

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 19, 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: Kathy Taylor, Kansas Bankers Association
Bud Grant, KCCI
Lori Callahan, KaMMCO
Patrick Morris, Kansas Association Insurance Agents
Kathleen Sebelius, Kansas Insurance Department
Tom Miller, Blue Cross/Blue Shield
Brian Moline, Kansas Insurance Department
Bill Pitsenberger, Blue Cross/Blue Shield
Kevin Case, Attorney General's Office

Others attending: See attached list

Continued Hearing on SB 27 - Deregulation of finance charges on consumer credit sales
The hearing was closed.

Senator Becker moved for the favorable passage of the bill. Motion was seconded by Senator Praeger. Motion carried.

Continued Hearing on SB 32 - Filing financing statements of security interests

An oral report from the Sedgwick Register of Deeds indicated their loss would be between \$45 and 50 thousand per year with the passage of this proposed legislation. A letter from the Kansas Register of Deeds Association suggested a study be made before they could take a position on this proposal (Attachment 1).

Kathy Taylor, Kansas Bankers Association, presented an amendment which would clarify that this bill is also a way to perfect a security interest in a manufactured home or a mobile home (Attachment 2). The amendment was supported by Martha Neu Smith, Kansas Manufactured Housing Association, in written testimony (Attachment 3).

Senator Feleciano moved to accept the amendment. The motion was seconded by Senator Clark. Motion carried.

Senator Clark moved that the bill be reported favorably as amended. Motion was seconded by Senator Feleciano. Motion carried.

Hearing on SCR 1601 - Establishing a task force to study the insurance industry

Chairman Steffes re-emphasized the need for the membership of the task force to remain non-partisan and presented the Committee with copies of the Substitute bill for SCR 1601 (Attachment 4). It was suggested that the Department of Commerce be involved in this attempt to stimulate the growth of the insurance industry in Kansas. Many of the high tech jobs which would be created would be at the upper end of the employment pay scale.

Lori Callahn, KaMMCO, voiced their support for the establishment of the task force. She encouraged the task force to consider the needs of the Insurance Department in hiring an in-house actuary to assist them in their work (Attachment 5).

Patrick Morris, Executive Director of the Kansas Association of Insurance Agents, offered a technical amendment which would correct the name of his organization (Attachment 6).

Insurance Commissioner Sebelius stated their enthusiasm about being involved in the hopeful growth of the insurance industry in Kansas and pledged their cooperation. Their agency currently contributes \$90 million

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 19, 1997.

annually to the general fund. \$6.2 billion is paid in insurance premiums each year by Kansans and a portion of this would remain in Kansas if there were more companies domiciled in Kansas. This would create better rates and more flexibility as well as increasing cash flow.

Senator Feleciano moved for the approval of the technical amendment and asked for the successful passage of the substitute bill as amended. The motion was seconded by Senator Praeger. Motion carried.

Continued Hearing on SB 225 - Merger or consolidation of mutual life insurance companies with other entities

Tom Miller, CEO of Blue Cross/Blue Shield, asked for the passage of the legislation which would allow their company to become a non-profit service benefit company serving all the counties of Kansas. This legislation is required to start the merger process with BC/BS of Kansas City before they are purchased by an out-of-state company. Improved service for the Kansas City area would be one of the benefits of the merger. This is permissive legislation which would give complete supervisory authority to the Insurance Commissioner.

Brian Moline, Kansas Insurance Department, informed the Committee that any expenses incurred by the Department due to the oversight of this merger would be billed back to Blue Cross/Blue Shield.

Bill Pitsenberger, Blue Cross/Blue Shield counsel, explained their attempts to clarify their legal ability to merge with the Attorney General's office.

Kevin Case, representing the Attorney General's office, stated they neither approved nor disapproved of the proposed merger (Attachment 7). Their concerns were that the Attorney General's Office has responsibility according to the anti-trust laws. They are concerned with their time commitments and responsibility in this matter due to their six month backlog. They will not stop the flow of this bill but did remind the Committee of their policing authority of industries, including the insurance industry. Blue Cross/Blue Shield of Kansas is not a corporation and this could expedite the passage of the proposed legislation.

