Approved: Feb. 16, 1998
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 12, 1998 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: Bud Grant, KCCI
Bill Caton, Consumer Credit Commissioner
George Barbee, KS Assoc of Financial Services
Chip Wheelen, Kansas Psychiatric Association
Callie Jill Denton, KS Association of Health Plans
Dave Hanson, Kansas Insurance Association
Teresa Sittenauer, State Farm
Bill Sneed, Health Insurance Assoc. Of America
Michelle Peterson, PhRMA

Others attending: See attached list

Hearing on SB 490 -- Finance charges on consumer credit sales

Bud Grant, KCCI, spoke on behalf of the Kansas Retail Council, and reminded the Committee of the passage of the bill last year which deregulated open and closed-end credit sales in Kansas, with main street businesses being the legislative intent (Attachment 1) Unintentionally, automobile sales were included in this deregulation and since that time there have been many in the market place who are charging interest rates in the 25% range. Many of the persons buying such vehicles look at the monthly payment only rather than the total price paid for the vehicle. Due to the high interest being charged, they are forced to purchase older vehicles and are paying very high total prices for them. This bill would return the credit environment for motor vehicle sales to where it was before the passage of **SB 27** in 1997.

Bill Caton, Consumer Credit Commissioner, presented testimony which would change the bill to have retail sales contracts on vehicles governed by the usuary limits provided on consumer loans in K.S.A. 16A rather than recreating usuary limits for retail sales contracts on vehicles (Attachment 2).

George Barbee, KAFS, asked if it was really necessary to have regulation of deregulation. Would such imposed legislation stifle sales?

The hearing was continued.

Continued Hearing on SB 462--Definition of terms in the Uniform Consumer Credit Code

Bill Caton, Consumer Credit Commissioner, explained that the bill would define origination fee and was necessary in that some out of state finance companies are charging duplicate fees in loan origination charges. He asked for two amendments to be added to the bill: Page 16, Line 16 change "or" to "and and on Line 14 add a colon after "exclusive of".

Senator Feleciano moved for the adoption of the two amendments. Senator Praeger seconded the motion. Motion carried. Senator Feleciano then moved that the bill be reported passed as amended. Motion was seconded by Senator Praeger. Motion carried.

Continued Hearing on SB 463--Health Information Privacy Act

Chip Wheelen, Kansas Psychiatric Association, reported that his clients are concerned about protecting privileged communications and the confidentiality of patient records (Attachment 3). This bill would transfer ethical enforcement of confidentiality to insurance companies. Patients requiring psychotropic drugs many times must be approved for this medication before it is allowed in HMO's or private carriers. He offered an amendment for Page 8, Line 21 to omit the words "medical examiner" and replace them with "coroner."

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 12, 1998.

Callie Denton, Kansas Association of Health Plans, said that their opposition to the plan was based on their reluctance to implement a state plan which likely will be in conflict with a federal law being developed at this time (Attachment 4). Kassebaum-Kennedy requires action in this area by February 21, 2000. She also handed out a confidentiality agreement that Health Net asks all employees to sign upon employment.

Dave Hanson, Kansas Insurance Association and the American Council of Like Insurance, requested that decision making be delayed until the NAIC model is available (Attachment 5). The Insurance Commissioner is Chair of the Health Committee and has been involved in the development of this model.

Teresa Sittenauer, State Farm, requested delaying action on this proposed legislation so Kansas does not have to revisit the issue if a different model is finally adopted by NAIC (Attachment 6). There have been no problems with lawsuits over leaking confidential material in State Farm. She did say that federal legislation in this regard would be much easier for State Farm to deal with than attempting to work with each individual state's attempts to handle confidentiality issues. The problem of computer security would need to be addressed also.

Bill Sneed, Health Insurance Associations of America, requested delaying action on this bill until a full cost disclosure could be made (Attachment 7).

Michelle Peterson, representing PhRMA, shared her concerns about the bill including the areas of research and the possibility of the adoption of a uniform set of rules at the national level (Attachment 8). Privacy is really not addressed in this bill.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 16, 1998.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2-12-98

NAME	REPRESENTING
Trish Copeland	SRS
Tom Wilder	Kansas Insurance Dept
Bill Sneed	NIAA
Callie Jill Denton	KAHP
Wenesa Intenaur	State Farm
Mike Hutle	Community Bankers Assn
Bill Caton	Consumer Credit
Kathy Olsen	KBA
Tom Bell	KHA
Patty Landmayer	SRS
RB Walk	ViaChristi
David Hanson	Ks Insur Assns
Rich Guthrie	Health Midwest
Bob Harder	MPS
Kevin Davis	Am Family Ins.
STEVE KEARNEY	CIGNA
John Federico	KCUA + Humana
Chip Wheelen	KS Psychiatric Society
George Barbee	KS Assn Fin. Servs.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2-12-98

