

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:09 a.m. on January 26, 1995 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Bob Hayes, Health Care Stabilization Fund
Jerry Slaughter, Kansas Medical Society
Lori Callahan, KaMMCO

Others attending: See attached list

Senator Steffes moved to approve the minutes of the meeting of January 25 as submitted. Senator Clark seconded the motion; the motion carried.

The chairman opened the hearing on SB 46, which amends the health care provider insurance availability act. Bob Hayes, Executive Director of the Health Care Stabilization Fund, appeared before the committee to provide a brief overview of the history and current status of the HCSF. (Attachment #1)

Chairman Bond explained to the committee that Kansas law requires health care providers to have malpractice insurance or self-insurance and asked Mr. Hayes to explain the layers of coverage above the required basic liability coverage. Mr. Hayes informed the committee that roughly 75% of physicians choose the highest level of additional coverage. In response to Senator Lee's question, Mr. Hayes explained that Kansas has a cap on awards for pain and suffering but has no cap on actual damage awards.

Mr. Hayes also explained that SB 46 is intended to clean up the remaining technical problems relating to the separation of the HCSF from the Insurance Department and he requested further amendments to the bill (Attachment #2).

Jerry Slaughter, Kansas Medical Society, also appeared as a proponent of this bill (Attachment #3), stating that the bill is designed to complete the transfer of responsibility for operation the HCSF from the Commissioner of Insurance to the Fund's Board of Governors.

Lori Callahan, KaMMCO, testified that KaMMCO supports this legislation and that the technical amendments requested are consistent with and necessary for the full enactment of the 1994 legislation. (Attachment #4)

There were no further questions and no other conferees; the hearing was closed.

Senator Corbin made a motion to adopt the amendments proposed by Mr. Hayes. Senator Clark seconded the motion. The motion carried.

Senator Lawrence moved to recommend **SB 46** favorably as amended. Senator Corbin seconded the motion. The motion carried.

The committee adjourned at 9:55 a.m. The next meeting will be Tuesday, January 31.

LEGISLATIVE TESTIMONY
TO THE
SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

The Health Care Stabilization Fund
and
Senate Bill No. 46

January 26, 1995

Presentation By:

Bob Hayes, Executive Director
Health Care Stabilization Fund

Claire McCurdy, Attorney
Health Care Stabilization Fund

Senate 7141
1/26/95
Attachment #1

*The Kansas
Health Care Stabilization Fund*

*Separation from the Kansas
Insurance Department
Based on 1994 Legislation*

Health Care Stabilization Fund

1/25/95

After careful review of the provisions of the 1994 legislation and the operational objective of the Health Care Stabilization Fund, the Fund's Board of Governors has determined the Fund should separate itself from the Insurance Department. We are currently proceeding with that objective, and Senate Bill No. 46, now before this Committee, will assist in completing this task. At the end of this presentation regarding the Health Care Stabilization Fund, we will discuss the provisions of Senate Bill No. 46 and respond to any questions the Committee may have regarding this bill.

Overview of the Health Care Stabilization Fund

- *Established in 1976*
- *Resolved Medical Malpractice
Insurance Market Problems*

Health Care Stabilization Fund

1/25/95

The Health Care Stabilization Fund was created in 1976 because of the failure of the excess professional liability insurance markets for doctors, hospitals and other health care providers in Kansas. Approximately 15% of our Kansas doctors were unable to locate any excess professional liability insurance -- at any price. Hospitals and other health care providers were also confronted with a lack of excess insurance coverage. Even the new Hutchinson hospital facility, for example, was confronted with insurance availability problems. The extent of the excess insurance market failure extended throughout the state - in both urban areas and in rural settings.

