Approved: March 6, 1997
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 18, 1997 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Tom Wilder, Kansas Insurance Department
Lori Callahan, KaMMCO
Brad Smoot, Blue Cross/Blue Shield
Bill Pitsenberger, Blue Cross/Blue Shield
Tom Miller, Blue Cross/Blue Shield
Brian Moline, Kansas Insurance Department

Others Attending: See attached list

Action on SB 3 - Workers Compensation, 24-hour coverage pilot projects
The Committee received the Committee Report from the Commerce Committee and their action in passing the bill out as amended (Attachment 1) Tom Wilder of the Kansas Insurance Department said the bill would allow the KID to combine workers compensation and health insurance for 24-hour coverage in a pilot project. Many states are experimenting with this type of coverage. He handed out copies of the testimony prepared by Philip S. Harness, Director of the Division of Workers Compensation, as presented at the January 30 meeting of the Joint Committees and Mr. Wilder's response to the questions (Attachment 2)

Senator Feleciano moved for adoption of the commercial bidding amendment. Motion was seconded by Senator Praeger. Senator Feleciano rescinded his action after discussion within the Committee.

Senator Feleciano moved for adoption of the amended bill as passed by the Commerce Committee. Motion was seconded by Senator Praeger. Motion carried. One "No" vote was recorded for Senator Corbin.

Hearing on SB 303 - Medical mutual malpractice insurance company to be nonassessable
Lori Callahan, KaMMCO, presented testimony which would expunge the assessability clause for mutual companies (Attachment 3). In 1988 when KaMMCO was formed, it was not known if another fully funded insurance company was needed or just the availability of an insurance mechanism. No other health care company has formed a medical liability insurance company. In order for KaMMCO to be recognized and allowed to do business in the surrounding states, they must not be an assessable company as this is considered an archaic formation. Only KaMMCO would be affected by this bill.

Senator Feleciano moved that the bill be reported favorably and put on the Consent Calendar. The motion was seconded by Senator Corbin. Motion carried.

Hearing on SB 225 - Merger or consolidation of mutual life insurance companies with other entities
Brad Smoot, representing Blue Cross/Blue Shield, said that before any merger can occur between a Kansas mutual company of Kansas, and an out of state company, demutualization must occur as well as the demutualized company domiciling in Kansas (Attachment 4) The proposed legislation would delegate authority to the Kansas Insurance Department to determine if policy holders are protected. The KID would review all factors of merging, marketing, and competition. Such legislation would provide a mechanism which could be used to start the merging process between BC/BS of Kansas and BC/BS of Kansas City. This company would be domiciled in Kansas. BC/BS of Kansas City operates in Wyandotte and Johnson Counties as well as in Missouri. The Kansas City Blues are going to be sold soon and it would be of benefit to both BC/BS of Kansas and Kansans for this company to remain as part of the parent company rather than sold to an out of state entity.

Bill Pitsenberger, attorney for BC/BS, reported that the Attorney General's concerns were:

1. Wanted a detailed plan regarding actual merger. These plans are far from finished at this point.
2. Legality of making such a move. This bill addresses the issue.
3. How will policy holders interest in the assets be handled? The Insurance Commissioner would review all plans regarding policy holders.
4. The incident of Ohio BC/BS selling to a health care organization stock company direct was brought to their attention. Ohio BC/BS would have pocketed the money which is illegal in Kansas.

Tom Miller, CEO of Blue Cross/Blue Shield of Kansas, presented testimony supporting the legislation which would allow them to grow, provide more competitive priced services to insureds, erase geographical barriers, develop one data processing system and one set of policies and procedures, etc. (Attachment 5)

Brian Moline, Kansas Insurance Department, reported their neutrality in the merger (Attachment 6). If the legislation is not passed, the mechanism which would allow for the beginning of the merger would not be in place and the merger would stop.

The hearing was continued.

Hearing on Sub SB 86 - Deposits of public moneys
The hearing was closed.

The Committee was reminded of Mr. LaFavor's testimony in which he indicated that both Kansas chartered banks and out-of-state chartered banks receive the same tax treatment and pay privilege taxes.