NAME	REPRESENTING
Michelle Peterson	PhRMA
Meg Draper	KS Medical Society

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: kcci@kspress.com

SB 490

February 3, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Financial Institutions & Insurance

by

Bud Grant
Vice President and General Manager

Mr. Chairman and members of the Committee:

My name is Bud Grant and I appear here today on behalf of the Kansas Retail Council, a major division of the Kansas Chamber of Commerce and Industry. My comments are brief and in support of SB 490.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

In 1997, this Committee and the full Legislature passed, and the Governor signed, SB 27. The Kansas Retail Council had requested and strongly supported the bill. Its purpose was to deregulate open and closed-end credit sales in Kansas. You will recall that 29 states had already

Senate FI & I
Attachment 1
2/12/98

ta .ne same step, which was precipitated by federal action. National retailers with credit cent in deregulated states were allowed to export deregulated rates into Kansas. The result was a two-tiered system; national retailers unregulated, main street merchants regulated. Passage of SB 27 put all retailers under the same credit umbrella.

An unintended consequence, in my opinion, of SB 27, is what SB 490 addresses. When this committee discussed deregulating retail credit, no one mentioned that automobile sales were included...I didn't, financial institutions didn't, the automobile industry didn't. Mr. Caton has advised me that when he and I discussed the bill, he pointed this out to me...and I am confident he did. My only explanation for not remembering this and bringing it to the Committee's attention, is that I was not supporting the bill for the automobile dealers. They weren't competing in a market where their competition was playing with rules different from theirs. I requested and supported the bill for your small Kansas merchants to give them the same flexibility in the area of credit as their large neighbors.

SB 490 returns the credit environment for motor vehicle sales to where it was before the passage of SB 27. Because the competitive situation is not the same as for other merchants, and because the industry has not expressed the need for deregulation, I urge your favorable consideration of SB 490.

KANSAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Bill Graves
Governor

Wm. F. Caton
Commissioner

Recap of Testimony on Senate Bill 490
Bill Caton, Consumer Credit Commissioner
February 12, 1998

I propose changing Senate Bill 490 to have retail sales contracts on vehicles to be governed by the usury limits provided on consumer loans in K.S.A. 16a-2-401 rather than recreating usury limits for retail sales contracts on vehicles. This proposal would allow credit grantors to charge 36% on the first $780, 21% on $781 to $2,600 and 14.45% over $2,600 with an alternative blended rate of 18% rather than reinstating retail sales contract usury limits which were 21% on the first $1,000 and 14.45% thereafter with an alternative blended rate of 18%. I believe this method of reinstating the usury rates on vehicle retail sales contracts would be less confusing to the finance industry and would provide somewhat higher interest rates on smaller size loans which would possibly address the credit issues of high risk auto lending.

At your direction, I will provide suggested language to the Revisor of Statutes office.

Senate FI&I
Attachment 2
2/12/98

JAYHAWK TOWER, 700 S.W. JACKSON, SUITE 1001 / TOPEKA, KANSAS 66603 / (785) 296-3151 / FAX: (785) 296-6810

Kan. Psychiatric Society

Founded 1942

Kansas Psychiatric Society

a district branch of the American Psychiatric Association
623 SW 10th Avenue, Topeka, Kansas 66612-1627
(785) 266-7173 • fax (785) 235-5114
kps@cjnetworks.com

Officers 1996-1998

Kathryn J. Zerbe, M.D.
President
Topeka

Linda L. Keeler, M.D.
President-elect
Lawrence

Bruce E. Klosterhoff, M.D.
Secretary
Hutchinson

Sanford E. Pomerantz, M.D.
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Ronald L. Lacey, M.D.
Councillor I
Lawrence

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Councillor II
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James L. Donley, M.D.
Councillor III
Kansas City

Ronald L. Martin, M.D.
Assembly Representative
Wichita

George Dyck, M.D.
Dep. Assembly Representative
Wichita

Manuel P. Pardo, M.D.
Immediate Past President
Mission Hills

Staff

Charles Wheelen
Executive Director

Testimony
to the
Senate Financial Institutions and Insurance Committee
by Charles Wheelen
February 5, 1998

Thank you for the opportunity to express our support for SB463. Physicians who specialize in the practice of psychiatry are particularly concerned about protecting privileged communications and the confidentiality of patient records.