Fund is Actuarially Sound

■ *Tillinghast Report*

- *Completed Spring 94*
- *Estimated Positive Balance of \$62 million*
- *Estimated Liabilities of \$124 million*

■ *Wakely Report*

- *Completed December of 1994*
- *Estimated Positive Balance of \$38 million*
- *Estimated Liabilities of \$148 million*

Based on a Projected June 30, 1994 Balance of \$186 Million

Health Care Stabilization Fund

1/25/95

Since 1991, the Fund has been determined not only to be actuarially sound but has acquired an estimated positive balance. The amount of the positive balance varies between the actuarial estimates of two independent actuarial firms. Tillinghast, the actuarial firm used by the Fund, has estimated the positive balance to be approximately \$62 million. The estimated positive balance amount provided by Wakely & Associates, the actuarial firm selected by the Legislative Oversight Committee, was \$38 million. While these two actuarial estimates may appear to be significantly different, both actuarial firms agree that, based on the Fund's projected June 30, 1994 balance of \$186 million, the difference of \$24 million between their estimates is not unreasonable or an indication that funding problems exist within the Fund itself.

Principle Source of the Positive Balance

- *Re-evaluation of loss expectations originally projected for Fiscal Years 1989 through 1991*

Health Care Stabilization Fund

1/25/95

Both actuarial firms indicate the source of the estimated positive balance of the Fund are the result of the current re-evaluation of the original loss estimates which were made in prior years; that is, the original loss expectations made in those prior years are not developing to the extent originally anticipated.

Lower Fund Surcharge Rates

Applying the Fund's Estimated Positive Balance Amounts:

- *Fiscal Year 1993 Were Lowered By \$4.4 Million or -16.8%*
- *Fiscal Year 1994 Were Lowered By \$12.5 million or -41.7%*
- *Fiscal Year 1995 Were Lowered By \$10 Million or -36%*

Health Care Stabilization Fund

1/25/95

Because of the estimated positive balance of the Fund, it has been possible for the Fund surcharge to be set lower than the actuarially indicated surcharge rate for the latest three fiscal years. Furthermore, we are anticipating the continuation of the lower surcharge rates for the next fiscal year. Part of this objective is to reach a smaller estimated positive balance which will be maintained as a "cushion". The amount of a cushion was discussed in the last meeting of the Legislative Oversight Committee. During their meeting, it was agreed that a cushion of \$20 million appeared to be reasonable. The amount of the cushion will be reviewed in greater detail when the Fund's Board of Governors receives the next actuarial report and sets the surcharge rates for Fiscal Year 1996.

The ability to utilize portions of the positive balance estimates to offset Fund surcharge rates is one of the benefits of maintaining the Health Care Stabilization Fund. If our health care providers were continuing to participate in the voluntary excess professional liability insurance markets, any "excess" premium payments made by Kansas providers would likely be used to pay for losses resulting from providers of states other than Kansas.

Other Benefits of the Fund

- *Local Management*
- *Alleviate Insurance Market Dependence*
- *Provides a Residual Insurance Market*
- *Avoids Most Claims-Made Policy Problems*
- *Source of Information and Data*

Health Care Stabilization Fund

1/25/95

Kansas health care providers receive other substantial benefits from the continuation of the Health Care Stabilization Fund. Other major benefits of the Fund are:

1. Local management of the Fund -- The Fund's Board of Governors is directly involved in the fiscal, organizational and administrative activities of the Fund. This includes all claim handling and provider defense activities.
2. Alleviates the dependence on national or foreign direct and reinsurance markets for the Fund's excess professional liability insurance coverage.
3. Provides a means to maintain a funded residual professional liability insurance market mechanism for the required basic professional liability insurance coverage.
4. Allows Kansas health care providers to avoid the basic professional liability claims-made tail coverage problems.
5. And finally, the Fund is a ready source of statistical information regarding the excess professional liability coverage it affords to Kansas health care providers.

Samples of Fund Information

- *December 31, 1994 Balance is:
\$186,880,661.32*
- *7,500 to 8,000 Health Care Providers
(21,000 providers since 1976)*
- *Paid Loss & Loss Expenses have been
\$222,677,822.82*
- *Average Loss Payment is \$326,073.*
- *Total Cases 3,400*

Health Care Stabilization Fund

1/25/95

From the existing records of the Fund, we can furnish the following information:

1. The December 31, 1994 balance of the Fund was:
\$186,880,661.32.
2. Between 7,500 and 8,000 health care providers are presently complying with the Fund. (On December 31, 1994 there were 7,429 providers listed in compliance; however, on any given date there are a number of providers who are in compliance but due to processing schedules of the industry and the Fund, their current compliance record has not been entered into the Fund's records.)
3. Since the inception of the Fund, about 21,000 health care providers have complied with the Fund -- either currently or at some time in the past.
4. Total paid losses and paid loss expenses of the Fund, as of the end of 1994, have been \$222,677,822.82.
5. The FY1994 average loss payment from the fund is \$326,073.
6. The Fund has been notified of 3,400 cases. 3,016 have been closed and 384 are open.