Senator Corbin moved to recommend Sub SB 86 for favorable passage. Senator Biggs seconded the motion. The motion carried. Senators Clark and Brownlee asked to be recorded as "No" votes.

Senator Corbin moved to approve the minutes of February 10. The motion was seconded by Senator Barone. Motion carried.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for February 19, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2/18/97

NAME	REPRESENTING
Bill Wempe	KS SOS Dept
Lori Callahan	KAMMCO
KEVIN D. CASE	AG OFFICE
Bill Pitzenberger	~~Kansas Dept~~ KBS
Tom Miller	BC & BS of KS
Bill Sneed	Am Vestors
Kevin Davis	Am. Family
Linda McCoursey	KS Insurance Dept.
Meggan Griggs	KEARNEY LAW OFFICE
Susan Baker	Hein + Weir
Judi Stork	OSBC
Tom Wilder	KID
John Federico	Pete McGill + Assoc
Roger Fraser	BKIV

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Commerce** recommends **SB 3** be amended on page 2, in line 38, by striking all after "authorized"; in line 39, by striking all before "bidding" and inserting "after a competitive"; and the bill be passed as amended.

_____Chairperson

Senate F&D
Attachment 1
2/18/97

TESTIMONY BY PHILIP S. HARNESS, DIRECTOR
DIVISION OF WORKERS COMPENSATION

BEFORE THE JOINT COMMITTEE MEETING OF THE SENATE COMMERCE COMMITTEE AND SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE ON 1997 SENATE BILL NO. 3 - JANUARY 30, 1997

Thank you for the opportunity to appear before you to express comments from the Division of Workers Compensation regarding Senate Bill No. 3, dealing with 24-hour coverage.

Although enabling acts should be open in nature, section 8 of Senate Bill No. 3, dealing with the applicability of the exclusive remedy and prohibited defenses provision of the workers compensation act, still does not address several issues to-wit:

(á) There is no mention of a K.S.A. 44-510 schedule of maximum medical fees; will that be retained for both non-workplace and workplace injuries, retained for workplace injuries only, or done away with totally?

(b) The Workers Compensation Act envisions an employer's choice of physician; will that carry through to 24-hour coverage?

(c) There are certain employer defenses within the Workers Compensation Act which would apply to both medical and indemnity payments. Will those defenses be waived? Some examples are use of drugs, failure to use guards, failure to submit to a reasonable physical exam, heart attacks (except for extraordinary stress), intentional injury by the employee, etc. Would those defenses not exist for medical questions, but perhaps for indemnity questions?

(d) What about the requirements of notice and written claims, pursuant to K.S.A. 44-520; will those cease to exist?

(e) The Workers Compensation Act envisions lifetime medical benefits; would that apply likewise to non-workplace injuries and illnesses?

(f) As to indemnity, would the Division of Workers Compensation still adjudicate the issue? What is the appeal mechanism, i.e. would it be to the Workers Compensation Board, a district court, Kansas Administrative Procedures Act, or some other appellate mechanism?

(g) There is no mention as to the existence, or lack thereof, of attorneys' fees, and any maximum cap therefor. Would there be any attorneys' fees granted?

(h) The Workers Compensation Act currently covers some volunteers, including firefighters. Does this bill envision the same coverage?

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Attachment 2
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(i) There will be interesting interaction with the Workers Compensation Fund, especially in the area of preexisting functional impairment; is the subsequent employer still entitled to that mitigating circumstance of preexisting functional impairment if the original employer participated in the pilot project?

I thank you for your time and patience.

Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions
and Insurance Committee

From: Tom Wilder

Re: S.B. 3 (24-Hour Coverage)

Date: February 17, 1997

I have been asked to respond to the concerns raised by Director Harness of the Division of Workers Compensation regarding Senate Bill 3 which would allow the State of Kansas to undertake pilot projects to develop "24-hour coverage" insurance products. As you recall, the idea behind 24-hour coverage is to combine workers compensation and health insurance for employers. The following is in response to Director Harness' memo dated January 30, 1997 and his supplemental memo:

(a) Maximum Medical Fees - The decision whether or not to keep the maximum medical fee schedule for workplace injuries as set out in K.S.A. 44-510 would be up to the Task Force that designs the regulations for the pilot projects.