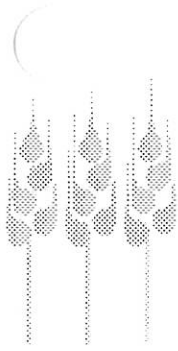
The relationship between a patient and his or her physician is unique. This relationship is so personal that the courts have determined that communications exchanged in this relationship are privileged because of our constitutional right to privacy. This is extremely important when the patient is emotionally disturbed or has a mental illness. The patient must be able to rely on the integrity of the psychiatrist in order to communicate openly and effectively.

Our members are held to the standards prescribed in *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*. This includes the general rule that "Psychiatric records, including even the identification of a person as a patient, must be protected with extreme care. Confidentiality is essential to psychiatric treatment. This is based in part on the special nature of psychiatric therapy as well as on the traditional ethical relationship between physician and patient."

This ethical responsibility in regard to patient records creates a dilemma when an insurer requests information about patient care. If the patient is insured and wishes to receive his or her benefits, he or she is often compelled to consent to the release of otherwise privileged information. When such consent is granted by the patient, the duty to protect the confidentiality of medical records should be shifted from the psychiatrist to the insurer. That's what SB463 does; it transfers the responsibility to honor the patient's privilege.

For the above reasons, we respectfully request that you recommend passage of SB463. Thank you for considering our testimony.

Senate FI&I
Attachment 3
2/12/98



Kansas Association of Health Plans

Testimony before the

Senate Financial Institutions and Insurance Committee

The Honorable Don Steffes, Chairman

Hearings on SB 463

February 5, 1998

The Kansas Association of Health Plans (KAHP) is a nonprofit corporation dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations, and others who support managed care. KAHP members serve over 200,000 Kansans.

The Kansas Association of Health Plans opposes SB 463 relating to privacy of medical records and confidentiality. Our opposition is not to the policy embodied by SB 463; rather, KAHP members oppose implementing state law that could potentially conflict with anticipated federal law. KAHP members urge legislators to forego action on this initiative pending federal action.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires the establishment of federal statutory or regulatory law that roughly parallels the objectives of SB 463. HIPAA requires that the new laws address the rights of an individual who is the subject of individually identifiable health information; procedures for the exercise of such privacy rights of such individuals; and the uses and disclosures of such information that should be authorized or required. Under the provisions of HIPAA, federal law must be in place no later than February 21, 2000. While the Kansas Legislature is not preempted by HIPAA from acting in the interim, the ultimate result of separate federal and state laws is dual regulation and complicated compliance. This situation is made more difficult by the fact that many Kansas health plans operate in the bi-state area in Kansas City.

Currently, HMOs must comply with federal and state laws regarding privacy of medical records. In addition, industry standards exist for the protection of confidentiality and privacy. The National Committee on Quality Assurance (NCQA) requires that accredited health plans have procedures in place for protecting the confidentiality of member materials. Plans are also expected to monitor the confidentiality practices of network physicians. These same

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Senate FI&I
Attachment 4
2/12/98

expectations are part of the Health Care Financing Administration's (HCFA) contracts with health plans who have Medicare HMOs. Because of these requirements and the industry's recognition of the importance of confidentiality, health plans have established internal policies and procedures for dealing with the confidentiality of medical records. KAHP member HMOs and PPOs are very sensitive to the privacy concerns of consumers and are actively implementing procedures that ensure privacy of medical records in anticipation of the new federal requirements.

As we understand it, SB 463 is a National Association of Insurance Commissioners (NAIC) draft act which has not yet been finalized by that national body. The NAIC draft is still undergoing review and is still subject to comment from interested parties. Again, the KAHP would like to emphasize that our opposition to SB 463 is not based on the policy of the bill but its timing. Uniformity of laws concerning confidentiality and privacy of medical records would be circumvented by proceeding with the enactment of SB 463 prior to the establishment of federal law.

The Kansas Association of Health Plans respectfully requests that the Senate Financial Institutions and Insurance Committee forego action on the initiative embodied in SB 463 pending federal action.

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CONFIDENTIALITY AGREEMENT

As a HealthNet employee, I understand that I may acquire or become aware of sensitive or confidential information during the course of my employment. "Confidential information" includes but is not limited to information which is not generally known about HealthNet or its business, including information about its products, projects, developmental or experimental work, computer programs, databases, know-how, processes, formulas, customers, providers, business associates, business plans, finances, medical records, personnel, and information obtained from third parties.

I also understand that, because HealthNet is a managed health care plan, employees who elect coverage under the HealthNet employee group health plan or any other HealthNet plan will be members of one of HealthNet's managed care programs. I understand that, if I elect coverage with HealthNet, my claims may be processed by HealthNet, and I will be subject to the same terms and conditions of coverage as other members in similarly situated HealthNet plans, which may involve the submission of medical information to HealthNet in keeping with the policies and procedures established by the plan.

