Approved 3/5/92
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Senator Richard L. Bond at
Chairperson

9:13 a.m./p.m. on Wednesday, March 4, 1992 in room 529-S of the Capitol.

All members were present except:
Senators Bond, Francisco, Kerr, Moran, Parrish, Reilly, Salisbury, Strick, Yost, and Ward.

Committee staff present:

Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Secretary

Conferees appearing before the committee:

Richard Morrissey, Kansas Department of Health and Environment
John Holmgren, Catholic Health Association
Elizabeth Taylor, Kansas Association of Local Health Departments
Chip Wheelen, Kansas Medical Society
Betty Jean McElhaney, Guadalupe Clinic, Wichita
Terri Sinclair, Risk Manager, Johnson County
Bruce Linhos, Kansas Assn. of Licensed Private Child Care Agencies
Bob Frey, Kansas Trial Lawyer's Association

The meeting was called to order by Chairman Bond at 9:13 a.m.

Senator Strick made a motion, seconded by Senator Parrish, to approve the minutes of March 3, 1992, as submitted. The motion carried.

SB 535, which the committee voted to refer to Senate Ways and Means Committee in the meeting of March 3, has now been withdrawn at the request of the sponsoring party, the Kansas Dental Association, for further study.

SB 701, on a motion made by Senator Parrish and seconded by Senator Salisbury, was referred to the Senate Ways and Means Committee by unanimous vote.

The Chairman opened the hearing on **SB 728**, which would allow local health departments and charity clinics to serve both indigent and Medicaid patients by expanding liability coverage.

Conferees appearing before the committee to testify in support of **SB 728** were:

-Richard Morrissey, Kansas Department of Health and Environment (Attachment #1)
-John Holmgren, Catholic Health Association of Kansas (Attachment #2)
-Elizabeth Taylor, Kansas Association of Local Health Departments (Attachment #3)
-Chip Wheelen, Kansas Medical Society (Attachment #4)
-Betty J. McElhaney, Guadalupe Clinic, Wichita (Attachment #5)
-Terry Sinclair, Risk Manager, Johnson County, KS (Attachment #6)
-Bruce Linhos, Kansas Assn. of Licensed Private Child Care Agencies (Attachment #7).

Also submitting written testimony in support of **SB 728** was Rojean Dubois, RN, Director of the Health Ministries of Harvey County. (Attachment #8)

Bob Frey, Kansas Trial Lawyers' Association, appeared before the committee to testify in opposition to **SB 728**. (Attachment #9) Mr. Frey proposed that **SB 728** be amended to include Medicaid patients in the definition of "medically

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.

indigent." and to provide immunity only if no fees are charged. Chairman Bond noted that the bill does not grant immunity, it limits liability. Mr. Frey responded that the health care provider is not responsible since the state of Kansas assumes responsibility.

After further discussion and clarification of the intent and need for this bill, Senator Salisbury made a motion to amend the bill to include the definition of "not for profit indigent health care clinics." The motion was seconded by Senator Parrish. The motion carried.

The Chairman declared the hearing on **SB 728** closed. Senator Ward made a motion to move **SB 728** favorably as amended. The motion was seconded by Senator Yost. The motion carried. The bill will be carried by Senator Ward.

The committee adjourned at 10:06 a.m.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 3/4/92

NAME	ADDRESS	ORGANIZATION
Betty Jean McElhaney RN	5322 S. Madey, Wichita Ks	KAMU / Ks. Com on Future of Health Care
John H. Holmgren	Topeka	Catholic Health Assn
Wendell Strom	Topeka	AARP - CCTF
R. G. Frey	"	KTLA
Elizabeth E. Taylor	"	Ks Asso of Local Health Depts
Gerry Ray	Olathe	Johnson Co. Commission
[illegible]	Olathe	Johnson Co. Govern
[illegible]	Topeka	KDHE
Rita [illegible]	"	Ins Dept.
Ron Smith	Topeka	KBA
Larry Buening	Topeka	Bd of Healing Arts
David Hanzlick	Topeka	KS Dental Assn
James [illegible]	Topeka	Intern Sen. McClure
Lisa Getz	Wichita	Wichita Hospitals
Jerry Slaughter	Topeka	Ks. Medical Society
[illegible]	"	Ks Gov't Consult
Jim Oliver	"	PIAK
Lori Callahan	Topeka	KAMMCO

Department of Health and Environment
Azzie Young, Ph.D., *Secretary*

Reply to:

Testimony presented to

Senate Financial Institutions and Insurance Committee

by

The Kansas Department of Health and Environment

Senate Bill 728

On April 1, 1991, the Charitable Health Care Provider Program became effective. Enacted by S.B. 736, the program was largely spearheaded by retired physicians looking for a means to offer their professional services to the medically indigent without having to maintain an active medical license. The statutory authority provided in K.S.A. 75-6101 through 75-6120, modifies the Kansas Tort Claims Act to allow health care providers to be considered employees of the state, for liability purposes, when they gratuitously donate their professional services to the medically indigent. The program applies to all statutorily defined health care providers.

Response to the program, by the health care provider community, has been good. In mid-March, with the help of the Kansas Medical Society and the Kansas Association of Osteopathic Medicine, virtually every doctor licensed in the state received an information packet on the Charitable Health Care Provider Program. To date, there are 427 physicians, 34 dentists, 68 nurses, 2 physical therapists, 2 optometrists, 2 podiatrists and 3 physicians' assistants registered with the state as charitable providers. Twenty-nine of the registered providers are retirees with exempt or inactive licenses.

There are 65 points of entry into the program for people looking for charitable care. Fifty-two of the points of entry are county health departments and 13 are indigent health clinics.