Commissioner Sebelius said they welcomed and needed the input of the Attorney General and are eager for them to be brought into the oversight loop. This bill would bring all agencies to the point where a merger could be considered. The Missouri Attorney General will be heavily involved in all consultations and they have begun negotiations on this proposed legislation. Such legislation is being developed in many states due to the need for consolidation in the insurance industry. There are currently sixty plans available for health care clients. In a few years this will be reduced to twelve or less. It is unknown if this projected number of plans will be of benefit to the Kansas public or if the lack of variety will present fewer options and less quality care.

Senator Biggs moved that the bill be reported favorably. The motion was seconded by Senator Feleciano. Motion carried.

Hearing on SB 286 - Patient protection act

Senator Praeger said this bill would address some of the troubling issues regarding impact on care of patients enrolled in HMO's. Have cost-cutting strategies and cost containment hurt the quality and availability of good care? Is the question really cost of care vs. quality and access of care? Senator Praeger walked the Committee through the bill which has sections relating to emergency care and gag clauses which forbid health providers to inform the patient of certain available types of treatment or procedures due to cost. This bill prohibits health care providers from receiving compensation for not telling patients of all varieties of treatment available. Insurance companies would be compelled to notify all applicants regarding health services provided if they request such information. Chronically ill people could be referred permanently to specialists. Every participating HMO must provide an adequate number of qualified providers within the network.

Commissioner Sebelius said that SB 64 Emergency Room Payments had been folded into SB 286. In HMO's, gatekeepers make the decisions for the enrollees seeking health care (Attachment 8). There are approximately 14,000 persons enrolling in some type of HMO daily. \$1 1/2 billion is spent by Kansans on health care each year. This bill would set standards for HMO's to work from and would enable the regulatory agencies to deal more fairly with them. Even though this bill does not carry a penalty clause for non-compliance, the Department of Insurance can pull the license or fine the HMO if it does not obey the regulations.

The hearing for SB 286 will be continued on February 20, 1997.

Senator Biggs moved for the approval of the February 11 minutes. The motion was seconded by Senator Becker. Motion carried.

The meeting adjourned at 10:02 a.m. The next meeting is scheduled for February 20, 1997.

**SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST**

DATE: 2-19-97

NAME	REPRESENTING
John Federico	Pete McGill + Assoc
Brian Molin	Kr. Insurance Dept
Tom Wilder	Kansas Insurance Dept
Chip Wheelan	Ks Psychiatric Society
Trish Copeland	Security Benefit Group
Arnos Rietu	KAOM
Rick Guthrie	Health Midwest
John Reinhart	KS Press Assn
Kathy Taylor	KBA
KEVIN CASE	AG
BOB ALDERSON	KPHA
Bob Williams	Ks Pharmacists Assoc.
Joann Wiley	KSHS Spunk
Nancy Zogleman	Pfizer
Bill Sneed	Ambot
Bud Smoot	BCBS
Cindy Wiklund	Ku student
Jan Ballinger	Principal Health Care
Cheryl Bellard	HealthNet

REGISTER OF DEEDS

KANSAS

ASSOCIATION

PRESIDENT
VICE-PRESIDENT

SECRETARY
TREASURER

MEMORANDUM

TO: Kansas Legislative Committee

FROM: Sara F. Ullmann, Chair, Kansas Register of Deeds Legislative Committee

DATE: February 17, 1997

RE: S.B. 32

It is our understanding that the language in S.B. 32 would increase the dollar amount from \$1000 to \$3000 on Uniform Commercial Code filings by the retail industry in the county register of deeds office. This testimony is being given to simply make legislators aware that this language would have a financial impact in county register of deed's offices. The extent of the financial impact would vary from county to county. A study would have to be conducted to provide you with the specific implications of this language in conjunction with local government funding.

