155 review and civil enforcement of agency actions in the district
156 court for Shawnee county.

157 ~~(10) Except as provided by K.S.A. 60-437 and amendments~~
158 ~~thereto, all reports, information, statements, memoranda,~~
159 ~~proceedings, findings and records submitted to the director for the~~
160 ~~purposes of this section, including any records of peer review~~
161 ~~committees, shall be privileged and shall not be subject to~~
162 ~~discovery, subpoena, or other means of legal compulsion for release~~
163 ~~to any person or entity and shall not be admissible in evidence in~~
164 ~~any judicial or administrative proceeding, except those authorized~~
165 ~~pursuant to this section.~~

166 ~~(11)~~ (10) A health care provider or health care facility may
167 not improperly charge or overcharge a workers compensation insurer
168 or charge for services which were not provided, for the purpose of
169 obtaining additional payment.

170 ~~(12)~~ (11) Any violation of the provisions of this section
171 which is willful or which demonstrates a pattern of improperly
172 charging or overcharging workers compensation insurers constitute
173 grounds for the director to impose a civil fine not to exceed
174 \$5,000. Any civil fine imposed under this section shall be subject
175 to review in accordance with the act for judicial review and civil
176 enforcement of agency actions in the district court for Shawnee
177 county. All moneys received for civil fines imposed under this
178 section shall be deposited in the state treasury to the credit of
179 the workers' compensation fund.

180 (b) Any health care provider, nurse, physical therapist, any
181 entity providing medical, physical or vocational rehabilitation
182 services or providing reeducation or training pursuant to K.S.A.

183 44-510g and amendments thereto, medical supply establishment,
184 surgical supply establishment, ambulance service or hospital who
185 accept the terms of the workers compensation act by providing
186 services or material thereunder shall be bound by the fees approved
187 by the director and no injured employee or dependent of a deceased
188 employee shall be liable for any charges above the amounts approved
189 by the director. If the employer has knowledge of the injury and
190 refuses or neglects to reasonably provide the services of a health
191 care provider ~~benefits~~ required by this section, the employee may
192 provide the same for such employee, and the employer shall be
193 liable for such expenses subject to the regulations adopted by the
194 director. No action shall be filed in any court by a health care
195 provider or other provider of services under this section for the
196 payment of an amount for medical services or materials provided
197 under the workers compensation act and no other action to obtain or
198 attempt to obtain or collect such payment shall be taken by a
199 health care provider or other provider of services under this
200 section, including employing any collection service, until after
201 final adjudication of any claim for compensation for which an
202 application for hearing is filed with the director under K.S.A. 44-
203 534 and amendments thereto. In the case of any such action filed
204 in a court prior to the date an application is filed under K.S.A.
205 44-534 and amendments thereto, no judgment may be entered in any
206 such cause and the action shall be stayed until after the final
207 adjudication of the claim. In the case of an action stayed
208 hereunder, any award of compensation shall require any amounts

209 payable for medical services or materials to be paid directly to
210 the provider thereof plus an amount of interest at the rate
211 provided by statute for judgments. No period of time under any
212 statute of limitation, which applies to a cause of action barred
213 under this subsection, shall commence or continue to run until
214 final adjudication of the claim under the workers compensation act.

215 (c) If the services of the health care provider furnished as
216 provided in subsection (a) are not satisfactory to the injured
217 employee, the director may authorize the appointment of some other
218 health care provider subject to the limitations set forth in this
219 section and the rules and regulations adopted by the director.
220 Without application or approval, an employee may consult a health
221 care provider of the employee's choice for the purpose of
222 examination, diagnosis or treatment, but the employer shall only be
223 liable for the fees and charges of such health care provider up to
224 a total amount of \$350.

225 (d) An injured employee whose injury or disability has been
226 established under the workers compensation act may rely, if done in
227 good faith, solely or partially on treatment by prayer or spiritual
228 means in accordance with the tenets of practice of a church or
229 religious denomination without suffering a loss of benefits subject
230 to the following conditions:

231 (1) The employer or the employer's insurance carrier agrees
232 thereto in writing either before or after the injury;

233 (2) the employee submits to all physical examinations
234 required by the workers compensation act;

235 (3) the cost of such treatment shall be paid by the employee
236 unless the employer or insurance carrier agrees to make such
237 payment;

238 (4) the injured employee shall be entitled only to benefits
239 that would reasonably have been expected had such employee
240 undergone medical or surgical treatment; and

241 (5) the employer or insurance carrier that made an agreement
242 under paragraph (1) or (3) of this subsection may withdraw from the
243 agreement on 10 days' written notice.

244 (e) In any employment to which the workers compensation act
245 applies, the employer shall be liable to each employee who is
246 employed as a duly authorized law enforcement officer, ambulance
247 attendant, mobile intensive care technician, fireman or
248 firefighter, including any person who is serving on a volunteer
249 basis in such capacity, for all reasonable and necessary preventive
250 medical care and treatment for hepatitis to which such employee is
251 exposed under circumstances arising out of and in the course of
252 employment.

