

Approved: March 11, 1996
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 8, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Jordan, Petty, Reynolds, and Steffes.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Philip Harness, Director, Workers Compensation Division
Terry A. Tracy, M.D., Medical Director, Workers Compensation Division
Jerry Slaughter, Kansas Medical Society
C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division
A. J. Kotich, Legal Counsel, Department of Human Resources

Others attending: See attached list

SB 657: Revising workers compensation medical fee schedule

Philip Harness, Chairman, Workers Compensation Advisory Committee, appeared before the Committee and stated the Advisory Committee scheduled a special meeting to consider SB 657 as requested. The Advisory Committee heard testimony from the Medical Society. The Advisory Committee determined the statute need not be amended this year.

The Workers Compensation Division held a public hearing on the proposed new rates this past Wednesday. The proposed new rates will increase rates 1 to 2% according to NCCI.

Doctor Terry Tracy, Medical Director, Workers Compensation Division, briefed the Committee regarding the procedure used to set rates. Dr. Tracy stated a 17% benchmark was used; rates were compared with Blue Cross and Medicare. Some procedures were increased and some decreased as a result of the comparison and the 17% benchmark used. Dr. Tracy stated there is an average 12% increase to providers at a cost of the 1 to 2% increase in rates. The private utilization contract with Kansas Foundation for Peer Review has been operational for one year and the Division is presently in the process of reevaluating the contract. The greatest problem faced is a lack of data available in determining cost of procedures. Insurance companies are not required to share the data.

Jerry Slaughter, Kansas Medical Society, appeared to request an amendment to SB 657. The amendment strikes the requirement that rules and regulations setting medical fees shall be in effect on or before January 15 of each year and provides for the revision of medical fee schedules at least every two years. The amendment also states the adoption of the rules and regulations shall be in effect before June 1, 1997.

Mr. Slaughter stated, after appearing before the Advisory Committee and learning the difficulty in data collection by the Division, he submitted an amendment establishing a health care claims database. The proposed amendment provides for the Secretary of Health and Environment, as administrator of the health care database, to serve as the statistical agent for the purpose of gathering, receiving and compiling the data required by the Director of Workers Compensation.

Senator Feleciano moved, seconded by Senator Reynolds, that SB 657 be amended to provide for data collection pursuant to K.S.A. 65-6804. The voice vote was in favor of the amendment. Attachment 1

Senator Feleciano moved, seconded by Senator Jordan, that SB 657 be amended pursuant to the balloon; and be recommended favorable for passage. The recorded vote was in favor of the motion. Attachment 2

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 8, 1996.

Upon motion by Senator Steffes, seconded by Senator Reynolds, the Minutes of the March 5, March 6, and March 7 meetings were unanimously approved.

SUBSTITUTE FOR HB 2660: Increasing the caps on applicant fees which may be charged by private employment agencies

The Chair reviewed for the Committee the provisions of SubHB 2660 and stated representatives from the Attorney General's Consumer Protection Division and the Department of Human Resources were present at her request. The Chair called the Committee's attention to additional written testimony from John Thomas, President, Heart of America Staffing Services Association, Attachment 3, and testimony from Patricia L. Bossert, Owner, Key Temporary Personnel. Attachment 4.

Steve Rarrick, Deputy Attorney General, Consumer Protection Division, advised the Committee the Attorney General has taken no position on HB 2660, the Substitute for HB 2660, or the policy consideration involved in these bills. Mr. Rarrick stated the Office of the Attorney General has no record of receiving complaints against private employment agencies. Mr. Rarrick advised that if HB 2660 passed and the provisions of K.S.A. 44-401 et seq. were repealed, the Consumer Protection Act (CPA) would provide authority for the Attorney General to investigate deceptive and unconscionable acts and practices committed by private employment agencies. The CPA does not provide authority to "regulate" private employment agencies as provided in K.S.A. 44-401 et seq. Attachment 5

Mr. Rarrick summarized the result of HB 2660 repealing the regulatory statutes: (1) Private employment agencies would not be required to be licensed: (2) Bonding would not be required: (3) Agencies would no longer be required to keep a register of applicants seeking employment: (4) Administrative revocation of license would be eliminated; however, injunctive relief is available under CPA: (5) Prohibitions on false notices, false advertisement, false information, and false promises would be eliminated; however, general prohibitions of deceptive acts would be available under CPA: (6) Criminal penalty would not be available: and (7) Private employment agencies would be able to charge employees for services.