Future Outlook of the Fund

To be maintained in a manner which will benefit not only the individual Kansas health care provider but also the Kansas health care delivery system.

Health Care Stabilization Fund

1/25/95

This has been just a brief overview of the Kansas Health Care Stabilization Fund. In closing, it is important to again note that the Fund has experienced many difficulties throughout the years; however, at the present time and for the foreseeable future, those difficult times are part of the Fund's history. We are currently looking forward to maintaining the Fund in a manner which will benefit not only the health care providers but also the Kansas health care delivery system.

Testimony on Senate Bill No. 46

This Senate Bill is intended to clean-up the remaining technical problems relating to the separation of the Health Care Stabilization Fund management activities from the Insurance Department that existed after the enactment of the 1994 legislation (House Bill No. 2730, Senate Bill No. 474 and Senate Bill No. 854).

Proposed revisions:

1. Page 11 and page 12 -- Correct two technical areas.

The first on page 11 deals with the required notice of basic coverage documentation to be in the manner and the form prescribed by the board of governors, not the Commissioner.

The change on page 12 relates to documentation of professional liability coverage for those providers whose Fund coverage has been terminated from Fund coverage.

2. Revisions set forth in Section 3, pages 12 through 14, relate to the administration of the availability plan for the required basic professional liability insurance coverage. These revisions are intended to leave the principle regulatory authority with the Commissioner but to provide a means for the Fund's Board of Governors to review any plan submitted and make specific recommendations to the Commissioner. The Commissioner would then be required to approve or disapprove those plans consistent with the Board of Governor's recommendations.

3. Section 4, pages 14 to 17. The existing provisions of K.S.A. 40-3414 regarding self-insurance authorization are presently under the Commissioner's authority. Revisions set forth in this bill change self-insurance authorization for the basic professional liability coverage to be the responsibility of the Board of Governors rather than the Commissioner's.

4. The remaining changes set forth in Sections 5 and 6 appear to correct technical oversights which were omitted from the 1994 legislation.

Section 5 relates to reporting requirements for providers suspected to be in violation of the Fund law.

Section 6 provides for the reporting of medical malpractice claim information to the Board of Governors, not the Commissioner.

Finally, we are requesting one further amendment to Senate Bill No. 46. Review handout with Committee.

We will be pleased to respond to any questions regarding these proposed revisions.

SENATE BILL No. 46

By Committee on Financial Institutions and Insurance

1-17

9 AN ACT concerning the health care provider insurance availability act;
10 amending K.S.A. 40-3403a, 40-3413, 40-3414, 40-3416 and 40-3421
11 and K.S.A. 1994 Supp. 40-3403 and repealing the existing sections.

12
13 Be it enacted by the Legislature of the State of Kansas:

14 Section 1. K.S.A. 1994 Supp. 40-3403 is hereby amended to read as
15 follows: 40-3403. (a) For the purpose of paying damages for personal
16 injury or death arising out of the rendering of or the failure to render
17 professional services by a health care provider, self-insurer or inactive
18 health care provider subsequent to the time that such health care provider
19 or self-insurer has qualified for coverage under the provisions of this act,
20 there is hereby established the health care stabilization fund. The fund
21 shall be held in trust in a segregated fund in the state treasury. The board
22 of governors shall administer the fund or contract for the administration
23 of the fund with an insurance company authorized to do business in this
24 state.