In keeping with HealthNet's Confidentiality Policy, which governs the release of confidential information:

- I agree not to disclose confidential information to any outside party unless the disclosure is made within the regular scope of my employment duties and is within my authority to disclose and is in conformance with health plan policies in effect at the time of disclosure.

- I agree to make every effort to make appropriate use of materials which maximize confidentiality of documents, such as confidential interoffice envelopes, fax cover sheets with confidentiality clauses, and "confidential" stamps. I further agree not to review confidential documents as soon as I become aware that they are confidential and to ensure that they are immediately sent to their intended recipients.

- I understand that sharing or discussing certain kinds of sensitive information about other employees could possibly constitute a violation of HealthNet's Harassment Policy or may otherwise be deemed to be a disciplinary issue, depending upon the specific circumstances and the nature of the sensitive information.

- I agree to treat medical information relating to HealthNet employees as strictly confidential and to handle such information only as authorized and in accordance with Company policy. I further agree to disclose such information only as authorized.

- I understand and agree that unauthorized inquiries or discussions relating to medical information obtained by HealthNet, whether about employees or about other HealthNet members, is strictly prohibited, whether on or off HealthNet's premises.

- I understand and agree that my own medical information is regarded as confidential by the Company and should be disclosed only to Human Resources when necessary to verify eligibility for benefits, to support leave of absence requests, and/or to support requests for accommodation. Such information must be disclosed to Human Resources in the manner required by Company policy and not to supervisors or other members of management (other

than references to illness, etc., when reporting absence). I understand that, if I share my own medical information with co-workers, such disclosure may severely compromise the ability of the Company to maintain the privacy of my medical issues. I understand that information shared between providers and health plan staff in accordance with health plan requirements is not shared with Human Resources and does not constitute notification to them of the need for absence, leave, accommodation or benefits.

- I understand that, depending upon the circumstances of the violation, the Company may pursue disciplinary action, up to and including termination, for non-compliance with the Confidentiality Policy or with this Agreement.

Employee (Print Name) Employee Signature

Date

David A. Hanson
Kansas Insurance Associations
Topeka, Kansas
(785) 232-0545

TESTIMONY ON SB 463

TO: Senate Financial Institutions and Insurance Committee
State Capitol
Topeka, Kansas

RE: Senate Bill No. 463

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas, and also on behalf of the National Association of Independent Insurers, a national trade association representing over 560 property and casualty insurance companies across the country.

I have talked with a number of companies that expressed strong concern with the provisions of Senate Bill 463. We believe that insurance companies in Kansas genuinely try to protect their policyholders and respect their right to privacy by trying to protect personal information about the policyholders. We are not aware of problems where confidential health information has been inappropriately disclosed in Kansas. We understand that the NAIC has been working on proposed model provisions in this area, although that work is not yet complete. We also understand the federal government is looking at this issue and this legislation may therefore be premature.

We appreciate Commissioner Sebelius' concerns and her work with the NAIC to try to develop a model that will provide reasonable safeguards for all of the parties involved in this issue. We would encourage you to wait until the work that is already underway at the NAIC has been completed.

I have also submitted copies of written testimony from the American Council of Life Insurance, Senior Counsel Jim Hall, who was not able to be present for the hearing today. That testimony reflects many of the same concerns that a number of companies have expressed and without repeating them all here, we would urge your consideration of those specific concerns as well.

We therefore believe that this bill should not be passed at this time. Thank you.

Respectfully,

DAVID A. HANSON

A:\TESTIMON.463

Senate FI&I
Attachment 5
2/12/98

American Council of Life Insurance

February 4, 1998

The Honorable Don Steffes
Chair
Senate Committee on Financial Institutions and Insurance
State Capitol
Topeka, KS

Re: Senate Bill 463

Dear Chairman and Members of the Committee:

I am writing on behalf of the American Council of Life Insurance whose 532 member companies hold 88.7 percent of the legal reserve life insurance in force in the United States. We have 402 member companies licensed in Kansas holding approximately 90.7 percent of the life insurance in force in the state. Thank you for the opportunity to comment on Senate Bill 463.

The American Council of Life Insurance (ACLI) opposes enactment of Senate Bill 463. Our opposition is based on the fact that the bill is a version of the as yet unfinished draft revision to the NAIC Model Health Privacy Act. We see no reason to for Kansas to move ahead of both the NAIC and other states by enacting an unfinished draft. Indeed, the drafting process is still so much underway that Senate Bill 463 does not even reflect the most recent version of the draft. For the Committee's benefit I am enclosing the most recent version of the Model draft with the Chairman's copy of this letter.