A. J. Kotich, Legal Counsel, Department of Human Resources, stated the Department does not take a position on this bill. Mr. Kotich stated the Department had received requests for exemption and the repeal of K.S.A. 44-401, et seq. as a result of the Interim Committee on Commerce and Industry study. Mr. Kotich stated he does not understand New Section 3 which mandates temporary help services to provide written notice of all employee benefits due to the agencies not being an employer. He further questions the language on Page 2, line 34, stating "provide information or service of any kind". Such a reference could refer to interviewing techniques, preparing resume's, etc. The language is too broad. Mr. Kotich advised SubHB 2660 would require a .5 FTE or a 1 FTE to collect fees and to regulate.

Ron Hein clarified that "temporary agencies" were exempt from SubHB 2660 as provided on Page 1, Line 43.

The meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for March 11, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 8, 1996

NAME	REPRESENTING
Rick Pittman	Health Midwest
ARON PALAN	KAOM
JERRY SWANWATER	KMG
Tom Wilder	Kansas Insurance Dept
Wen Hanson	US Medical Society
Nancy Lindberg	A.C.
Steve Larrick	Attorney General
David Shufelt	KDHR Div of Work Comp
Al [unclear]	KDHP
Harry Bonn	DoFA
MARK RAN	Professional Security, Inc.
DON DOESKEN	KDHR-legal
Aaron Palan	—
Frank Palan	—
Bill Farrell	Boeing
Roger [unclear]	Ks gov Consultants
KEVIN ROBERTSON	Ks SELF-INSURERS ASSOC.
Ron Hein	HASSA
TERRY A. TRACY, MD.	DWC

Amendment establishing a health care claims database

Every insurer, group funded self-insurance plan, third party administrator or other entity which provides insurance or payment for claims or health care services rendered pursuant to the workers compensation act shall report annually to the director such information as the director may require for the purpose of developing a comprehensive database on the claims and expenditures for health care services provided pursuant to this act. The director may contract with the secretary of health and environment, as administrator of the health care database, pursuant to K.S.A. 65-6804, and amendments thereto, to serve as the statistical agent for the purpose of gathering, receiving and compiling the data required by the director. Data collected pursuant to this section shall be confidential and shall be disseminated only for statistical purposes pursuant to rules and regulations adopted by the director and shall not be disclosed or made public in any manner which would identify individuals. The director shall adopt rules and regulations necessary to carry out the provisions of this section.

*Senate Commerce Committee
March 8, 1996*

Attachment 1

SENATE BILL No. 657

By Committee on Commerce

2-12

9 AN ACT concerning workers compensation; relating to the medical fee
10 schedule; amending K.S.A. 44-510 and repealing the existing section.
11

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

13 Section 1. K.S.A. 44-510 is hereby amended to read as follows: 44-
14 510. Except as otherwise provided therein, medical compensation under
15 the workers compensation act shall be as follows:

16 (a) It shall be the duty of the employer to provide the services of a
17 health care provider, and such medical, surgical and hospital treatment,
18 including nursing, medicines, medical and surgical supplies, ambulance,
19 crutches, and apparatus, and transportation to and from the home of the
20 injured employee to a place outside the community in which such em-
21 ployee resides, and within such community if the director in the director's
22 discretion so orders, including transportation expenses computed in ac-
23 cordance with subsection (a) of K.S.A. 44-515 and amendments thereto,
24 as may be reasonably necessary to cure and relieve the employee from
25 the effects of the injury.