25 (b) (1) On the effective date of this act, the board of governors in
26 existence on the day preceding such effective date is hereby abolished.
27 On the effective date of this act, there is hereby created a board of gov-
28 ernors which shall be composed of such members and shall have such
29 powers, duties and functions as are prescribed by this act. The board of
30 governors shall:

31 (A) Administer the fund and exercise and perform other powers, du-
32 ties and functions required of the board under the health care provider
33 insurance availability act;

34 (B) provide advice, information and testimony to the appropriate li-
35 censing or disciplinary authority regarding the qualifications of a health
36 care provider;

37 (C) prepare and publish, on or before October 1 of each year, a sum-
38 mary of the fund's activity during the preceding fiscal year, including but
39 not limited to the amount collected from surcharges, the highest and
40 lowest surcharges assessed, the amount paid from the fund, the number
of judgments paid from the fund, the number of settlements paid from
the fund and the amount in the fund at the end of the fiscal year; and

43 (D) have the authority to grant exemptions from the provisions of

Proposed amendments on pages 2 and 3.

These amendments are intended to address
the issue of the appointment provisions related
to the Fund's Board of Governors membership in
the light of the Workers' Compensation Supreme
Court decision in the Sedlak v. Dick case.

The proposed amendment as shown in this draft
will require the professional society or associa-
tion to submit a list of three Board of Governor
nominees to the Commissioner.

Senate 7/41
11/26/95 #2
Attachment #2

2-2

1 subsection (m) of this section when a health care provider temporarily
2 leaves the state for the purpose of obtaining additional education or train-
3 ing or to participate in religious, humanitarian or government service
4 programs. Whenever a health care provider has previously left the state
5 for one of the reasons specified in this paragraph and returns to the state
6 and recommences practice, the board of governors may refund any
7 amount paid by the health care provider pursuant to subsection (m) of
8 this section if no claims have been filed against such health care provider
9 during the provider's temporary absence from the state.

10 (2) The board shall consist of 10 persons appointed by the commis-
11 sioner of insurance, as provided by this subsection (b) and as follows:

12 (A) Three members who are licensed to practice medicine and sur-
13 gery in Kansas who are doctors of medicine and who are on a list of
14 nominees submitted to the commissioner by the Kansas medical society;

15 (B) three members who are representatives of Kansas hospitals and
16 who are on a list of nominees submitted to the commissioner by the
17 Kansas hospital association;

18 (C) two members who are licensed to practice medicine and surgery
19 in Kansas who are doctors of osteopathic medicine and who are on a list
20 of nominees submitted to the commissioner by the Kansas association of
21 osteopathic medicine;

22 (D) one member who is licensed to practice chiropractic in Kansas
23 and who is on a list of nominees submitted to the commissioner by the
24 Kansas chiropractic association;

25 (E) one member who is a licensed professional nurse authorized to
26 practice as a registered nurse anesthetist who is on a list of nominees
27 submitted to the commissioner by the Kansas association of nurse anes-
28 thetists.

29 (3) On and after the effective date of this act, whenever a vacancy
30 occurs in the membership of the board of governors created by this act,
31 the commissioner shall appoint a successor of like qualifications from a three
32 list of nominees submitted to the commissioner by the professional so-
33 ciety or association prescribed by this section for the category of health
34 care provider required for the vacant position on the board of governors.
35 Except as otherwise provided by this section, all appointments made shall
36 be for a term of office of four years, but no member shall be appointed
37 for more than two successive four-year terms. Each member shall serve
38 until a successor is appointed and qualified. Whenever a vacancy occurs
39 in the membership of the board of governors created by this act for any
40 reason other than the expiration of a member's term of office, the com-
41 missioner shall appoint a successor of like qualifications to fill the unex-
42 pired term. In each case of a vacancy occurring in the membership of the
43 board of governors, the commissioner shall notify the professional society

1 or association which represents the category of health care provider re- three
2 quired for the vacant position and request a list of nominations of health
3 care providers from which to make the appointment.