(b.) Employers Choice of Physician - This would be decided by the Task Force.

(c.) Employer Defenses - It is anticipated that the employer defenses in the law would remain for workplace injuries (see Section 8). However, some of these injuries may otherwise be paid by health insurance and they would continue to be covered.

(d.) Notice of Claims - This information would still need to be collected but the exact reporting format would be decided by the Task Force.

(e.) Lifetime Medical Benefits - Such benefits would only apply to workplace injuries as under current law.

(f.) Adjudication of Issues - The Task Force would need to develop regulations on how workplace injury disputes would be handled. The Division of Workers Compensation would still be involved in the process.

(g.) Attorney Fees - The issue of attorney fees would need to be developed by the Task Force when the regulations are drafted.

(h.) Volunteers - The workers compensation statutes cover certain voluntary activities such as firefighters. This issue would probably not come up since the pilot projects would be designed only to cover regular employers.

(i.) Second Injury Fund - The Task Force would need to work out how the Workers Compensation Fund would operate under a pilot project.

(j.) Co-Payments/Deductibles - These would only be allowed for nonworkplace injuries.

(k.) Tail Liability - The Task Force would need to work out issues of liability once the pilot projects are completed.

(l.) "Arising Out of Employment" - The 24 hour coverage programs anticipate that all injuries (both workplace and nonworkplace) are paid for out of the insurance product.

(m.) Preexisting Disability - The program would be set up so that all claims would be paid by the insurance carriers who participate in the pilot projects.

(n.) Confidentiality - The records of claims would be retained by the employers and insurers and would be subject to the same confidentiality standards as in existing law.

(o.) "Equivalency" of Benefits - Section 4 of the bill is intended to provide that workers who are injured on the job will not receive any lower level of benefits that they are currently entitled to under the workers compensation laws.

(p.) Section 8 - This section is designed so that an employee who is compensated for a workplace injury waives any right to sue his or her employer (same as the current workers compensation law) and the employer can raise the same defenses for such claims as are available under the statute.

The Director has raised a number of important questions on how the program will be set up. Most of these issues are intended to be part of the discussions when the Task Force meets to design the regulations for the pilot projects.

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: S.B. 303

DATE: February 18, 1997

The Kansas Medical Mutual Insurance Company (KaMMCO) is a Kansas domestic physician-owned professional liability insurance company formed by the Kansas Medical Society. KaMMCO is the largest insurer of physicians in Kansas.

KaMMCO supports S.B. 303.

When KaMMCO was formed in 1988, a special statute was enacted which allowed the Kansas Medical Society to form a liability insurance company which could restrict coverage to only its members. This legislation is now codified at K.S.A. 40-12a01 *et seq.*

At the time of KaMMCO's formation, the medical malpractice market was in crisis both as to the affordability and availability of liability insurance. Several health care provider groups in addition to the Kansas Medical Society were exploring creating their own liability insurance companies.

In 1988, the other health care provider groups were not sure they wanted a fully funded insurance company, or just the availability of an insurance mechanism. As a result, K.S.A. 40-12a01 provides that companies formed under that article must be assessable mutual companies. KaMMCO, however, was fully licensed and funded as an insurance company and specifically limits its assessment capability to $100.00 per year pursuant to its bylaws.

Since the 1980's, the availability crisis of medical malpractice liability insurance has eased. Affordability, however, continues to be a problem with Kansas continuing to be one of the most expensive states for medical malpractice insurance. As a result of the increased access to liability insurance, however, no other health care provider group ultimately chose to avail themselves of K.S.A. 40-12a01 and form their own insurance company.

S.B. 303 would require companies formed under K.S.A. 40-12a01 to be "nonassessable". KaMMCO had never desired to be an assessable company. Further, the assessable form for an insurance company is an archaic mechanism which is rarely used and virtually no longer in use for medical malpractice companies. This hinders KaMMCO as its seeks licensure in other states, which do not recognize this form of insurance company.