While we do not suggest that Kansas must automatically adopt NAIC Models, we would strongly suggest that it would be more prudent to at least wait until the regulators and industry representatives drafting the Model have completed that document before Kansas considers whether to enact it.

We wish to state that the ACLI strongly supports enactment of the NAIC Insurance Information and Privacy Protection Model Act. Kansas has already enacted a portion of this Model, found at K.S.A. 40-2,111 through 40-2,113. This Model is currently the law in sixteen jurisdictions.

If Kansas insists on going ahead with consideration of this not yet final version of the draft Model, we have a number of comments regarding Senate Bill 463:

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202/624-2000
FACSIMILE 202/624-2319

Section 2 (l): We ask that the definition of "Protected health information" be amended to reflect an exception or exclusion for demographic information. Names and addresses are not generally considered health information.

Section 3(a)(2): We ask that this section be deleted. We believe that periodic training of all employees who handle protected health information is unnecessary. Written notification of information practices to appropriate employees should be sufficient.

Section 3 (b)(1)&(2):We ask for deletion of these two sections. The draft's requirements on insurers alone are significant. It is inappropriate and impractical to additionally hold insurers responsible for the actions of third parties. Insurers may contract with literally hundreds of third parties in various capacities. It would be extremely burdensome to require insurers to audit these third parties. Conducting random audits requires the insurer to act as a policeman when in many circumstances they may have no legal right to do so. For example, how can an insurer conduct a "random audit" of a contracted lab if the lab's own internal security procedures do not allow non-lab employees beyond the lab's reception area?

Section 4(a): The requirement that insurers file their information practices with the commissioner creates an added burden and also raises proprietary issues. A preferable alternative would be to have insurers certify to the commissioner that they have specified practices and procedures in place. This can then be verified during a market conduct exam. This alternative would permit insurers to maintain their practices in a confidential manner.

Section 4(a)(5):We ask for deletion of the requirement that insurers inform covered persons of a right to a copy of the insurer's internal confidentiality procedures. In addition to the fact that it is not standard practice to grant covered persons a right to copies of the internal corporate procedures of an insurer, the information in this case could include not only printed matter but computer code as well. This would be of little value to an insured. In addition, as stated above this access raises proprietary issues.

Section 7(c):We ask that this requirement be modified with respect to agents and independent contractors. There are many routine disclosures made to agents and contractors. To create a written record of each one would impose a tremendous burden with little discernable benefit.

Section 7 (d): This section requires that disclosed protected health information be used solely for the lawful purpose for which it was disclosed. That means information collected for underwriting purposes cannot be used for any future purposes such as claims

The Honorable Don Steffes
February 4, 1998
Page 3

or fraud investigation. Clearly, such a restriction unrealistically strict and does not take into account standard and accepted insurer business practices.

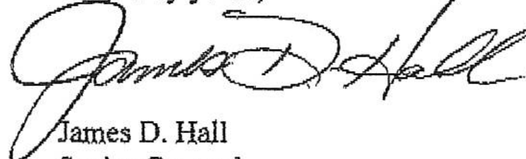
Section 9: The draft offers disclosure authorization exceptions for many situations in which insurers disclose health information in the ordinary course of business but two have been overlooked here; 1) disclosure to other insurers as a part of the sale of a block of business or as a part of the purchase of one insurer by another; and 2) disclosure to the insurer's own outside legal counsel, for example in the course of preparing a defense to a lawsuit. We would ask for the bill to incorporate these additional instances where insurers should be allowed to disclose health information to third parties without obtaining authorization from the covered person.

ACLI recognizes that applications of technology, including the evolution of electronic medical data, have increased society's concern with respect to protections afforded health information. We submit that life insurers have a long-standing history of safeguarding the confidential information of their policyowners and account holders. Life insurers have no intention or incentive to discontinue that safeguarding.

We urge the Committee not to favorably recommend Senate Bill 463 for passage. In addition to the bill's numerous flaws listed above, this bill would be an enactment of what is at this time an unfinished and unadopted NAIC Model law. It is almost certain that interested parties would end up returning to this legislature in a future session to seek amendments that would reflect the final, adopted version of the Model law. In addition, the federal government is also examining this same area of health information privacy and may pass legislation as well. Given these facts we feel it is premature for Kansas to enact this bill into law and we urge the Committee to at least allow the regulators and industry representatives drafting the new NAIC Protected Health Information Model Act to finish their work before Kansas considers whether to enact the new Model.