S.B. 728 makes four important modifications to the Charitable Health Care Provider program:

1. **It allows Medicaid recipients to be part of the population served by Charitable Health Care Providers.** Many of the points of entry around the state don't distinguish between people without any medical insurance and those on Medicaid when determining eligibility for services. This can be a serious problem if they have an exempt license charitable physician. According to current law, that doctor has no liability protection if he or she sees a person on Medicaid and that person files a suit.

FI&I 3/4/92
Attachment #1

Additionally, points of entry that accept both people without insurance and those on Medicaid are currently obliged to keep two sets of records in order to be able to correctly make quarterly reports to the Kansas Department of Health and Environment. KDHE only wants to know about persons seen charitably, and that can't include Medicaid right now. This double record keeping is extremely taxing on already over-burdened staffs. For several months, a health department in a large urban area decided against participating in the program specifically because of the administrative nightmare this type of separation would provoke.

2. **It expands liability coverage to include Charitable Health Care Providers giving care to the medically indigent in any local health department or not for profit indigent health care clinic who receive remuneration for their services.** Current language allows only health care providers who give their time gratuitously or for a fee paid by a local health department participating in a primary care pilot program to be considered charitable health care providers. This limiting language prevents employed or contracted providers that are not part of the primary care demonstration project from enjoying liability protection under the Tort Claims Act. S.B. 728 would give to those providers the same protection now allowed to providers in local health departments that are primary care pilot projects.

3. **It expands liability coverage to include Charitable Health Care Providers giving care in <u>any</u> local health department or not for profit indigent health care clinic.** This means that providers in local health departments or indigent health care clinics who provide clinical services to the medically indigent could be afforded liability protection. An example would be health department nurses who run immunization clinics. Providers would not have to be involved in a formal primary care program to benefit from the Tort Claims Act protection.

4. **It provides liability coverage to Charitable Health Care Providers whether or not the local health department or the not for profit indigent health care clinic charges a fee based on federal poverty guidelines.** Many sites have sliding fees based on the clients ability to pay, using federal poverty guidelines as their basis. These fees help defray the overhead costs of operating a clinic. This provision of S.B.728 assures that such a practice will not affect the liability protection of the Charitable Providers.

Since the program's inception, there have been no suits filed against any Charitable Health Care Providers in Kansas. We are unaware of any suits filed against any of the indigent health care clinics in Kansas since they began starting up some 7-8 years ago.

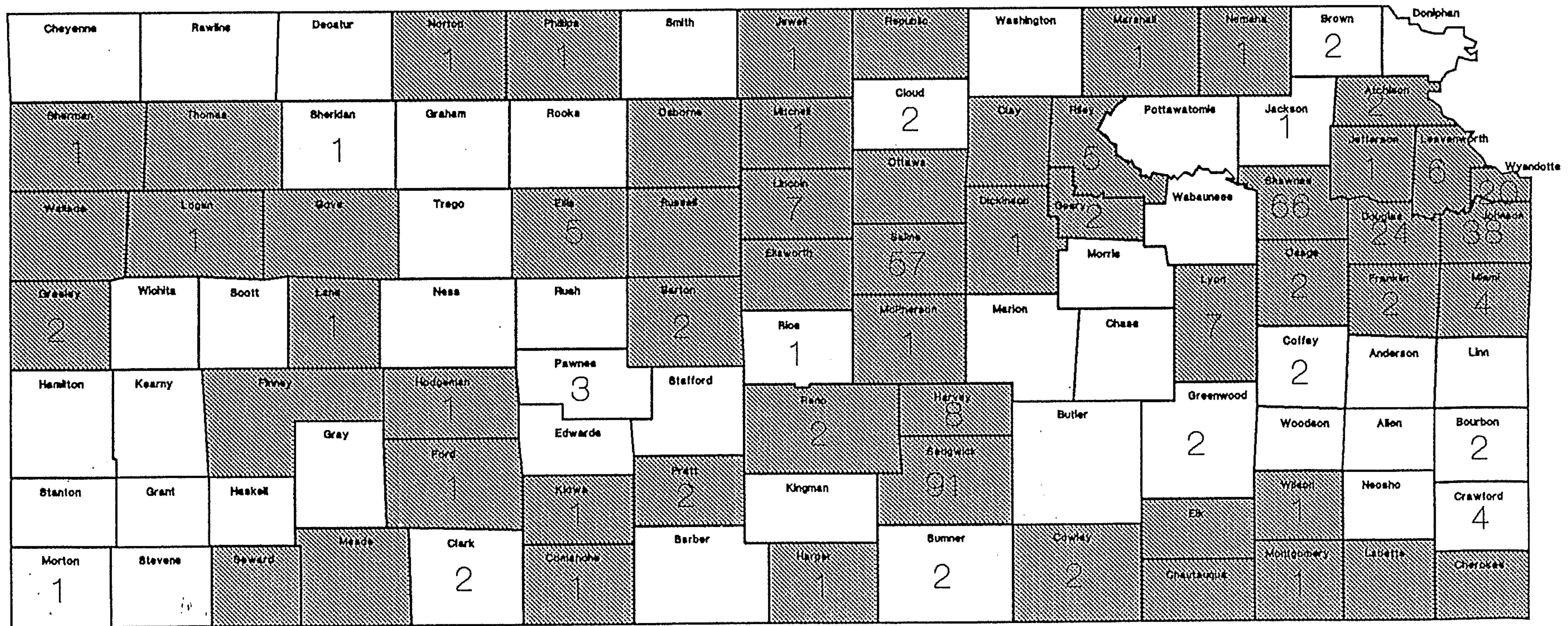
The Kansas Department of Health and Environment recommends that the Committee report S.B.728 favorably for passage.