Senate F.D.S.D
Attachment 1
2/19/97



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

To: Senate Committee on Financial Institutions and Insurance

From: Kathy Taylor
Kansas Bankers Association

Date: February 19, 1997

Re: SB 32 Amendments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present this amendment to KSA 84-9-302(3)©, which is the section of the Uniform Commercial Code which provides that in order for a security interest in a vehicle to be "perfected", the creditor's lien must be noted on the title.

Our amendment is to clarify that this is also the way to perfect a security interest in a manufactured home or a mobile home.

Manufactured and mobile homes are required to be titled according to a provision of the Manufactured Housing Act (KSA 58-4204). This provision also states that all liens should be recorded on that title.

Unfortunately, the KBA recently discovered that while it is clear that all liens must be noted on the title of all manufactured or mobile homes under Chapter 58 of our states laws, Chapter 84, Article 9 (the Uniform Commercial Code), does not specifically state that this is how to perfect a security interest in such property.

We believe that this amendment is necessary to eliminate any doubt between these two provisions of law, that the proper way to perfect a security interest in manufactured home and mobile homes is by noting the lien on the title.

Senate FD D
Attachment 2
2/19/97

SENATE BILL No. 32

By Committee on Financial Institutions and Insurance

1-15

9 AN ACT concerning filing financing statements of security interests; pur-
10 chase price of consumer good; amending K.S.A. 84-9-302 and repeal-
11 ing the existing section.

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

14 Section 1. K.S.A. 84-9-302 is hereby amended to read as follows: 84-
15 9-302. (1) A financing statement must be filed to perfect all security in-
16 terests except the following:

17 (a) A security interest in collateral in possession of the secured party
18 under K.S.A. 84-9-305 and amendments thereto;

19 (b) a security interest temporarily perfected in instruments, certifi-
20 cated securities or documents without delivery under K.S.A. 84-9-304 and
21 amendments thereto or in proceeds for a ten-day period under K.S.A.
22 84-9-306 and amendments thereto;

23 (c) a security interest created by an assignment of a beneficial interest
24 in a trust or a decedent's estate;

25 (d) a purchase money security interest in a consumer good with a
26 purchase price of ~~\$1,000~~ \$3,000 or less, other than a vehicle in which a
27 security interest is subject to perfection under subsection (3), but filing
28 is required to perfect a security interest in a vessel as defined in K.S.A.
29 82a-802, and amendments thereto, and a fixture filing is required for
30 priority over conflicting security interests in a fixture as provided in K.S.A.
31 84-9-313, and amendments thereto;

32 (e) an assignment of accounts which does not alone or in conjunction
33 with other assignments to the same assignee transfer a significant part of
34 the outstanding accounts of the assignor;

35 (f) a security interest of a collecting bank (K.S.A. 84-4-208 and
36 amendments thereto) or arising under the article on sales (see K.S.A. 84-
37 9-113 and amendments thereto) or covered in subsection (3);

38 (g) an assignment for the benefits of all creditors of the transferor
39 and subsequent transfers by the assignee thereunder;

40 (h) a security interest in investment property which is perfected with-
41 out filing under K.S.A. 84-9-115 or 84-9-116.

42 (2) If a secured party assigns a perfected security interest, no filing
43 under this article is required in order to continue the perfected status of

Senate Bill 32
attached 2/18/99 2-2

1 the security interest against creditors of and transferees from the original
2 debtor.

3 (3) A security interest in:

4 (a) Property subject to a statute of the United States which provides
5 for national registration or filing of such security interests in such prop-
6 erty; or

7 (b) property subject to a statute of this state which provides for cen-
8 tral filing of such property; or

9 (c) a vehicle (except a vehicle held as inventory for sale) subject to a
10 statute of this state which requires indication on a certificate of title or a
11 duplicate thereof of such security interests in such vehicle:

12 Can be perfected only by presentation, for the purpose of such regis-
13 tration or such filing or such indication, of the documents appropriate
14 under any such statute to the public official appropriate under any such
15 statute and tender of the required fee to or acceptance of the documents
16 by such public official, or by the mailing or delivery by a dealer or secured
17 party to the appropriate state agency of a notice of security interest as
18 prescribed by K.S.A. 8-135 and amendments thereto. Such presentation
19 and tender or acceptance, or mailing or delivery, shall have the same
20 effect under this article as filing under this article, and such perfection
21 shall have the same effect under this article as perfection by filing under
22 this article.