Thank you for the opportunity to comment on Senate Bill 463.

Very truly yours,



James D. Hall
Senior Counsel

Enclosure

cc: John Atchley
Jerry Banaka
Dave Hanson
Mark Heitz
Roger Viola

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Draft: 1/30/98

The NAIC solicits comments on this draft. Underlining and overstrikes show changes from the 11/23/97 draft. Comments should be addressed to Jennifer Cook, NAIC, 444 North Capitol St., Suite 701, Washington, D.C. 20001-1512.

HEALTH INFORMATION PRIVACY MODEL ACT

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Section 1. Title

This Act may be known and shall be cited as the Health Information Privacy Act.

Section 2. Purpose

The purpose of this Act is to ~~prevent the~~ set standards to protect health information from unauthorized collection, ~~unauthorized~~ use ~~or~~ and ~~unauthorized~~ disclosure ~~of protected health~~

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~~information and to require the establishment of~~ by requiring insurance carriers to establish procedures for the treatment of all health information~~, by insurance carriers.~~

Section 3. Definitions

A. "Carrier" or "insurance carrier" means ~~a corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society or other person engaged in the business of insurance or subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.~~ any person or entity required to be licensed by the commissioner to assume risk, including without limitation an insurer, a hospital, medical or health service corporation, a health maintenance organization, a multiple employer welfare arrangement or a worker's compensation self-insurer. Carrier does not include a non-risk-bearing regulated insurance entity, such as a producer, agency or administrator.

Drafting Note: Insurance Departments may want to extend the application of this Act to other organizations regulated by the commissioner that may collect, use or disclose protected health information, such as third party administrators.

B. "Commissioner" means the insurance commissioner of this state.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term "commissioner" appears. If the jurisdiction of certain health carriers, such as health maintenance organizations, lies with some state agency other than the insurance department, or if there is dual regulation, a state should add language referencing that agency to ensure the appropriate coordination of responsibilities.

C. "Covered person" means a policyholder, subscriber, enrollee, beneficiary, certificate holder or other person covered by a policy, contract or agreement of insurance issued by a carrier.

D. "Disclose" means to release, transfer, ~~provide access to,~~ or otherwise divulge protected health information to any person other than to the individual who is the subject of the information. ~~The term includes any subsequent release of protected~~

5-7

~~health information by a person to whom the protected health information was initially disclosed.~~

E. "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

F. "Health care" means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures or counseling, including appropriate assistance with disease or symptom management and maintenance, that:

(a) Affects the physical, ~~or~~ mental or behavioral condition of an individual, including individual cells or their components which includes genetic information and the results of genetic tests; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; and

(2) Prescribing, dispensing, or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

G. "Health care professional" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law.

H. "Health care provider" or "provider" means a health care professional or facility.

I. "Health information" means, with respect to the individual who is the subject of the information, any information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships disclosed by the individual, a member of the individual's family, or an authorized representative of such individual, that relates to:

(1) The past, present or future physical, ~~or~~ mental or behavioral health or condition of an individual or a member of the individual's family,

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including individual cells and their components and which includes genetic information and the results of genetic tests;

(2) The provision of health care to an individual; or

(3) The payment for the provision of health care to an individual.

J. "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing.

K. "Protected health information" means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

L. "Unauthorized" means a use or disclosure of protected health information made by a carrier without the authorization of the subject of that information or that is not in compliance with this Act or other legal requirements.

Section 4. Applicability and Scope

This Act applies to all insurance carriers and governs the treatment management of health information, including the collection, use, and disclosure of protected health information by insurance carriers. An insurance carrier shall require that all persons acting on behalf of or at the direction of the carrier comply with the terms and conditions of this Act.

Section 5. Maintenance of Health Information; Confidentiality Policies, Standards and Procedures

A. A carrier shall develop and implement written policies, standards and procedures to protect against the confidentiality, security, accuracy and integrity of health information. These procedures unauthorized collection, use or disclosure of health information by the carrier or its employees which shall include:

(1) Nondisclosure and confidentiality policies and agreements that set forth guidelines forLimitation on access to health informationand use of health

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~~information maintained by the carrier~~ by only those persons who need to know the health information in order to perform their jobs;

(2) ~~Periodic~~Appropriate training for all employees ~~who have access to health information regarding the requirements of this Act~~;

(3) Disciplinary measures for violations of the ~~confidentiality~~ health information procedures;

(4) Identification ~~by~~ of the job titles and job descriptions ~~of those positions within the organization whose occupants have authorization~~ that are authorized to disclose protected health information; ~~and~~

(5) Methods for handling, disclosing, storing and disposing of health information~~, including procedures for appropriate responses to court ordered legal process, legal process from a governmental entity, or legal process issued by an attorney.~~; and

(6) Periodic monitoring of the employees' compliance with the carrier's policies and procedures in a manner sufficient for the carrier to determine compliance with this Act and to enforce its policies and procedures.