Testimony presented by: Richard J. Morrissey
Deputy Director
Division of Health
March 4, 1992

Charitable Health Care Provider Program

Distribution of Charitable Health Care Providers and Points of Entry, January 1, 1992

Kansas Department of Health and Environment
Office of Local and Rural Health Systems
(913) 296-1200



* Shaded counties indicate one Point of Entry. Exceptions: Cowley (2), Johnson (2), Sedgwick (5) and Wyandotte (3).
* Number in county represents the number of charitable doctors in that county.

January 1, 1992, there were 388 charitable doctors, 61 nurses and 30 dentists. There were 65 Points of Entry into the system: 52 local departments of public health and 13 indigent health care clinics.

Kansas Association for the Medically Underserved
Board Members

President, Gerry Winget
United Methodist Urban Ministry Medical Clinic
1611 N. Mosley
Wichita, KS 61214
(316) 265-5852

Vice President, Penney Schwab
United Methodist Western Kansas, Mexican-American Clinic
P.O. Box 766
Garden City, KS 67846
(316) 275-1766

Treasurer, Judy Eyerly
Health Care Access, Inc.
P.O. Box 531
Lawrence, KS 66044
(913) 841-5760

Secretary, Janice Koelzer, CSJ
Duchesne Clinic
636 Tauromee
Kansas City, KS 66101
(913) 321-2626

At-Large
Jean McElhaney
Guadalupe Clinic
940 S. St. Francis
Wichita, KS 67211
(316) 264-8974

Pat Patton
Hunter Community Health Clinic
2318 Central
Wichita, KS 67214
(316) 262-3611

Advisor
Joyce Volmut
Kansas Department of Health
and Environment
900 SW Jackson
Topeka, KS 66612-1290
(913) 296-0613

Kansas Association for the Medically Underserved
Membership

Catholic Health Association
John Holmgren
700 Jackson, Ste. 801
Jayhawk Tower
Topeka, KS 66603
(913) 232-6597

Duchesne Clinic
Janice Koelzer, CSJ
636 Tauromee
Kansas City, KS 66101
(913) 321-2626

Finney County Health Department
Marilyn Petgerson
919 Zerr Road
Garden City, KS 67846
(316) 272-3600

Guadalupe Clinic
Jean McElhaney
940 S. St. Francis
Wichita, KS 67211
(316) 264-8974

Health Care Access
Judy Eyerly
P.O. Box 531
Lawrence, KS 66044
(913) 841-5760

Health Ministries of Harvey County
Rojean Dubois
316 Oak
Newton, KS 67114
(316) 283-6103

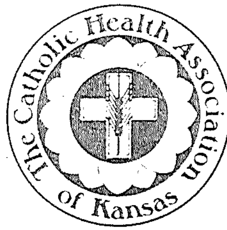
Hunter Community Health Clinic
Bert Steeves
2318 Central
Wichita, KS 67214
(316) 262-3611

Sedgewick County Health Department
Judith Reno
1900 E. Ninth
Wichita, KS 67214
(316) 268-8425

St. Vincent Clinic
Sister Amy Wilcox
422 Walnut
Leavenworth, KS 66048
(913) 651-8860

United Methodist Western Kansas, Mexican-American Clinic
Penney Schwab
P.O. Box 766
Garden City, KS 67846
(316) 275-1766

United Methodist Urban Ministries
Gerry Winget
1611 N. Mosle
Wichita, KS 67214-1399
(316) 265-5852



Catholic Health Association of Kansas

John H. Holmgren • Executive Director
Jayhawk Tower, 700 Jackson, Suite 801 / Topeka, KS 66603 / (913) 232-6597

TESTIMONY
Senate Financial Institution and Insurance Committee
Richard L. Bond, Chairman
March 4, 1992
Ref: Senate Bill 728

Our Association's members include Catholic hospitals, nursing homes, and charity clinics throughout Kansas. We were one of the providers supporting the original Charitable Provider Act in 1991, KSA 1991 supp. 75-6102 and 75-6117, and helped coordinate this support with Committees of the legislature, with the Department of Health and Environment, and with the Healing Arts Board. We felt at the time however, that the act did not go far enough because malpractice coverage for physicians only was limited to selected public health departments which were pilot projects.

Now, under Senate Bill 728, access for indigent patients would be increased throughout Kansas, to all not for profit health care clinics and would include SRS clients, and malpractice coverage would extend to other clinic staff members whether or not their services were compensated or gratuitous.

This bill should effectively increase the number of physician providers offering to work in a charitable, not for profit indigent health care clinic, on a fee or contract basis.

This is a bill that would address some of the problems now being experienced by charity clinics that operate under the sponsorship of Catholic hospitals.

Some of our charity clinics under Catholic sponsorship are now not seeing Medicaid patients because of the malpractice insurance problem and lack of fee coverage. This would particularly help increase access for those areas of the state, where there is a shortage of physicians accepting new Medicaid patients.

We ask your support of SB 728. Thank you.

John H. Holmgren
(913) 232-6597

FI+I 3/4/92
Attachment #2

KANSAS ASSOCIATION OF LOCAL HEALTH DEPARTMENTS

"... Public Health in Action"

TESTIMONY PRESENTED IN SUPPORT OF SB 728
March 4, 1992

presented to the Senate Financial Institutions and Insurance Committee
presented by Elizabeth E. Taylor, Executive Director

The Kansas Association of Local Health Departments, with 83 members representing local health departments serving 95% of the Kansas citizens, offers its support to SB 728.