Accordingly, KaMMCO would request the committee to pass S.B. 303 favorably.

Endorsed by the Kansas Medical Society

623 W. TENTH ST.-STE. 200 • TOPEKA, KANSAS 66612
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Senate F.I. & I.
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2/18/97

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Testimony Of Brad Smoot, Legislative Counsel
Blue Cross Blue Shield Of Kansas
Regarding Senate Bill 225
Before
Senate Financial Institutions And Insurance Committee
February 18, 1997

I am Brad Smoot, legislative counsel for Blue Cross Blue Shield of Kansas, a domestic health insurer providing coverage for more than 720,000 Kansans in 103 counties of the state. Thank you for this opportunity to speak on SB 225.

Senate Bill No. 225 would clarify the authority of Blue Cross and Blue Shield of Kansas to merge with Blue Cross and Blue Shield of Kansas City. The KC BCBS plan serves 700,000 Kansas and Missouri residents in 30 western Missouri counties and the Kansas counties of Johnson and Wyandotte.

Before the Kansas Legislature required Blue Cross and Blue Shield of Kansas to convert to a mutual insurance company in 1991 (the conversion was effective in 1992), it was governed by an "enabling act," K.S.A. 40-19c01 through K.S.A. 40-19c11, and was known as a nonprofit medical and hospital service corporation.

Blue Cross and Blue Shield of Kansas City remains organized under a statute similar to the law under which Blue Cross and Blue Shield of Kansas had been organized. In Missouri, the KC BCBS plan is known as a nonprofit health services corporation. In Kansas, it is recognized as a foreign nonprofit medical and hospital service corporation, and its ability to do business in Johnson and Wyandotte Counties is specified in the enabling act that previously also applied to Blue Cross and Blue Shield of Kansas.

K.S.A. 40-19c11 not only authorizes a foreign nonprofit medical and hospital service corporation to transact business in Kansas in areas bordering its domestic area, but also authorizes the merger of such a foreign nonprofit corporation with a domestic nonprofit medical and hospital service corporation. In other words, the legislature previously contemplated and authorized merger of the

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Kansas and Kansas City plans before Kansas became a mutual insurance company.

When we began talking with Kansas City about merger, the differing governing statutes of the two were discussed. At that time, we thought that Kansas City might first have to become a mutual insurance company, since there appeared to be no explicit authority in Missouri for merger with a mutual insurer. However, staffers at the Missouri Division of Insurance indicated, at least as a preliminary matter, that to require Kansas City to become a mutual insurer, when the result of the merger would be a surviving corporation which was a mutual insurer, would be to create unneeded process, and that it could probably be permitted to merge directly with Kansas without that process.

Blue Cross and Blue Shield of Kansas discussed these issues generally with the Kansas Insurance Department several months ago. After careful review of the statutes, there appears a need for legislative clarification, since current Kansas law only authorizes a mutual to merge with either a domestic or foreign mutual.

Senate Bill No. 225 would specify that a mutual insurer can also merge with a foreign nonprofit health services corporation (the terminology used in Missouri statutes for Kansas City) or a foreign nonprofit medical and hospital service corporation (the terminology used in Kansas statutes for Kansas City). Under this bill, the merger is only permitted if the surviving corporation is a Kansas domestic mutual insurance company. Many other Blue Cross and Blue Shield Plans in our area are also mutuals (Arkansas, Oklahoma, and Nebraska, for example). The bill would also authorize Blue Cross and Blue Shield of Kansas to merge with a Blue Plan which still operates under enabling act legislation, such as Texas, but only if the Kansas Plan were the survivor of the merger.

Passage of Senate Bill No. 225 would not automatically authorize any merger. The current merger law sets forth an elaborate process requiring the board of each corporation to approve a merger agreement (K.S.A. 40-509) and submit it to the Commissioner of Insurance for approval. The Commissioner may disapprove the merger if it is inequitable to the policyholders of the domestic insurer; if it would materially reduce the financial security of Kansas policyholders; if it would lessen competition or tend to create a monopoly; or if it is subject to any other reasonable

objection (K.S.A. 40-510). If not disapproved, a summary of the agreement is submitted to policyholders, and two-thirds of those policyholders voting must approve the agreement before it can be effective.