B. A carrier shall file the health information policies, standards and procedures developed pursuant to Section 5 with the Commissioner.

C. In any contractual arrangement between a carrier and a person where the transmission of health information may occur ~~A~~ a carrier shall:

(1) Include a provision that ~~requiring~~ requires compliance with the carrier's ~~confidentiality~~ health information procedures and all the provisions of this Act~~, that address the confidentiality of health information in all its contractual arrangements with persons who, acting on behalf of or at the direction of the carrier, may collect, use or disclose protected health information.~~

(2) Inform the person of its obligation to comply with state and federal statutory and regulatory requirements.

(3) ~~Conduct random audits periodically of~~ Monitor all persons ~~under contract with the carrier to act on behalf of or at the direction of the carrier~~ in a

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manner sufficient for the carrier to determine compliance with this Act and to enforce its ~~own~~ policies and procedures.

~~(3) Monitor internal operations on an ongoing basis to determine and enforce employee compliance with the carrier's policies and procedures.~~

C. A carrier shall have policies and procedures to address a person's noncompliance with the terms of the contract between the carrier and the person regarding the transmission of health information.

Section 6. Notice of ~~Confidentiality Practices~~ Health Information Policies Standards and Procedures

A. A carrier shall file a written notice of its health information policies, standards and procedures developed pursuant to Section 5 ~~its confidentiality notice, policies and procedures~~ with the commissioner and provide the notice upon request to ~~a covered person, in writing and in a clear and conspicuous manner,~~ any person ~~notice of the carrier's confidentiality practices~~. The notice shall include:

~~(1) A description of a covered person's rights with respect to protected health information;~~

(1) The uses and disclosures of protected health information ~~authorized under~~ prohibited by this Act;

(3) The procedures for authorizing and limiting disclosures of protected health information and for revoking authorizations;

(4) The procedures established by the carrier for the ~~exercise of a~~ covered person~~'s rights~~ to review and amend protected health information; and

(5) The right of a covered person to obtain a copy of the carrier's ~~confidentiality~~health information policies, standards and procedures developed pursuant to Section 5.

Section 7. Covered Person's or Applicant's Right to Have Access to Health Information

A. A covered person or an applicant who has been denied coverage has the right to examine or receive a copy of health information relating to that covered person or applicant that is in the possession or control of the carrier.

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B. A carrier shall, nNo later than twenty (20) working days after receipt of a written request for health information from a covered person to examine or receive a copy of the requester's health information maintained by the carrier or an applicant who has been denied coverage, a carrier shall:

(1) Provide a copy of the information requested to the covered person or applicant or if providing a copy is impracticable, permit the covered person or applicant to examine the information during regular business hours;

(2) Notify the covered person or applicant that the carrier does not have the information and, if known, inform the covered person or applicant of the name and address of the person who has the information requested or, if the carrier will be obtaining access to the requested information, when the information will is expected to be available to the covered person or applicant;

(3) Deny the request in whole or in part if the carrier determines any of the following:

(a) Knowledge of the information would reasonably be expected to identify a confidential source who provided the information in conjunction with a lawfully conducted investigation, law enforcement investigation, or court proceeding; or

(b) The information was created solely compiled in preparation for litigation, law enforcement or fraud investigation, quality assurance or peer review purposes;

(c) The information is the work product of the carrier, which would include but not be limited to interpretation, mental impressions, instructions and other original product of the insurer, its employees and agents; or

(d) The Claimant has filed suit against the carrier.

B. If a request to examine or copy health information is denied in whole or in part under this section, the carrier shall notify the covered person or applicant of the decision reasons for the denial in writing.

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C. ~~If a carrier does not maintain the information in the form requested by the individual, the~~ A carrier is not required to create a new record or reformulate an existing record in order to meet ~~the~~ a request for information.

D. The carrier may charge a reasonable fee for providing the health care information requested and shall provide a detailed bill accounting for the charges. No charge shall be made for reproduction of health care information requested for the purpose of supporting a claim, supporting an appeal or accessing any federal or state sponsored or operated health benefits program.

Section 8. **Covered Person's Right to Amend Health Information**

A. A covered person may request in writing that a carrier amend the covered person's health information to correct any inaccuracies, as long as the amendment does not address the underlying truth or correctness of a medical record submitted by a medical professional or delete, erase or obliterate any of the original information.