The change of language allowing local health departments which may serve as primary care facilities, health care clinics for the medically underserved or the medically unserved as well as all local health departments to be covered for liability for their care providers will help expand the amount and quality of care given to this states poorest without great cost to the state.

The language also gives flexibility to local health departments for coverage of the liability regardless of whether the local health department charges a fee (in accordance with the Federal poverty guidelines).

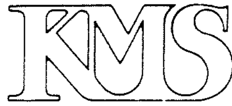
Further, this language will allow liability to be covered even in a health department which might offer some renumeration to its care provider.

Local health departments are asked every day to offer basic public health services (including environmental health services) to the citizens of Kansas regardless of their ability to pay. Health departments have struggled for years finding the resources to provide such expected services. Kansas provides state support of local health departments at a level of $2.50 per capita while the national average expended by state governments to local health departments is $5.63 per capita. While the language of this bill does not address the allocation of funds for public health services, it certainly does offer a solution to the problem most health departments have felt in not being able to provide care givers with adequate compensation and benefits so that citizens can be served.

Thank you, Mr. Chairman, for the opportunity to support this bill.

FI+I 3/4/92
Attachment #3

933 Kansas Avenue, Topeka, Kansas 66612, 913-354-1605



KANSAS MEDICAL SOCIETY
623 W. 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

March 4, 1992

TO: Senate Financial Institutions and Insurance Committee

FROM: Kansas Medical Society *Chip Wheelen*

SUBJECT: Senate Bill 728; Charitable Health Care Providers

The Kansas Medical Society supports the provisions of SB 728 because passage of this bill would remove one of the barriers that impedes access to health care for Medicaid patients.

In August 1991, we testified before the SRS Task Force Subcommittee on Medical Services regarding access to medical care for Medicaid clients. In our statement we identified three major barriers to access: (1) inadequate payment levels, (2) "hassle factors," and (3) liability concerns. We concluded that because our state's financial condition does not make it possible to improve reimbursement rates under Medicaid, that the Department of SRS should embark on a program of eliminating the so-called "hassle factors" and that the Legislature should consider ways of easing liability concerns of physicians. We suggested at that time that one possibility would consist of broadening the definition of "charitable health care provider" to include those physicians and other health care professionals who render services to Medicaid patients. This idea was not endorsed by that Subcommittee simply because we have not accrued a great deal of experience under the Charitable Provider Law that was enacted in 1990.

We believe that it makes very good sense to consider a person who is paid by the State of Kansas to provide health care services to a patient who is dependent upon the State of Kansas for medical care, to be considered an employee of the state for purposes of that episode of health care. This would not create any kind of immunity but would simply shift the liability exposure from the physician or other health care professional to the State of Kansas. This would likely overcome the pervasive myth shared by many physicians that Medicaid and other indigent patients are more litigious than the general population. Attached to this statement is an article from a September 1989 "Journal of the American Medical Association" which discusses this subject. The article refers to a 1987 report by the U.S. General Accounting Office which found that Medicaid patients accounted for 5.8% of closed claims for which insurance status was known, while Medicaid recipients represent about 9% of the U.S. population. The article also cites other studies which all conclude that the Medicaid and indigent populations are actually less likely to sue than the general population.

We respectfully request that you recommend SB 728 for passage for the following reasons: (1) it would address problems experienced by local health departments and charity clinics that serve both the indigent and Medicaid patient populations, (2) it would remove one of the barriers which discourages physicians from participating in the Medicaid Program, and (3) it makes good sense. Thank you for considering our comments.

CW/cb

FI+I 3/4/92
Attachment #4

Are Poor Patients Likely to Sue for Malpractice?

Q As I try to interest other physicians in providing medical care for the poor, I am finding that almost all physicians assume that their risk of being sued for malpractice will be higher if they take such patients into their practice, that is, they believe that the poor are more likely to sue physicians than are more affluent patients. Has this issue been studied? Are there data to substantiate whether the risk of suit is different in a practice among the poor than among the financially secure? If a physician takes poor people into his or her practice, is there a greater risk of suit?

David Hilfiker, MD
Washington, DC

A The perception that poor patients sue more for medical malpractice is a damaging myth. This myth hurts access to health care for indigent people by decreasing physician acceptance of Medicaid patients.

Until very recently, there were no data either to support or refute the assertion by insurance companies and doctors that indigent patients were more likely to sue for medical malpractice than were privately insured patients. However, current studies now universally demonstrate what common sense told us all along: poor people do not account for disproportionate numbers of malpractice suits—in fact, they are *less likely to sue* than are middle-class or privately insured patients. The fear of malpractice suits by indigent patients, therefore, is not a legitimate reason for denying patients health care. A brief summary of these studies follows.

A 1988 study conducted by the Texas Medical Association found that indigent and Medicaid/Medicare patients do not account for disproportionate numbers of suits and claims.[1] The proportion of lawsuits filed by indigent patients does not vary significantly from their proportions in the overall patient population, and suits filed by Medicaid patients are disproportionately low. Medicaid patients and indigents (or those without medical insurance coverage) each account for about 12% of patients seen by Texas physicians. The reported incidence of suits filed by indigent patients is 13.4%, and for Medicaid patients it is only 3.5%. Medicare patients account for 5.9% of lawsuits and patients with acquired immunodeficiency syndrome for less than 1% of the suits.

Similar perceptions and findings have been reported from Michigan. A survey there found that Medicaid recipients are significantly underrepresented in malpractice litigation. In 1988, the Michigan Department of Licensing and Regulation reviewed the Insurance Bureau's medical malpractice closed-claim database for the years 1985 through 1987.[2] They found that Medicaid-related closed claims accounted for only 6.23% of all closed claims, while the Medicaid-eligible population for that period ranged from 10% to 11%.