23 Sec. 2. K.S.A. 84-9-302 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its
25 publication in the statute book.

, a manufactured home or a mobile home

~~MM~~
2-3

KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY BEFORE
THE SENATE COMMITTEE
ON

FINANCIAL INSTITUTIONS AND INSURANCE

To: Senator Don Steffes, Chairman and
Members of the Committee

FROM: Martha Neu Smith, Executive Director

DATE: February 19, 1997

RE: Senate Bill 32 Amendment

Mr. Chairman and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association representing all facets of the manufactured housing industry.

I am here today to ask for your support of the amendment introduced by the Kansas Bankers Association. Over the past couple weeks we have worked with the Kansas Bankers Association on what we believe to be an oversight in Kansas statutes regarding perfection of a security interest in a manufactured home or a mobile home. We feel this amendment addresses that oversight.

Thank you for the opportunity to comment and I would appreciate your support of this amendment.

Senate F.D.S.
Attachment 3
2/19/97

SENATE CONCURRENT RESOLUTION NO. _____

By Senator Steffes

A CONCURRENT RESOLUTION establishing a task force to study the insurance industry in Kansas in order to identify programs and actions that can be undertaken to promote the growth of the existing industry, enhance its financial viability and attract out-of-state insurance companies to Kansas.

WHEREAS, It is the goal of the state of Kansas to foster economic development within the state and to pursue those policies and actions that will diversify and strengthen the economic base of the state; and

WHEREAS, The insurance industry is a vital component of the Kansas economy, and is critical to the conduct of commerce and industry, and the preservation and protection of the security and well-being of Kansas residents; and

WHEREAS, The insurance industry in Kansas is a major employer with approximately 21,000 employees within the state paying wages of over \$650 million annually, and contributing more than \$1.2 billion to the economy; and

WHEREAS, Kansans pay annually over \$6 billion for insurance protection; and

WHEREAS, The financial scale of the insurance industry is substantial within the state and the public is a significant purchaser of products sold by out-of-state companies and any increase of purchases by Kansans of in-state company products can generate increased income and wealth for Kansas residents; and

WHEREAS, The legislative and executive branches of state government should work together with the Insurance Department and the insurance industry in the state of Kansas in order to enhance and improve this valuable economic asset; and

WHEREAS, It is a desirable public policy goal to identify through research, analysis and planning specific policies,

*Senate FDS
Attachment 4
2/19/97*

programs and actions that can be undertaken by the public and private sectors that will promote the growth of the existing Kansas insurance industry, enhance its financial viability and encourage the attraction and location of out-of-state insurance companies into Kansas: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That a task force be established to examine the current climate of the Kansas insurance industry, as well as other states which have a successful insurance industry, to determine whether actions can be taken to strengthen and improve the insurance industry in Kansas; and

Be it further resolved: That a task force be formed consisting of 13 members to include the Chair of the Senate Committee on Financial Institutions and Insurance; the Chair of the House Committee on Insurance; the ranking minority member of the Senate Committee on Financial Institutions and Insurance; the ranking minority member of the House Committee on Insurance; the Insurance Commissioner or her designee; the Secretary of Housing and Commerce or his designee; two persons, one representing a domestic life or health insurance company and one representing a foreign life or health insurance company appointed by the Insurance Commissioner from a list submitted by the Kansas Life Insurance Association; two persons, one representing an other-than-life domestic insurance company and one representing an other-than-life foreign insurance company appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Property and Casualty Insurance Companies; one member representing the licensed Kansas insurance agents appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Independent Agents; and two members appointed by the Governor representing the economic development interests of the state and the public at large. The Governor shall appoint the Chairperson and Vice Chairperson from the

membership of the committee. The Chairperson and Vice Chairperson shall not be of the same political party. Legislative members and representatives of the public serving on the task force shall receive pay and allowances as provided for legislative service; and

Be it further resolved: That the task force be appointed by July 1, 1997, and that it prepare and submit its report and recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 12, 1998.