In other words, Senate Bill No. 225 does not reflect legislative authorization for the proposed merger itself, but merely lets us "put the ball in play," starting the legal process of merging two Blue Cross Blue Shield plans long-considered merger candidates by the Kansas Legislature.

Thank you and I would be pleased to respond to your questions.

HISTORY
BLUE CROSS BLUE SHIELD OF KANSAS

1941--LEGISLATURE AUTHORIZES CREATION OF MUTUAL NONPROFIT CORPORATIONS TO CONTRACT WITH HOSPITALS (S 214)

1942--KANSAS HOSPITAL SERVICE CORPORATION IS INCORPORATED

1945--LEGISLATURE CREATES NONPROFIT MEDICAL SERVICE CORPORATION ACT

1946--KANSAS PHYSICIANS SERVICE IS INCORPORATED

1969--LEGISLATURE REPEALS PROPERTY TAX EXEMPTION PREVIOUSLY AVAILABLE TO BOTH CORPORATIONS

1970--ALL DOMESTIC INSURERS BECOME SUBJECT TO PREMIUM TAXES

1980--LEGISLATURE AUTHORIZES MERGER OF MEDICAL AND HOSPITAL SERVICE CORPORATIONS

1983--BLUE CROSS BLUE SHIELD IS CREATED BY MERGER OF THE TWO CORPORATIONS

1986--CONGRESS REPEALS TAX EXEMPT STATUS FOR ALL BLUE PLANS

1991--LEGISLATURE REQUIRES BLUE CROSS BLUE SHIELD TO BECOME A DOMESTIC MUTUAL COMPANY

1992-- BLUE CROSS BLUE SHIELD BECOMES A MUTUAL LIFE INSURER

1996--BLUE CROSS BLUE SHIELD OF KANSAS ANNOUNCES DESIRE TO MERGE WITH BLUE CROSS BLUE SHIELD OF KANSAS

TESTIMONY BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

February 18, 1997 at 9:00 A.M.
by Thomas L. Miller, President and CEO of
Blue Cross and Blue Shield of Kansas

I. INTRODUCTION

Mr. Chairman, Madam Vice Chairman and members of the committee.

Good morning, my name is Tom Miller, President and CEO of Blue Cross and Blue Shield of Kansas.

I am here to testify in favor of SB 225.

This bill clarifies the ability of a non-domestic non-profit health services corporation to merge, or consolidate, with Blue Cross and Blue Shield of Kansas, which is a non-profit mutual life insurance company, if such merger or consolidation is permitted by the state regulatory officials with jurisdiction over Blue Cross and Blue Shield of Kansas and the surviving company is a domestic mutual life insurance company.

In today's environment, we are in what I call merger mania. Companies are merging, consolidating, acquiring and forging partnerships to form stronger financial bases, build bigger and better service networks and take advantage of economies of scale.

Our initiative to have Blue Cross and Blue Shield of Kansas City merge into Blue Cross and Blue Shield of Kansas is representative of what many health care insurers and providers are doing to remain competitive and expand.

People want access to high quality, efficient health care services. In many ways, we are becoming an agent of health care for our customers, ensuring that they not only have access to care but access to the right care.

II. STRATEGIC REASON FOR A MERGER WITH BLUE CROSS AND BLUE SHIELD OF KANSAS CITY.

- Even though each plan is strong locally, we will have difficulty competing in the long term against large, for-profit, national managed care companies that are moving into our market areas.

- It will enhance our ability to provide our insureds with efficient quality care at competitive prices. It will make us more competitive and enhance enrollment.

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- The current borders of our plans (Johnson and Wyandotte counties are in Blue Cross and Blue Shield of Kansas City plan area) hinders the natural medical services area.

  This is why we bought a small part of Blue Advantage (an HMO owned by Blue Cross and Blue Shield of Kansas City and health midwest hospitals). It was also to assist managed care in the counties around Kansas City where most of the referrals go from primary care physicians (i.e., we tried an HMO once in this area and had to dissolve it because of the referrals into Kansas City).