Other studies have reached similar conclusions.[3] A study of medical malpractice conducted by the National Association of Community Health Centers in 1986 showed that health center obstetricians (virtually all of whose patients have incomes that are <200% of the federal poverty level, and 25% to 40% of whom are eligible for Medicaid) have malpractice claim profiles approximately one fifth as great as those of office-based obstetricians.[4]

A 1987 report by the US General Accounting Office[5] found that Medicaid patients accounted for 5.8% of the closed claims for which insurance status was known, while Medicaid recipients total about 9% of the US population.[6]

Unpublished data on malpractice claims in Maryland from 1977 through 1985 showed that Medicaid patients accounted for 9.6% of all claims for which insurance status was known; recipients represent about 9% of the state population.[7] Self-pay patients filed 17.1% of the malpractice claims, about the same proportion estimated to be uninsured in the state. Medicaid recipients accounted for 13% of obstetric-gynecologic claims for which insurance status was known. In 1986, Medicaid recipients accounted for about 19% of admissions to Maryland hospitals.[8]

A 1988 article[9] examined malpractice experience associated with fertility-control services among a national sample of obstetricians-gynecologists. This study found no significant correlation between Medicaid participation and threatened or actual malpractice litigation.

The foregoing studies reinforce what logic tells us: for a variety of reasons, poor people are the most unlikely patients to sue.[10] The primary reason is that the poor are even less likely than the general population to perceive that any type of wrong has occurred or to assert their rights,[11] and much less likely to obtain legal counsel. Contrary to what many may think, there is not an "ambulance chaser" on every block, and indigent people have virtually no access to legal representation for malpractice suits. As a general rule, only members of the private bar can take malpractice cases, and, for economic reasons, hardly any take them for the indigent.

There are two reasons for the private bar's refusal to provide legal services in malpractice cases brought by low-income clients. First, malpractice plaintiff lawyers are usually paid on contingency; that is, the lawyer will get a percentage of the award if the plaintiff wins. Since malpractice awards are based largely on future earnings, and since poor people obviously have very low future earning potential, poor plaintiffs are unlikely to get large financial awards. In fact, a study showed that a Medicaid plaintiff's average malpractice award is approximately $50 000, compared with an average $250 000 award for privately insured patients.[12] Since the economic award probably will be small, private bar lawyers do not like to represent poor people; representation of the poor is not economically profitable.

If a private bar attorney is not available, the only other way for a low-income person to get legal representation is to qualify for a Legal Services lawyer. However, federal law prohibits Legal Services lawyers, the primary providers of free legal assistance to the poor, from taking malpractice cases unless that client first has been turned away by two private attorneys. Furthermore, the eligibility requirements for Legal Services are quite strict: a client's income must be under approximately $7000 per year to qualify.[13] Thus, as a practical matter, Legal Services lawyers virtually never take

Edited by Helene M. Cole, MD, Senior Editor.
Every letter must contain the writer's name and address, but these will be omitted on request. Questions are submitted to consultants at the discretion of the editor and published as space permits.

4-2

malpractice cases, and private bar lawyers virtually never take on a malpractice case for an indigent patient.

The same poverty that discourages lawyers from representing the poor likewise removes economic incentives for the poor to sue. In many states, Medicaid recipients must turn over to the state Medicaid agency their right to collect the money awarded by the court for medical care,[14] so the "successful" plaintiff may not get to keep any compensation. Another disincentive to poor people is the long delays in settlement of litigation. Finally, when compensation ultimately is received, it may be in the form of a lump-sum payment. Lump-sum payments usually disqualify the recipient from Aid to Families With Dependent Children, and therefore also disqualify the recipient from Medicaid. Thus, indigent plaintiffs who won their malpractice claim probably would lose their Medicaid coverage for other illnesses, preventive medical care, and their families' medical expenses as a result of receiving compensation for malpractice.

Despite the studies and the commonsense reasons demonstrating the unlikelihood of increased malpractice exposure from caring for low-income patients, the pernicious myth that poor people are a "malpractice risk" persists. Perhaps one reason for the persistence of this damaging myth is that physicians confuse the distinction between the likelihood of *medically bad outcomes* and the likelihood of *malpractice suits* and paid claims.[15] It may indeed be true that indigent patients are at higher risk for poor outcomes, because their overall health is inferior to that of privately insured people. But higher risk in and of itself does not affect a physician's malpractice exposure *if the incidents do not become claims.* Insurance premiums are based on the amount of money paid out in claims, not on the number of bad outcomes. As both common sense and recent studies tell us, poor people who have been the victims of malpractice rarely pursue their right to compensation in court.