26 (1) The director shall appoint, subject to the approval of the secretary,
27 a specialist in health services delivery, who shall be referred to as the
28 medical administrator. The medical administrator shall be a person li-
29 censed to practice medicine and surgery in this state and shall be in the
30 unclassified service under the Kansas civil service act. The medical ad-
31 ministrator, subject to the direction of the director, shall have the duty
32 of overseeing the providing of health care services to employees in ac-
33 cordance with the provisions of the workers compensation act, including
34 but not limited to:

35 (A) Preparing, with the assistance of the advisory panel, the fee
36 schedule for health care services as set forth in this section;

37 (B) developing, with the assistance of the advisory panel, the utili-
38 zation review program for health care services as set forth in this section;

39 (C) developing procedures for appeals and review of disputed
40 charges or services rendered by health care providers under this section;

41 (D) developing a system for collecting and analyzing data on expend-
42 itures for health care services by each type of provider under the workers
compensation act; and

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Senate Commerce Committee
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Attachment 2 thru 3

2-2

(E) carrying out such other duties as may be delegated or directed by the director or secretary.

(2) The director shall prepare and adopt rules and regulations; which shall be in effect on or before July 1, 1993; and which establish a ~~On or before January 15 of each year, the director shall adopt rules and regulations which revise the schedule of maximum fees for medical, surgical, hospital, dental, nursing, vocational rehabilitation or any other treatment or services provided or ordered by health care providers and rendered to employees under the workers compensation act. The schedule shall include provisions and review procedures for exceptional cases involving extraordinary medical procedures or circumstances and shall include costs and charges for medical records and testimony.~~ June 1, 1997 and at least every two years thereafter

(3) The schedule of maximum fees shall be reasonable, shall promote health care cost containment and efficiency with respect to the workers compensation health care delivery system, and shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

(4) (A) In every case, all fees, transportation costs, charges under this section and all costs and charges for medical records and testimony shall be subject to approval by the director and shall be limited to such as are fair, reasonable and necessary. ~~The revised schedule of maximum fees shall be reviewed annually by the director to assure that the schedule is current, reasonable and fair.~~ revised at least every two years

(B) There is hereby created an advisory panel to assist the director in establishing a schedule of maximum fees as required by this section. The panel shall consist of the commissioner of insurance and seven members appointed as follows: (i) One person shall be appointed by the Kansas medical society, (ii) one member shall be appointed by the Kansas association of osteopathic medicine, (iii) one member shall be appointed by the Kansas hospital association, (iv) one member shall be appointed by the Kansas chiropractic association, and (v) three members appointed by the secretary. One member appointed by the secretary shall be a representative of employers recommended to the secretary by the Kansas chamber of commerce and industry. One member appointed by the secretary shall be a representative of employees recommended to the secretary by the Kansas AFL-CIO. One member appointed by the secretary shall be a representative of entities providing vocational rehabilitation services pursuant to K.S.A. 44-510g and amendments thereto. Each appointed member shall be appointed for a term of office of two years which shall commence on July 1 of the year of appointment. ~~The advisory panel shall annually select a consulting firm with expertise regarding customary charges for provision of health care services in this state. Such consulting firm~~

~~shall be contracted by the director to provide research and analysis to the advisory panel for evaluation of the adequacy of maximum fees established under this section. The cost of such contract shall be paid from the workers compensation fee fund and such contract shall be exempt from the competitive bid requirements of K.S.A. 75-3739 and amendments thereto.~~