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

M E M O

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: S.C.R. 1601

DATE: February 19, 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.C.R. 1601.

The Kansas Insurance Department is fully funded through fees from the Kansas insurance industry. Additionally, that industry pays approximately \$90 million in taxes each year to the State of Kansas. In order to encourage the development of these environmentally clean, service, and therefore, employee-oriented companies, KaMMCO would support the study of the economic attractiveness of Kansas to this industry. Additionally, as has been discussed, the Kansas Insurance Department is in need of the appropriate expertise to evaluate such additional companies if they are attracted to Kansas. Thus, as a part of the work of this task force, KaMMCO would encourage the task force to consider any needs the Insurance Department might have for the hiring of in-house actuarial support.

Senate F.D.D
Attachment 5

Endorsed by the Kansas Medical Society

2/19/97



Testimony regarding Senate Concurrent Resolution 1601

Presented by Patrick J. Morris

Executive Vice President of the Kansas Association of Insurance Agents
(February 19, 1996 - Senate Financial Institutions and Insurance Committee)

Thank you Mr. Chairman and members of this committee for the opportunity to appear at the hearing today on Senate Concurrent Resolution 1601. I am Pat Morris, the Executive Vice President of the Kansas Association of Insurance Agents. The KAIA is an association that represents over 600 independent agency members across Kansas who employ nearly 3,500 people, most of whom are licensed agents.

Our association was very supportive of the idea of a task force to study Kansas insurance laws and regulations when it was first proposed during the interim committee this past summer, and we have seen the new draft of the resolution and continue to support the idea. The study of the insurance industry to "identify programs and actions that can be undertaken to promote the growth of the existing industry" is very important to our membership, as a healthy and robust insurance industry in this state makes for a strong, vibrant, and growing independent agency system. The more choices that our member agents can offer insurance consumers in terms of companies that are ready and available to write insurance in Kansas makes for a "win-win" situation. The insurance industry wins and the insurance consumer wins.

As many on this committee may know, I came to Kansas to run this association only one year ago. One of the first issues that I was hit with was the wholesale withdrawal of some large personal lines companies from the state. This is an issue that is frustrating to consumers, to

*Senate F.D.D.
Attachment 6
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our agents, and to the Insurance Department, and I hope that the task force will be able to address this issue and how it might be prevented in the future. Six months into my tenure, the Executive Committee and I conducted insurance company visits in Iowa and Nebraska. One of our missions on these visits was to explore the interests of these companies in the Kansas insurance market, and ways that their business and company appointments might grow. One of the issues that came up in all of the discussions was their perception of the Kansas regulatory environment. Most asserted that they were heartened by many of the changes that had taken place in the last two years - especially in terms of speed and efficiency. The concerns of companies that might be looking to enter or expand in Kansas is one of paramount importance, and an issue that our association hopes that the task force, if approved, will explore in detail.

Mr. Chairman, I have one minor correction in the revised resolution. Our association name that is included toward the end of the text should read "Kansas Association of Insurance Agents."

In closing, KAIA believes that the study that will be conducted by this task force is very important, and we wholeheartedly support this resolution.

**TESTIMONY OF ASSISTANT ATTORNEY GENERAL KEVIN D. CASE BEFORE
THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
FEBRUARY 19, 1997 RELATING TO SB 225**

Mr. Chairman, Senators:

I am Kevin D. Case, Assistant Attorney General. I am here on behalf of Attorney General Carla J. Stovall to address the committee regarding the Attorney General's concerns pertaining to Senate Bill 225, a bill which is intended to create statutory authority to permit a mutual insurance company to merge with a nonprofit health services corporation or nonprofit medical and hospital service corporation. As you are aware, Blue Cross and Blue Shield of Kansas, Inc. has sponsored this bill in an effort to obtain legislative authority for a business transaction which it plans to undertake.