Molly McNulty, JD
National Health Law Program
Washington, DC

1. Conversation with Leslie Lanham, Children's Defense Fund, Austin, Tex (June 15, 1989), author of the Texas Medical Association Professional Liability Survey (summer 1988).
2. Michigan Dept of Social Services. *Medicaid Matters.* February 1989;3(2).
3. Two other states, Maryland and Washington, currently are studying the issue. The Institute of Medicine also is expected to issue a report by September 1989.
4. Rosenbaum S, Hughes D. The medical malpractice crisis and poor women. In: Brown S, ed. *Prenatal Care: Reaching Mothers. Reaching Infants.* Washington, DC: Institute of Medicine; 1988:229-243.
5. *Medical Malpractice: Characteristics of Claims Closed in 1984.* Washington, DC: US General Accounting Office; 1987. GAO-HRD-87-55.
6. Data recalculated by Deborah Lewis-Idema, *Increasing Provider Participation.* Washington, DC: National Governors Association; 1988:27. The recalculation corrected for the presence of closed claims for which the insurance source was not known.
7. Data provided by Laura L. Morlock, The Johns Hopkins University School of Public Health, Dept of Health Policy and Management, *cited* in Lewis-Idema, *supra* note 6, p 70.
8. *Ibid.*
9. Weisman CS, Teitelbaum MA, Morlock LL. Malpractice claims experience associated with fertility-control services among young obstetricians-gynecologists. *Med Care.* March 1988;26(3):298-306.
10. Stoll K. Don't blame the poor for the malpractice crisis. *Washington Post.* April 30, 1986. Health Section:6.
11. Dept of Health, Education, and Welfare Secretary's Commission on Medical Malpractice. *Consumer's Knowledge of and Attitudes Towards Medical Malpractice.* Washington, DC: Dept of Health, Education, and Welfare; 1973:658-694. These data do not mean that the poor experience fewer incidents of malpractice. Peterson hypothesized that low-income groups may be less likely to perceive a negative medical experience as a case of malpractice.
12. US General Accounting Office, *supra* note 5. The GAO data were retabulated by Laura L. Morlock, The Johns Hopkins University. The GAO-published report includes payout on behalf of plaintiffs in 1 year. Because large awards frequently involve payments over time, the averages in the published report understate the effect of these awards. The retabulation from the GAO database covers total expected value of the award to the patient. Reported in Lewis-Idema, *supra* note 6, note 48 on p 71.
13. A person's family income must be less than 125% of the federal poverty guidelines to be eligible for Legal Services. In 1989, these levels are as follows:

Family Size	Annual Income, $
1	7475
2	10 025
3	12 575
4	15 125

Federal Register. February 16, 1989;54:7098.
14. See, eg, *White v Sutherland*, 585 P2d 331 (NM Ct App 1978); *Brown v Stewart*, 129 Cal App 3d 331 (Calif Ct App 1981); and *Moss v Glynn*, 383 NE2d 275 (Ill App Ct 1978).
15. Rosenbaum and Hughes, *supra* note 4.

43

..arch 4, 1992

Testimony Presented to:
Senate Financial Institutions and Insurance Committee

Chairman: Senator Richard Bond

Presented by: Betty Jean McElhaney RN, Program Director, Guadalupe Clinic, Wichita, KS. Member Kansas Commission on the Future of Health Care, Inc.

I wish to speak in favor of
SENATE BILL NO. 728 - CHARITABLE HEALTH CARE PROVIDER BILL

The four Major Points of this bill:

- Allows MEDICAID recipients to be part of the population served by Charitable Health Care Providers.
- Expands liability coverage to include Charitable Health Care Providers giving care to medically indigent in any local HEALTH DEPARTMENT or not for profit indigent health care clinic.
- Expands liability coverage to include Charitable Health Care Providers at any local HEALTH DEPARTMENT or not for profit indigent health care clinic who receive remuneration for their services.
- Provides liability coverage to Charitable Health Care Providers whether or not the local HEALTH DEPARTMENT or not for profit indigent health care clinic charges a fee based on federal poverty guidelines.

As the director of a free clinic, serving a medically indigent population, I wish to speak for this bill. In the original KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT/ADMINISTRATIVE RULES AND REGULATIONS FOR THE CHARITABLE HEALTH PROVIDER PROGRAM, it was clearly stated that recipients of MEDICAID assistance were not determined to be medically indigent.

This determination prohibited a provider from giving care to these needy individuals while volunteering under the Charitable Health Care Provider Program. Because the MEDICAID program is not totally comprehensive, many needs are left unmet.

A number of clinics utilizing volunteer health professionals; as well as volunteer physicians in private practice, have and wish to continue to meet as many of these needs as possible.

A change of definition would allow care for these otherwise qualifying individuals.

As concerned health care providers, we are very appreciative of the efforts that have been made to provide sensible liability coverage for each of us as we work in the various sites committed to serving the medically vulnerable citizens in Kansas.

Thank you for your consideration of this bill.

FI+I 3/4/92
Attachment #5

CHARITABLE HEALTH CARE PROVIDER

SENATE BILL No. 728

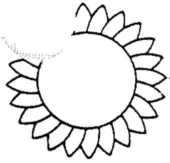
Testimony given on the 4th day of March, 1992

in support of this bill before Committee on Judiciary

on behalf of Johnson County, Kansas,

by Terry Ann Sinclair, Risk Manager.

FI&I 3/4/92
Attachment #6



Johnson County
Kansas

March 4, 1992

Comments in support of Senate Bill No. 728:

Local health departments, supported by federal and State grant funds, have been in a precarious situation when providing medical services which require a physician's participation/assistance to the medically indigent. Many health departments are financially prohibited from staffing a physician; therefore, these services are either contracted or are solicited on a gratuitous basis. The medical services provided by the physician, whether for a fee or gratuitously, place an additional exposure on the medical malpractice coverage the physician carries. The cost for this additional exposure is increased when the medical services of the physician are provided on a gratuitous basis. This increased exposure may make it prohibitive for the physician to provide services to the local health department.