- We will be more efficient with one data processing system and one set of policies and procedures. (Explain the year 2000 expense)

- Gain access to more sophisticated state of the art managed care tools.

- We will be able to take advantage of economies of scale to improve our administrative expenses.

- It will help stabilize the insureds reserves because of greater diversification of risks (i.e. Boeing strike but growth of Hallmark).

- Will reduce the volatility spread over a larger geographic area.

- Both plans have received an A rating from S & P, (an outside agency) so we are both strong financially.

- Will improve both plans by incorporating best practices.

- Will allow us to retain a strong local presence and improve the value of the Blue Cross and Blue Shield marks.

- Will give us access to a wider and deeper management pool of talent.

- Will achieve a stable, strong financial company.

- Share the expense of new product offerings.

- Will enhance our integrated strategy including provider partnerships.

- Maintain our position as a business leader and employer in Topeka.

- The health care industry is consolidating.

- National players are becoming predominant.

- Mergers are happening everywhere.

  During 1996, some 49 hospitals merged; 48 physician groups merged; 28 long term care groups merged; 25 home health care agencies merged; 12 rehabilitation centers have merged; and 5 psychiatric hospitals have merged.

- The merger of Kansas and Kansas City would only be about a $1.2 billion company so we would still be small compared to our future major competitors.

- Because of what is happening nationally, we don't believe we have a lot of options if we want to remain a viable company.

- Our hope is that by merging it will increase our ability to compete against these national companies coming into our market area. We want to do this so we can maintain our insured population and continue to work with providers of health care across Kansas with enough volume to maintain a network of providers for the good of Kansans.

- Other Blue Plans are merging:

  Examples: Benchmark (Washington, Oregon, Idaho, Montana, Utah); Anthem (Ohio, Kentucky, Indiana, Connecticut, Delaware, New Jersey); Texas and Illinois; Rocky Mountain (Colorado, New Mexico, Nevada); Maryland Blue Cross and Blue Shield and the National Capital Area; and many of the Pennsylvania plans are merging.

- We don't want to be the last Blue Plan to merge because we would then have no options.

- We would rather be the regional center and have other blue Plans merge with us (i.e. Oklahoma and Arkansas).

- It is logical because of the common geographic area (only 70 miles apart).

- The major population growth in Kansas is in the northeast.

III. WHY IS THIS HAPPENING NOW?

- Our competitors are merging.
  For Example: Aetna and US Healthcare have merged resulting in a company of $12.8 billion; Pacific Care and FHP have merged ($7.8 billion); HSI and Foundation ($6.1 billion); United Healthcare has expanded ($5.7 billion); Humana ($4.7 billion); and Signa ($3.9 billion).

- Another reason is defensive. If we cannot clear the legal hurdles for Blue Cross and Blue Shield of Kansas City to merge into Blue Cross and Blue Shield of Kansas, they will likely have to look for another partner (i.e. Wellpoint - Blue Cross of California or Trigon - Blue Cross and Blue Shield of Virginia).

- If this were to happen, we would lose the favorable discounts in the Kansas City areas that have been negotiated by Blue Cross and Blue Shield of Kansas City (our insured received these same discounts today).

- The Blue Cross and Blue Shield of Kansas plan staff will be the team leaders in these functional areas (Finance, Information Systems, Market in Kansas, National Accounts, FEP and Government Programs, and Human Resources). Kansas City has a Senior Vice President that will be the leader in the health care management function.

- Because of my pending retirement, Dick Krecker of Kansas City will be the initial CEO and John Knack, who will be my replacement, will be the President and COO. Their duties will be spelled out and they will both serve at the pleasure of the Board of Directors.

02/17/97

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TESTIMONY OF BRIAN J. MOLINE
General Counsel - Kansas Insurance Department
on SB 225

The Kansas Insurance Department is appearing today to provide background information on SB 225.