As of November, 1996, there was no statutory authority for a domestic mutual insurance company such as BCBSK to merge or consolidate with a corporation such as BCBS-KC which is not a mutual insurance company. This is still true today. This absence of any statutory authority for the BCBSK proposed transaction explains why the Attorney General was concerned with BCBSK's public announcement, which lacked any legal authority for their proposed merger and predated by approximately three months this proposed legislation.

Even if BCBSK is authorized under Kansas law to participate in a merger, the Attorney General is still required to determine whether the proposed merger would violate Missouri law. Compliance with Missouri law is precisely the issue the Attorney General is trying to resolve with BCBSK's intended partner, BCBS-KC. Our preliminary assessment is that BCBS-KC is prohibited under Missouri law from merging with BCBSK. We were reassured that our analysis of Missouri law was correct when the Missouri Attorney General agreed with our preliminary conclusions.

The Attorney General is pleased that her role has been acknowledge in SB 225. SB 225 refers to "state regulatory official or officials" having jurisdiction over such corporations which necessarily includes the Attorney Generals of both states. The role of the Kansas Attorney General is also evident from the Letter of Intent which BCBSK and BCBS-KC have already endorsed. In the Letter, the parties have contractually bound themselves to seek approval from many state officials including the Attorneys General of Kansas and Missouri, the Commissioners of Insurance, the Secretaries of State and other state officials if necessary.

The Attorney General does not support or oppose the proposed transaction. The Attorney General offers these comments to explain that even with the passage of SB 225 other issues including compliance with state and federal laws, including those dealing with antitrust will still need to be addressed.

*Senate F.I.D.
Attachment 7
2/19/97*

**Examples of Statutory Authority of the Kansas Attorney General
regarding proposed merger
of Blue Cross and Blue Shield of Kansas, Inc., and
Blue Cross and Blue Shield of Kansas City, Inc.**

The parties have already acknowledged the authority of the Kansas and Missouri Attorneys General. In their Non-binding Letter of Intent to merge, BCBSK and BCBSKC have acknowledged that they must seek regulatory approval from their Boards of Directors, the Commissioners of Insurance in both Kansas and Missouri, their members and policyholders and “[i]f necessary, Attorneys General, . . . or other officials of the respective states.”

Abuse, misuse or nonuse of its corporate charter. Under the Kansas Corporation Code, the Attorney General upon her own motion shall proceed to the district court which shall have jurisdiction to revoke or forfeit the articles of incorporation of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. K.S.A. § 17-6812(a); K.S.A. § 17-6812(c).

Ultra vires acts. The Attorney General is authorized to bring an action to enjoin ultra vires acts (acts taken by a corporation that extend beyond the powers of the corporation). K.S.A. § 17-6104.

Foreign corporations. The Attorney General is authorized to enjoin foreign corporations from doing business in the state without proper authorization. K.S.A. § 17-7308.

Antitrust violations. The Kansas Attorney General is given broad authority to initiate actions to enjoin antitrust violations. The Attorney General has the authority to enforce antitrust laws “by injunction or other proceedings.” K.S.A. § 50-101; K.S.A. § 50-102.

The Kansas Supreme Court. For over 65 years, the Kansas Supreme Court has affirmed the jurisdiction of the Kansas Attorney General to bring an action for appointment of a receiver for an insurance company. *E.g., State, ex rel Beck v. Bank Savings Life Ins. Co.*, 142 Kan. 899, 905-906 (1935).

The role of Attorneys General in other states.

Attorneys General from coast to coast have initiated aggressive actions in the wake of proposed transactions involving Blue Cross and Blue Shield plans similar to the one contemplated by Blue Cross and Blue Shield of Kansas, Inc.

Recent examples include:

California. In California, Attorney General Dan Lungren intervened in a proposed transaction relating to a subsidiary of Blue Cross of California, Inc. According to sources, the transaction with Wellpoint Health Networks Inc. represented a nonprofit organization that is effectively converting to for-profit status. The Attorney General was given supervisory authority over charitable foundations created by the “conversion.”