253



KANSAS MEDICAL SOCIETY

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February 3, 1992

TO: House Labor and Industry Committee
FROM: Kansas Medical Society *Chy Uteelen*
SUBJECT: Worker's Compensation Medical Fee Schedule

Some of you will recall that when we testified on 1990 HB 3069 we urged the Legislature to first engage in a thorough study of the reimbursement system under workers compensation before mandating adoption of a fee schedule (copy attached). There remain two simple facts that seem to have been lost in the haste to adopt a fee schedule: (1) employers have the right to choose the physicians who provide medical services to their employees, and (2) insurers can engage in utilization review procedures which identify any excessive charges by physicians, hospitals, or other providers.

In 1990, the KMS provided to the Director of Worker's Compensation, statutory language that provides for utilization review of services rendered to injured workers. That language was incorporated in HB 3069 and is now law.

It does not take a great deal of thought or an advanced degree in statistics to understand that ceilings also become floors. This is why a maximum fee schedule could likely result in net losses to insurers. We respectfully suggest that you seriously consider legislation that would repeal the maximum medical fee schedule under worker's compensation.

Thank you for considering our comments.

CW/cb

Attachment

*Labor & Industry
2-3-92
Attachment #2-1*



KANSAS MEDICAL SOCIETY

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February 26, 1990

TO: House Labor and Industry Committee

FROM: Jerry Slaughter
Kansas Medical Society

SUBJECT: HB 3069; Medical Fee Schedules Under
Workers' Compensation

The Kansas Medical Society appreciates the opportunity to comment on some of the provisions of HB 3069. Our comments will be restricted to those portions of the bill which mandate the Director of Workers' Compensation to implement a medical fee schedule and utilization review program.

At the outset, we would like to publicly thank Robert Anderson, Director of the Division of Workers' Compensation, for sharing a draft of the proposed legislation with us approximately one week ago. This opportunity did give us a chance to make several suggestions, many of which were incorporated into the bill. We would like to point out, that we have not yet had the opportunity to discuss HB 3069 with our Legislative Committee or Executive Committee, hence our comments today should be considered preliminary, as our final position may be different pending study by our committees.

It was clear to us that the Director under current law has the statutory authority to implement a medical fee schedule affecting all health care providers. In discussions with Mr. Anderson, it became clear that he intended to do so, but that he wanted more specificity written into the law including a provision mandating utilization and peer review. Generally, we are opposed to statutorily imposed fee schedules. Our experiences with Medicaid and Medicare have proven that such efforts to contain costs generally hurt access to health care for those who are injured or ill, or cause substantial cost shifting, as certain payors cut reimbursements to unreasonably low levels. For example, under the Medicaid program, physicians in Kansas generally are reimbursed in the range of 35-50% of their normal and customary fees. Obviously access to care becomes an issue, and we are concerned that any unreasonable fee schedules in the Workers' Compensation Program would have this same result.

To the several business organizations who have been noisy advocates for fee schedules, we must point out that the best way of achieving lower costs under workers' compensation is prevention of injury. The same interests that are promoting the provisions of HB 3069 should be looking inward to provide safer equipment, safer working conditions, better training for their employees, and aggressive risk management in general. We believe that prevention of injury should be the goal, rather than officially reducing costs after the injury occurs.

If there is evidence indicating that fees charged for health care provided to injured workers under the Workers' Compensation Program are higher than fees charged for similar services under other third-party reimbursement systems, it may be for a reason. Physicians indicate that it is more time consuming and more difficult to not only evaluate the extent of injury to patients under workers' compensation cases, but there are greater requirements for documentation of clinical findings. This could account for somewhat higher charges, and would not be unjustified. If however, fees sometimes charged by health care providers are truly excessive, we believe the Director has adequate authority under current law to disapprove them.

The provisions in the bill which establish a utilization review and peer review system still need some work. While a utilization review system by qualified professionals can be an effective method of analyzing the use of resources in a third-party payor system, it must have safeguards so that quality care is maintained. We would like to give further study to these provisions, and we will provide amendments intended to strengthen and clarify the concept at a later date.

We recommend and urge that prior to enactment of any fee schedule, that a thorough study be done of the current reimbursement system under workers' compensation. If there are excessive fees being charged by health care providers, such a study would reveal whether it is a widespread problem, or one that is confined to a few individuals and institutions. Such an evaluation must also include the perspective of the health care providers who deliver the services, for only they are able to determine the medical necessity and appropriateness of the services rendered.

In spite of the fact that we do not support a statutorily imposed fee schedule, I do again want to thank Mr. Robert Anderson for sharing with us a draft copy of the proposed legislation. As I mentioned above, while we are opposed to a mandated fee schedule, we will share this legislation with our appropriate committees as soon as possible, and provide additional comments at a later date. Thank you for the opportunity to appear today.

JS:nb