Under current law (K.S.A. 40-507), a mutual life insurance company (as Blue Cross Blue Shield of Kansas ("BCBSK") is currently organized) can merge or consolidate with any other domestic life insurance company or a non-domestic mutual life insurance company if such a merger is permitted in the state or territory where the non-domestic is organized.

SB 225 would add language to K.S.A. 40-507 which would permit a mutual life insurance company (BCBSK) to merge with a non-domestic non-profit health services corporation (BCBSKC). The resulting entity continues to be a domestic (Kansas) life insurance company. The legislation does not mandate such merger but simply allows a merger subject to existing safeguards under K.S.A. 40-509.

BCBSK is a Kansas corporation regulated under Kansas law by the Kansas Insurance Commissioner. Blue Cross Blue Shield of Kansas City ("BCBSKC") is a Missouri corporation regulated under Missouri law by the Missouri Department of Insurance.

There has been much discussion and speculation as to a possible merger between BCBCK, a mutual life insurance company as mandated by HB 2001, 1991 Session, and BCBSKC.

It is important to note that there has been no plan of merger to date filed with either Kansas or Missouri regulators as required by the law of both states. For several months, a team from both the Kansas and Missouri regulators has been discussing the procedural steps required under current law for both agencies.

K.S.A. 40-509, *et seq.*, outlines the procedural steps when a Mutual Life Insurance Company merge with another company:

1. The Board of Directors of each company must pass a resolution by a simple majority approving the merger " . . . setting forth the terms and conditions . . . the mode of carrying same into effect . . . and such other provisions as are deemed advisable." K.S.A. 40-509(a).

Senate FI&I
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420 SW 9th Street
Topeka, Kansas 66612-1678
913 296-3071
Fax 913 296-2283

☎ Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

2. The resolution shall then be forwarded to the commissioner of insurance. 509(b).

3. No merger shall go into effect unless the agreement " . . . and any other information required by the Commissioner of Insurance has been filed with the Commissioner and has not be disapproved in writing." K.S.A. 40-510.

4. The Commissioner "shall act with respect to the agreement after a hearing held in accordance with the Kansas Administrative Procedure Act." Ibid.

5. The agreement "shall be effectuated in accordance with its terms" unless the Commissioner disapproves it within 60 days "after the date of filing" subject to an additional 60 days "upon notice to the insurers involved." Ibid.

6. If the agreement has not been disapproved "and if the insurer is otherwise unimpaired," the agreement shall be submitted to the domestic insurer's policyholders for approval at a regular or special meeting. K.S.A. 40-511.

7. "Upon receiving the affirmative vote of 2/3 of all votes cast, such agreement shall be deemed approved." Ibid.

8. After the proposed agreement has been filed with the Commissioner "and not disapproved" and been approved by 2/3 of the policyholders, the "articles of merger or consolidation" shall be executed "under the seal of each insurer." K.S.A. 40-513.

9. The Commissioner of Insurance shall examine the articles of merger or consolidation and "if the same are in order shall endorse the approval thereon." The "entire proceedings" shall be filed and recorded with the Secretary of State. K.S.A. 40-514.

    a) "The merger or consolidation shall be effective upon the commissioner's endorsing approval, which date of approval shall be the date of consolidation or merger." K.S.A. 40-515(b).

10. "No director or officer of any company part to a merger or a consolidation, except as fully expressed in the agreement of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, directly or indirectly, for in any manner aiding, promoting or assisting in such merger or consolidation." (Emphasis added.) K.S.A. 40-515(a).

Missouri law is similar to Kansas in the procedural steps necessary for approval of mergers between companies. KID has discussed SB 225 with the Missouri Department of Insurance and that agency has no opposition to the bill as currently worded.

In conclusion, Kansas law has a significant procedural track for mergers such as SB 225 contemplates which includes Notice, Public Hearing, a vote of 2/3 of the policyholders in the case of BCBSK, and statutory prohibition against unjust enrichment. The Commissioner of Insurance, in addition to her existing staff, is empowered to retain the services of such outside

experts as she deems necessary to comprehensively review the plan if and when it is proposed. The Kansas Administrative Procedures Act ("KAPA") insures a fair and public process.