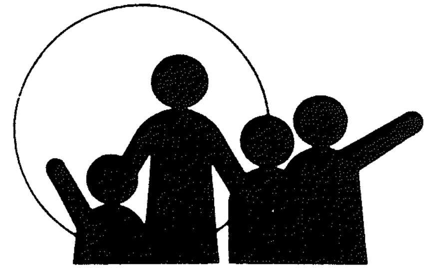
The proposed legislation, Senate Bill 728, removes the prohibitive exposure by expanding the charitable health care provider protection under the Tort Claims Act and the tort claims fund. This would create a favorable tool for the local health department in obtaining the gratuitous or fee-based services of physicians to provide services to the medically indigent in the health clinics or indigent care clinics. This bill also would remove the pilot program restriction, under K.S.A. 1991 Supp 65-226, which was not reasonable since other local health departments, which were not selected as a pilot program, were encouraged by available grant funds to establish clinics without the protection afforded by the Tort Claims Act and the tort claims fund.

Senate Bill 728 provides a significant impetus to physicians to provide the medical services which are so urgently needed by the indigent population and are offered through local health department or indigent care clinics.

Also, an important note is the actual liability risk from the operation of a local health department or a proposed indigent care clinic. Johnson County's loss history reflects no claims brought against the Health Department for its rendering or failure to render professional services. This is due not only to the operation's strict adherence to treatment protocol and ability to provide thorough patient education, but also, in my opinion, the individuals served are appreciative of the medical services which are provided and are not of a litigious nature.

I, as a Risk Manager, and Johnson County, as an entity providing indigent care through our Health Department, wholeheartedly support Senate Bill No. 728.

Office of Purchasing
& Risk Management
115 East Park, Suite 104 Olathe, Kansas 66061 (913) 791-5522



KALPCCA

KANSAS ASSOCIATION OF LICENSED PRIVATE CHILD CARE AGENCIES

BOARD OF DIRECTORS

PRESIDENT
Judy Culley
The Shelter Inc.
Box 647
Lawrence, Kansas 66044
913-843-2085

VICE PRESIDENT
Frank Ross
Elm Acres
Box 1135
Pittsburg, Kansas 66762
316-231-9840

TREASURER
Don Wise
Associated Youth Services
Box 6145
Kansas City, Kansas 66106
913-831-2820

SECRETARY
Peg Martin
The Farm, Inc.
Box 2224
Emporia, Kansas 66801
316-343-6111

AT LARGE
Ray Kelley
Cowley Co. Juvenile Center
Box 576
Arkansas City, Kansas 67005
316-442-8229

Doug Zimmerman
Ozanam Home for Boys
421 E. 137th St
Kansas City, Missouri 64145
816-942-5600

Sarah Robinson
Wichita Children's Home
810 N. Holyoke
Wichita, Kansas 67208
316-684-6581

Weldon White
Kansas East Youth Service
529 Mur-Lin
Olathe, Kansas 66062
913-764-6906

David Lang
St. Francis Academy
Box 1340
Salina, Kansas 67402
913-825-0541

PAST PRESIDENT
Wayne Sims
Wyandotte House
632 Tauromee
Kansas City, Kansas 66101
913-342-9332

EXECUTIVE DIRECTOR
Bruce Linhos
Box 3658
Lawrence, Kansas 66046
913-749-2775

Testimony
Senate Committee on Financial Institutions
March 4, 1992
Proponent: S.B. 728

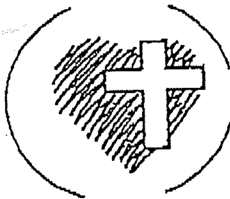
The Kansas Association of Licensed Private Child Care Agencies is comprised of community based, private not-for-profit organizations providing residential care to children in the states custody. Member agencies care for more than a 1,000 children annually from across Kansas. The entire foster care system in this state cares for better than 5,000 children each year.

One of the problems residential agencies and foster families have been having for some time revolves around the decreasing number of physicians willing to accept clients who have medical cards. Each child placed by SRS in foster care or group care is issued a medical card. The problem stems from the difficulty in finding medical care for children who rely on the medical card.

We were optimistic that the Charitable Health Care Providers act would assist us in seeing that foster children's medical needs are better served. As the bill was originally passed however, having a medical card disqualified these children from being considered "medically indigent".

We strongly support the current amendments being proposed to this bill and believe that these amendments will assist in insuring improved health care to many children in the foster care system.

FI+I 3/4/92
Attachment #7



HEALTH MINISTRIES OF HARVEY COUNTY, INC.
316 Oak Newton, Kansas 67114
316-283-6103

Director
Rojean DuBois, M.N.

Medical Director
Timothy Wiens, M.D.

Board of Directors

Steven Schmidt,
President

Marilyn Wilder,
Vice-President

Allison Lemons
Secretary

Robert Sjogren, C.P.A.
Treasurer

Larry Emerson

Bill Ester

Denise Manning

Mary McKay

Wanda Schmidt, R.N.,C.

Roy Weber, M.D.

Timothy Wiens, M.D.

March 4, 1992

To Whom It May Concern,

On behalf of Health Ministries of Harvey County, Inc., I am writing this statement of support for the Kansas Charitable Health Care provider Program

Without this program our clinic would not exist.

In August of 1990 planning began to establish a clinic designed to serve the uninsured in our area. In May 1991, we opened Health Ministries Clinic. We serve people in Harvey County primarily, but also serve bordering areas of McPherson, Marion and Butler counties.

Our patients are those people with no health insurance whose income places them at 200% poverty level or below. Most of these people are working but do not have health insurance as a benefit, or they are self employed and cannot afford private insurance. Sixty-five of the patients we see are at 100% poverty level or below.

All of our Health Care Providers (physicians and nurse practitioners) are volunteer. Initially, we opened with one active and three retired physician volunteers. The Charitable Health Care Program made that possible. The volunteer physicians could not have provided their own malpractice insurance and donated services.

The presence of this program also relays the message to the public that the Kansas Legislature thinks health care is an important issue and that they are willing to act. We strongly support further action to make this program accessible to more Kansans.