(C) All fees and other charges paid for such treatment, care and attendance, including treatment, care and attendance provided by any health care provider, hospital or other entity providing health care services, shall not exceed the amounts prescribed by the schedule of maximum fees established under this section or the amounts authorized pursuant to the provisions and review procedures prescribed by the schedule for exceptional cases. A health care provider, hospital or other entity providing health care services shall be paid either such health care provider, hospital or other entity's usual charge for the treatment, care and attendance or the maximum fees as set forth in the schedule, whichever is less. In reviewing and approving the schedule of maximum fees, the director shall consider the following:

(i) ~~The levels of fees for similar treatment, care and attendance imposed by other health care programs or third-party payors in the locality in which such treatment or services are rendered. Research and analysis of the consulting firm and recommendations of the advisory panel regarding adequacy of maximum fees.~~

[re-insert language from current law]

(ii) ~~indices which measure trends in costs of medical services as reported by the bureau of labor statistics of the United States department of labor.~~

(i) (iii) the impact upon cost to employers for providing a level of fees for treatment, care and attendance which will ensure the availability of treatment, care and attendance required for injured employees;

(ii) (iv) the potential change in workers compensation insurance premiums or costs attributable to the level of treatment, care and attendance provided; and

(iii) (v) the financial impact of the schedule of maximum fees upon health care providers and health care facilities and its effect upon their ability to make available to employees such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

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

(5) Any contract or any billing or charge which any health care provider, vocational rehabilitation service provider, hospital, person, or institution enters into with or makes to any patient for services rendered in

Heart of America Staffing Services Association

FAX COVER SHEET

Date: 3/7/96
Pages: 4
To: Ron & Julie Hein / Alicia Salisbury
From: John Thomas
Phone: 913-273-9243 / 913-296-6718, 1153
Subject: Testimony

Ron/Alicia,

I am forwarding a copy of my testimony given before the House Committee this past fall.

As we have stated before, our position would be to repeal the Employment Agencies laws. We strongly oppose the amendment added that mandates the Temporary agencies to give benefit information to applicants.

If you have any questions in regards to my testimony or would like to ask our input or suggestions, please give me a call.



John Thomas
President

Senate Commerce Committee

4550 West 109th Street, Suite 312 Overland Park, KS 66211 (913)-498-3900 FAX (913)-498-8094

March 8, 1996

Attachment 3 thru 3-4

**TESTIMONY ON DE-REGULATION
OF THE EMPLOYMENT INDUSTRY**

Good Morning ladies and gentlemen.

My name is John Thomas and I am the Vice President of Kaplan & Associates, an accounting and finance placement company. I am also the President of the *Heart of America Staffing Services Association*, which represents the Temporary and Full-time staffing firms here in the state of Kansas. I am here today to express my thoughts in regard to deregulating the employment industry.

I have been in the employment industry for 12 years. I have worked in both the Temporary and the Full-time placement sides of our industry. Our Association is comprised of both Temporary and Full-time placement companies.

The Staffing services industry serves as a mechanism to achieve full employment for our states by matching unemployed people with jobs, as well as matching employed people with new employers looking to fill open positions. This system has been an effective tool for over forty years with a few exceptions.

The Employment Agency laws here in Kansas have been on the books since 1911. Many of the changes over the years have been very minor in scope to the vast changes that have taken place in the Employment Industry during the same time period. For example, in a letter used in testimony before the Labor, Industry & Tourism committee in 1982, Jerry Powell, Employment Relations Administrator for the Department of Human Resources stated that there were 62 (SIXTY-TWO) licensed agencies operating in Kansas. In 1995 there are 0 (ZERO) licensed agencies in the state of Kansas. It is my understanding that the 62 (SIXTY) licenses were for wall plaques only. In 1982 the KDHR was handling approximately 1 complaint/inquiry per month. In 1995 the complaints/inquiries to the KDHR were very limited. In fact the only complaints/inquires made, may have been the ones made by our Association.