Missouri. Following approval by the Missouri Department of Insurance then an unsuccessful legal challenge by the Director of the Missouri Department of Insurance, Attorney General Jay Nixon successfully prosecuted an action against Blue Cross and Blue Shield of Missouri, Inc. regarding BCBSM’s spin-off of its assets to a for-profit subsidiary.

In ruling in favor of Attorney General Nixon, the circuit court found that BCBSM “has continued to exceed or abuse the authority conferred on it by law . . .” in violation of the Missouri Corporation Code.

Ohio. Attorney General Betty Montgomery sued Blue Cross and Blue Shield of Ohio when the Attorney General discovered the potential conflict of interest arising out of alleged payments to high ranking officials in a proposed transaction with Columbia/HCA. Attorney General Montgomery sued in circuit court and won.

Texas. Attorney General Dan Morales sued Blue Cross and Blue Shield of Texas after it announced plans to merge with Blue Cross and Blue Shield of Illinois a mutual company. Attorney General Morales alleges that in attempting to merge where no statutory authority is present, the Board of Directors have breached its fiduciary duties.

Virginia. Attorney General Jim Gilmore obtained a settlement with the Virginia Blue Cross and Blue Shield plan in which Blue Cross agreed to distribute \$159 million to a charitable foundation to support higher education in Virginia at Virginia’s state-supported universities.

Attorney General Gilmore represented the interest of consumers before Virginia’s State Corporation Commission when the Virginia Blue Cross and Blue Shield Plan announced plans to recast itself as a for-profit corporation.

The Attorney General had jurisdiction over the Virginia Blue Cross even after the Virginia Insurance Commissioner found that the Virginia Blue Cross and Blue Shield plan had engaged in deceptive and unlawful conduct. The Plan agreed to pay a \$5 million fine and approximately \$23 million in restitution to policyholders.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions and
Insurance Committee

From: Kathleen Sebelius, Commissioner
of Insurance

Re: Senate Bill 286 (Patient Protection Act)

Date: February 19, 1997

I am appearing today in support of S.B. 286 which will establish important consumer protection standards for managed care plans to follow in their treatment of patients and payment of claims. These provisions are similar to legislation which the Insurance Department introduced this year on payment for emergency room services (S.B. 64) as well as regulations which the Department is considering which deal with "gag rules," the use of "negative incentives," and access to specialty care. The following is an outline of the major provisions of the bill:

- **Section 2.** Definitions - The key term in this section is "emergency medical condition" which is the trigger for payment of a claim by a managed care plan.
- **Section 3.** Payment for Emergency Services - Requires health insurers to pay benefits for emergency services if the attending physician indicates that a emergency medical condition exists. The insurer must pay for all necessary medical services to stabilize the patient. Health care plans can require preauthorization to pay for additional medical services once the insured is stabilized but they must make someone available to authorize payment 24 hours a day, seven days a week.
- **Section 4.** Prohibition of "Gag Clauses" - Prohibits health insurers from restricting the discussion of treatment options by medical providers with their patients.
- **Section 5.** "Negative Incentives" - Prevents health insurers from using financial incentives in their contracts with medical providers that would reduce or limit the

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Senate FID
Attachment 8

2/19/97

benefits available to the insured. Capitation payment arrangements are not included in the definition of a "negative incentive."

- **Section 6.** Plan Information - Requires health care plans to provide information to enrollees on what services are covered, who are the participating providers under the plan and what limitations exist on the payment of benefits.
- **Section 7.** Access To Care - Requires health insurers to have sufficient providers in their network plans to provide treatment to patients. Insurers may allow patients to have direct access to specialty care in cases where the insured has a life-threatening, chronic, degenerative or disabling condition or disease.

I believe that Senate Bill 286 will give Kansas consumers enrolled in managed care plans an important level of protection. I would ask the Committee to carefully consider the legislation and to approve S.B. 286.