In 1991 we had 415 patients for a total of 734 visits. In January and February of this year we have seen 132 new patients for a total of 360 visits. The need is great.

Thank you for caring enough to provide this program.

Sincerely,

Rojean DuBois

Rojean DuBois, R.N., M.N.
Director

"And He sent them to preach the kingdom of God
and to heal the sick." Luke 9:2

FI&I 3/4/92
Attachment #8

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

Testimony of
THE KANSAS TRIAL LAWYERS ASSOCIATION
RE:
Senate Bill 728
March 4, 1992

The Kansas Trial Lawyers Association appears in opposition to S.B. 728

As general rule, we do not believe that persons should be given immunity from liability for acts of negligence which result in injury to others. In 1990 we agreed to support a change in the law which did in fact give health care providers immunity from liability if they were providing health care services to medically indigent persons and there were no fees paid for the services provided.

We agreed to the concept with a condition that the State of Kansas assume the liability under the Kansas Tort Claims Act. While libility is limited under these terms, it was still in place and served as a protective provision on behalf of injured indigent persons.

There was a quid pro quo which allowed services to be provided to indigent persons and in return for those free services those persons accepted limited protection from possible injury as a result of negligent acts on behalf of the health care provider.

H.B. 728 would now allow doctors to charge a fee for their services with a continued assumption of immunity from liability for negligence. The doctor would no longer be giving up the opportunity to collect a fee but there would be no personal liability if the doctor did cause injury to the patient.

We , the Kansas Trial Lawyers Association, oppose any law that would grant immunity to persons who charge a fee for their services.

There is an unfounded assumption in this bill that poor people tend to sue doctors more that other types of patients who are more economically stable. Because of that assumption, the effect of this bill is to create a second class citizen who would have less protection under law and who would receive nothing in return for the loss of that protection.

We propose to amend S.B. 728 to provide that immunity should only be extended if there are no fees. If that is not possible, we would then ask this committee to not recommend H.B. 728 favorably.

FI+I 3/4/92
Attachment #9

SENATE BILL No. 728

By Committee on Judiciary

2-25

AN ACT concerning charitable health care providers; amending K.S.A. 1991 Supp. 75-6102 and 75-6117 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1991 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. ~~1990~~ *1991* Supp. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity but does include a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor. Employee also includes former employees for acts and omissions within the scope of their employment during their

1 former employment with the governmental entity.
2 (e) "Community service work" means public or community serv-
3 ice performed by a person (1) as a result of a contract of diversion
4 entered into by such person as authorized by law, (2) pursuant to
5 the assignment of such person by a court to a community corrections
6 program, (3) as a result of suspension of sentence or as a condition
7 of probation pursuant to court order, (4) in lieu of a fine imposed
8 by court order or (5) as a condition of placement ordered by a court
9 pursuant to K.S.A. 38-1663, and amendments thereto.
10 (f) "Charitable health care provider" means a person licensed by
11 the state board of healing arts as an exempt licensee or a health
12 care provider as the term "health care provider" is defined under
13 K.S.A. 65-4921, and amendments thereto, who has entered into an
14 agreement with:
15 (1) The secretary of health and environment under K.S.A. ~~1990~~
16 *1991* Supp. 75-6120, and amendments thereto, who, pursuant to
17 such agreement, *gratuitously* renders professional services to a per-
18 son who has provided information which would reasonably lead the
19 health care provider to make the good faith assumption that such
20 person meets the definition of medically indigent person as defined
21 by this section ~~and who renders such professional services gra-~~
22 ~~tuitously~~ ~~*or persons receiving medical assistance from the programs*~~
23 ~~*operated by the department of social and rehabilitation services*~~, and
24 who is considered an employee of the state of Kansas under K.S.A.
25 ~~1990~~ *1991* Supp. 75-6120, and amendments thereto; or
26 (2) a local health department ~~that is part of the pilot programs~~
27 ~~established under K.S.A. 1991 Supp. 65-226 and amendments~~
28 ~~thereto~~, *or not for profit indigent health care clinic* who~~,~~ ~~pursuant~~
29 ~~to such agreement,~~ renders professional service to medically in-
30 digent persons ~~or persons receiving medical assistance from the pro-~~
31 ~~grams operated by the department of social and rehabilitation~~
32 ~~services gratuitously or for a fee paid by the local health de-~~
33 ~~partment or *on a contract*~~*.*
34 (g) "Medically indigent person" means a person who lacks re-
35 sources to pay for medically necessary health care services, and who
36 meets the eligibility criteria for qualification as a medically indigent
37 person established by the secretary of health and environment under
38 K.S.A. ~~1990~~ *1991* Supp. 75-6120, and amendments thereto.
39 Sec. 2. K.S.A. 1991 Supp. 75-6117 is hereby amended to read
40 as follows: 75-6117. (a) There is hereby established in the state
41 treasury the tort claims fund which shall be administered by the
42 attorney general. All expenditures from such fund shall be made
43 upon warrants of the director of accounts and reports pursuant to

[Margin insertion at lines 28–29:] gratuitously

[Margin insertion at line 35:] or who qualifies for medical assistance under Title 19 of the Federal Social Security Act

9-3

vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department ~~that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto~~, *or not for profit indigent health care clinic* to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106, and amendments thereto. Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department ~~that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto~~, *or not for profit indigent health care clinic* to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) This section shall be part of and supplemental to the Kansas

9-4

1 tort claims act.
2 Sec. 3. K.S.A. 1991 Supp. 75-6102 and 75-6117 are hereby
3 repealed.
4 Sec. 4. This act shall take effect and be in force from and after
5 its publication in the statute book.

9-5