As I have testified before, these laws are in need of many changes to reflect the new look of the Employment Industry. But as I have stated in previous testimony, this Industry has existed here in Kansas employing thousands of workers on a daily basis with very few, if any, complaints or concerns of its employees. The exceptions to which I speak involve those situations in which a person is charged a fee for locating employment. According to the KDHR Employment Standards Division, virtually ALL of the complaints they deal with involve cases where a person believes they have been wronged when a company charged them money to locate a job.

The current Employment Agency Laws provides no protection or method of recourse for an individual that feels they have been wronged by an employment agency. Additionally, the Employment Agency is required by law to abide by all employer regulations on the State and Federal level. Through EEOC & Affirmative Action laws the applicant has means of seeking justice if the applicant believes they have been wronged by the Employment Agency. The only area that the applicant is at risk, is that of being *charged a fee* for seeking employment. Again the current Employment Agency Laws are outdated in their language addressing the many ways that an individual can be *charged a fee* for seeking employment.

But at this time given the low unemployment rate and the need for qualified workers, I do not feel that there is going to be a dramatic increase in applicant paid fee companies opening offices in Kansas. In Missouri, where Agencies are able to charge fees, there is less than 3% of all employment agencies that charge applicants a fee for finding employment. On a National level, according to the National Association of Personnel Services, less than 40 of the 900 plus members in 1994 were charging a fee to individuals for finding employment. Let me also state that even with the existing Employment Agency Laws those few companies that would try applicant paid fees can still open and operate until they are uncovered in their business practices.

A mechanism for wronged consumers to seek justice would be through the Attorney General's office. In reviewing the current consumer protection laws it is my understanding that there is adequate protection to an individual that feels they have been treated unjustly through the Consumer Protection Laws..

As President of the Heart of America Staffing Services it is my recommendation that the current Employment Agency Laws be repealed, as that in their current condition they do not represent the employment industry of the 1990's and beyond.

Thank you for your time.



March 7, 1996

Senator Alicia L. Salisbury
Chairperson, Senate Commerce Committee
State Capitol, Room 120-S
Topeka, KS 66612

Dear Senator Salisbury:

As a board member of HASSA and owner of an employment service, I am expressing my support for deregulation of employment agencies, as was the initial intent behind HB2660. As you are aware, I participated in the Interim study of this bill. Although our association, myself included, originally opposed applicant paid fees, after studying the issue this summer, we are in support of deregulation for several reasons.

- 1.) It is not appropriate to single out two agencies and exempt them from the current law, as was done last session with Cattleman's and Access.
- 2.) It is virtually impossible to regulate applicant fees that are currently charged in Kansas through the Internet and through "900" numbers. Therefore, the only agencies the law would end up regulating are existing Kansas businesses who are unlikely to abuse the law anyway.
- 3.) Because of the nature of the employment industry, an agency can simply move their office across the state line and serve Kansas applicants from Missouri or Oklahoma where applicant fees are allowed.
- 4.) There is an extreme shortage of employment candidates in Kansas. If an agency begins charging large or fraudulent fees to applicants, they will soon put themselves out of business. In today's employment climate, agencies are more inclined to pay applicants than to charge them!

For these reasons, I support deregulation of the employment industry.

Respectfully,

A handwritten signature in cursive script that reads "Patricia L. Bossert".

Patricia L. Bossert
Owner

Senate Commerce Committee

March 8, 1996

(913) 267-9905

Attachment 4



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597

PHONE: (913) 296-3751 FAX: (913) 291-3699

CONSUMER HOTLINE
1-800-432-2310

Testimony of

C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division

Office of Attorney General Carla J. Stovall
Before the Senate Commerce Committee

RE: HB 2660/Substitute for HB 2660

March 8, 1996

Chairperson Salisbury and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to provide information on House Bill 2660 and the Substitute for House Bill 2660. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

I have been requested to provide the information to this Committee that I gave to the House Business, Commerce, and Labor Committee on House Bill 2660, and information on the Substitute for House Bill 2660. Attorney General Carla Stovall has taken no position on HB 2660, the Substitute for House Bill 2660, or the policy considerations involved in these bills.