4 (4) (A) The persons serving as members of the board of governors
5 on the day preceding the effective date of this act, except the commis-
6 sioner of insurance and the persons appointed from the public at large
7 or to represent the unspecified category of health care providers under
8 the provisions of this section as it existed on the day preceding the effec-
9 tive date of this act, shall be the initial members of the board of governors
10 created by this act and shall hold such office in accordance with and
11 subject to the provisions of this section. The commissioner shall designate
12 the terms of office of such initial members of the board of governors
13 created by this act as follows:

14 (i) one member who is licensed to practice medicine and surgery in
15 Kansas who is a doctor of medicine shall be designated for a term expiring
16 on July 1, 1995;

17 (ii) one member who is licensed to practice medicine and surgery in
18 Kansas who is a doctor of medicine shall be designated for a term expiring
19 on July 1, 1996;

20 (iii) one member who is licensed to practice medicine and surgery in
21 Kansas who is a doctor of medicine shall be designated for a term expiring
22 on July 1, 1997;

23 (iv) one member who is a representative of a Kansas hospital shall be
24 designated for a term expiring on July 1, 1995;

25 (v) one member who is a representative of a Kansas hospital shall be
26 designated for a term expiring on July 1, 1996;

27 (vi) one member who is a representative of a Kansas hospital shall be
28 designated for a term expiring on July 1, 1997;

29 (vii) one member who is licensed to practice medicine and surgery
30 in Kansas who is a doctor of osteopathic medicine shall be designated for
31 a term expiring on July 1, 1995;

32 (viii) one member who is licensed to practice medicine and surgery
33 in Kansas who is a doctor of osteopathic medicine shall be designated for
34 a term expiring on July 1, 1996;

35 (ix) the member who is licensed to practice chiropractic in Kansas
36 shall be designated for a term expiring on July 1, 1995; and

37 (x) the member who is a licensed professional nurse authorized to
38 practice as a registered nurse anesthetist in Kansas shall be designated
39 for a term expiring on July 1, 1996.

(B) If there was a vacancy in the membership of the board of gov-
42 ernors abolished by this act on the day preceding the effective date of
43 this act, the commissioner shall appoint a person of like qualifications in
accordance with this subsection (b) and shall designate the term of such

2-3



KANSAS MEDICAL SOCIETY

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

January 26, 1995

TO: Senate Financial Institutions & Insurance Committee

FROM: Jerry Slaughter
Executive Director *J. Slaughter*

SUBJECT: SB 46; Concerning the Health Care Stabilization Fund

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 46, which makes technical changes to the Health Care Provider Insurance Availability Act. The amendments contained in SB 46 are designed to complete the transfer of responsibility for operating the HCSF from the Commissioner of Insurance to the Fund's Board of Governor's. This process was initiated be last year's legislature, and this bill merely cleans up some of the details that were overlooked.

Established in 1976 to provide professional liability insurance coverage to health care providers, the Fund has operated successfully throughout almost two decades of often stormy and volatile market conditions. There are no state tax dollars in the Fund. It is entirely supported by premiums (surcharges) paid by physicians, hospitals and other health care providers. At December 31, 1994, the Fund had a balance of almost \$187 million, and was in very sound financial shape. During its existence, the Fund has paid out almost \$198 million in settlements and judgments.

The Fund is embarking on a new path this year, as its operations are transferred from the Insurance Commissioner's jurisdiction to its own Board of Governors, a move we support. The bill before you today helps complete that transition, and we urge your support. Thank you for the opportunity to offer these comments.

*Senate 7141
1/26/95
Attachment #3*

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

MEMO

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: S.B. 46

DATE: January 26, 1995

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic physician-owned, professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures over 1,000 Kansas physicians and is the largest insurer of physicians in the state. KaMMCO is also the servicing carrier for the statutorily created Kansas Health Care Provider Insurance Availability Plan, a joint underwriting association for Kansas health care providers.

KaMMCO supports S.B. 46. In 1994 legislation was enacted which made the Kansas Health Care Stabilization Fund independent of the Kansas Insurance Department. This was done to reflect the autonomy of the Fund, which is solely supported by Kansas health care providers, and receives no state funds. This was the first major reconsideration of the Fund since its creation in the 1970's. In so doing, there were minor technical issues which were not addressed, but have become apparent since the Fund became independent January 1, 1995. These technical matters are consistent with and necessary for the full enactment of the 1994 legislation. Accordingly, KaMMCO urges this committee to vote this bill favorable for passage.

Endorsed by the Kansas Medical Society

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*Senate 7/41
1/26/95
attachment #4*