8-2

Emergency Room Denials

Dear Commissioner Sebelius:

"I appealed the denied claims February 10 and 15, 1996 with explanations that the reason I was taken to the emergency room was that I thought I was having a heart attack with severe chest and upper abdominal pain. I was on the verge of passing out and my son rushed me to the emergency room. Tuesday, April 2, 1996, I received a phone call from Sylvia at HMO Kansas who advised me that they had ruled that my condition was not life treating [sic] and the claims appeals are denied . . . Advertisements advise us not to take chest pain lightly and with the severe pain I experienced, it is my opinion I did the right thing by being rushed to the emergency room. I further believe that HMO Kansas, my health insurance coverage, should pay the bills as submitted."

Topeka

Dear Commissioner Sebelius:

"Being a new diabetic, I was very concerned about the severe stomach cramps I was experiencing. As a diabetic, I was told of the many complications experienced with out-of-control sugars. At this time, my sugars were very out of control. Being aware of this, I was wondering what the possibilities were that this could be related to the high sugars, thus bringing me to emergency room at KU. Arriving approximately 12:00 a.m., on May 31, 1995, I was placed in a room, where many tests were performed. Many doctors informed me that I would be admitted for my sugars. Relieved that I had come, I was sure this was the cause for my pain, only to be released at 6:30 a.m. In my opinion, being a newly diagnosed diabetic, this should have been considered to be a medical necessity. Believing that a doctor would keep someone for 6 1/2 hrs, they too must have thought it a valid concern."

Bonner Springs

Dear Commissioner Sebelius:

"On October 14, 1995, I had a seizure at work. Dr. John Oxler, who was dining at the club that morning, recommended calling an ambulance because I had hit my head on a ceramic tile floor. No one from work escorted me in the ambulance. I somewhat remember giving a nurse something from my wallet, I assume it was my insurance card."

Overland Park

Luckily, the doctor present testified that it was a medical emergency and the bill was paid.

Dear Commissioner Sebelius:

"This is the second time that your Claims Department has not accepted an ER claim. The first denied claim was when we took our four-day old daughter to the hospital ER in the middle of the night on our doctor's orders. She was suffering from acute diarrhea, which can be life-threatening for infants. Principal Health covered this claim after and only after we requested that it be reviewed. In order to keep this from happening again, please explain the exact method required when emergency medical service is necessary."

Olathe

The company did pay the claim after KID intervened.

Dear Commissioner:

"On Friday Feb. 2 of this year I was having severe abdominal pain at work I became nauseated and began throwing up and couldn't stop with traces of blood, I went home and called the doctors office several times leaving messages asking to be seen. They were not able to see me on short notice, so I made an appointment for the following Monday, as well I requested to speak to the doctor before she left but was unavailable, she was with other patients. I was told if the severity increased that my doctor was on call that evening. The pain increased and was in the same location of the appendix. I called Dr. Cordum's answering service and was called back by her, at this time approximately 7:30 PM she said 'If you need to go to the ER, go, you have my approval, I will approve it'. I was going to try until Monday, but the pain was getting worse so I went to the ER"

Terry Klausen

The company paid the claim upon KID's intervention.

Dear Commissioner Sebelius:

"I was having blackouts, dizziness, headaches, and passing out. I also had a 4 month old daughter at that time. I called the doctor to see if I could come in and see him. I was told by the lady at the front desk that he had no opening. I could come in and sit but he would not be able to see me. . . I asked if I could go to the hospital and if I would be covered. She said yes for both answers."

Kansas City, KS

The company denied the claim because there was no emergency. The company continued to deny the claim.

Consumer Complaint:

This consumer's claims for emergency treatment at Stormont Vail were denied because the Primary Care Physician did not authorize it. The company did agree to pay the claim with our urging.

Topeka

Consumer Complaint:

This consumer had a serious allergic reaction to food that a fellow employee at her workplace was eating. Apparently, the consumer felt as though she was going to pass out and she could not breathe, so she called an ambulance. The insurance company denied the claim, stating it was not an emergency. The insurance company maintained the denial.

Kansas City, KS