I was asked to provide information to the House Committee by Representative Janice Pauls on how the Kansas Consumer Protection Act (KCPA) would be applied to private employment agencies if House Bill 2660 repealed the provisions of K.S.A. 44-401 et seq. The Office of the Attorney General has no record of ever receiving complaints against private employment agencies from the Secretary of Human Resources pursuant to the provisions of K.S.A. 44-401 et seq. This appears to be because the statutes in question essentially prohibit charging employees for the services of private employment agencies.

If HB 2660 were passed and the provisions of K.S.A. 44-401 et seq. were repealed, the KCPA would provide authority for the Attorney General to investigate deceptive and unconscionable acts and practices committed by private employment agencies. However, the KCPA does not provide authority to "regulate" private employment agencies, unlike the provisions of K.S.A. 44-401 et seq. I have attempted to summarize, as briefly as possible, the result of HB 2660 repealing these regulatory statutes and whether the KCPA will or will not provide similar protection to consumers:

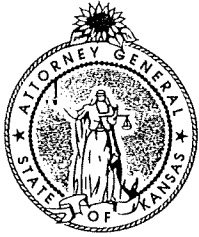
1. Private employment agencies would not be required to be licensed under K.S.A. 44-402.
2. The bonds currently required by K.S.A. 44-403 and K.S.A. 44-404 would not be available to pay for deceptive acts or other violations by private employment agencies.

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Attachment 5 thru 5-4*

3. The duty of agencies to keep a register of applicants seeking employment and the nature of the employment sought would no longer be required of private employment agencies.
4. The ability to administratively revoke a license of a private employment agency under K.S.A. 44-405 would be eliminated. However, injunctive relief is available under the KCPA in cases of extremely severe violations of the KCPA.
5. The specific prohibitions on false notices, false advertisements, false information, and false promises contained in K.S.A. 44-408 would be eliminated. However, the general prohibitions of deceptive acts or practices under the KCPA would apply.
6. The criminal penalty provided for in K.S.A. 44-410 would not be available.
7. The most significant result of HB 2660 is that private employment agencies would be able to charge employees for their services. This could result in up-front fees being charged to employees which would raise questions about whether the agency performed work for the up-front fee and the amount of the fee in general. With regard to up-front fees, we anticipate complaints being filed when the private employment agency fails to obtain employment for the employee. To prove deception, we would have to prove the private employment agency never intended to perform the services promised, which is a difficult burden, especially if the employee doesn't have good job skills or experience. With regard to the amount of the fee, the KCPA only prohibits prices which are unconscionable, which means the price must grossly exceed the price readily available with other private employment agencies. Courts have interpreted this to mean the prices must shock the conscience of the court, not simply be higher than the average.

The Substitute for House Bill 2660 amends current law regarding private employment agencies to (1) increase the limit on registration fees from two dollars to \$100.00, (2) eliminates the exemption for businesses that publish employment information through a computerized data base, and (3) eliminates the provision requiring a refund of the registration fee when a job is not obtained in three days.

I would be glad to address any questions you may have at this time.



CARLA J. STOVALL
ATTORNEY GENERAL

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Consumer Protection Division

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1. Private employment agencies would not be required to be licenced under K.S.A. 44-402.
2. The bonds currently required by K.S.A. 44-403 and K.S.A. 44-404 would not be available to pay for deceptive acts or other violations by private employment agencies.

3. The duty of agencies to keep a register of applicants seeking employment and the nature of the employment sought would no longer be required of private employment agencies.
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The Substitute for House Bill 2660 amends current law regarding private employment agencies to (1) increase the limit on registration fees from two dollars to \$100.00, (2) eliminates the exemption for businesses that publish employment information through a computerized data base, and (3) eliminates the provision requiring a refund of the registration fee when a job is not obtained in three days.

I would be glad to address any questions you may have at this time.