B. Within thirty (30) working days after receipt of a written request from a covered person to amend health information, a carrier shall do one of the following:

(1) Amend the information as requested, amend any errors documented, or act to verify the accuracy of information identified as erroneous by the covered person; or

(2) Notify the covered person that the request has been denied, the reason for the denial, and that the covered person may:

(a) Seek an amendment of the records by the medical professional who created the record in question. The carrier shall include the medical professional's name and address; or

(b) ~~f~~File a concise statement of what the covered person believes to be the correct information and the reasons why the covered person disagrees with the denial. The carrier shall retain this statement filed by the covered person in the health information.

C. If the carrier amends the information as requested pursuant to Subsection B(1), the carrier shall furnish the amendment to:

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(1) A person specifically designated by the covered person who may have, within the preceding two (2) years, received the recorded personal information;

(2) An organization whose primary source of personal information is insurance carriers, as long as the organization has systematically received recorded personal information from the insurance carrier within the preceding seven (7) years. However, the amendment need not be furnished if the organization no longer maintains health information about the covered person;

(3) Any organization that furnished the health information that was amended pursuant to Subsection B(1).

D. If the covered person files a statement pursuant to Subsection B(2)(b), the insurance carrier shall:

(1) Clearly identify the matter or matters in dispute and include the statement in any subsequent disclosure of the health information; and

(2) Furnish the statement to the persons described in Subsection C.

E. Nothing in this section shall require a carrier to alter original medical records provided to them by a medical professional.

Section 9: Collection, Use or Disclosure of Protected Health Information: Generally

A. A carrier shall not collect, use or disclose ~~P~~protected health information ~~shall not be collected, used or disclosed by a carrier~~ except as permitted under this Act, or as otherwise permitted or required by law or court order.

~~B. A carrier shall limit the collection, use or disclosure of protected health information to the minimum amount necessary to accomplish a lawful purpose related to the business of insurance and shall restrict access to such information to only those persons needing the information to perform a lawful function. Except as provided in Section 10, a carrier may not collect, use or disclose protected health information for marketing purposes.~~

B. A carrier shall not disclose protected health information to an individual's employer without the individual's specific authorization.

C. A carrier shall not disclose protected health information if a covered person clearly indicates that disclosure to certain individuals of all or part of that information could jeopardize the safety of the covered person.

D. (1) A carrier shall not disclose protected health information concerning sensitive health services, including those related to reproductive health, sexually transmitted diseases, substance abuse and behavioral health to a policyholder or certificateholder, when requested by the covered person who has received or will receive these services.

(2) When a request pursuant to Section 9D(1) has been made by a covered person, a carrier shall not disclose any information regarding those services, including mailing a bill or explanation of benefits, to the policyholder or certificateholder. In such a case, the carrier shall obtain from the covered person receiving the service an address to which the information should be sent and shall mail that information only to that address.

(3) The provisions of this subsection take precedence over any state law to the contrary.

E. A carrier shall create a record of all disclosures made to any person who is not an employee of the carrier. The record shall include the following:

(1) The name~~,~~ and address ~~and~~ or ~~institutional affiliation, if any,~~ location of the person to whom the information is disclosed. If disclosed to an institution, a contact person shall be named;

(2) The date and purpose of the disclosure;

(3) A description of the information disclosed; and

(4) The authorization or release form allowing the receipt or disclosure of the information.

F. A person ~~to whom~~who receives protected health information ~~is disclosed~~ from the carrier shall not use the information for any purpose other than the lawful purpose for which it was disclosed.

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G. ~~The provisions of this Act do not affect other laws that restrict to a greater extent the collection, use or disclosure of specific types of health information to a person other than the covered person to whom the information relates. No provision of this Act shall affect any other state or federal laws that expressly permit or require the collection, use or disclosure of health information.~~

~~**Drafting Note:** Those states with existing privacy laws, including laws addressing specific diseases or treatments, will need to decide how to integrate these provisions.~~

Section 10. Authorization for Collection, Use or Disclosure of Protected Health Information

A. A carrier shall not collect, use or disclose protected health information without a valid authorization by the covered person, applicant or claimant who is the subject of the information, except as permitted by Section 11 of this Act or as permitted or required by law or court order. A covered person, applicant or claimant may provide specific authorization for the collection, use or disclosure of that covered person's, applicant's or claimant's protected health information for any purpose, provided that the authorization meets the requirements of this section.

B. A carrier shall retain a covered person's, applicant's or claimant's authorization in the covered person's, applicant's or claimant's record.

C. An authorization shall be valid if it is in writing or in electronic form and contains all the following:

(1) The identity of the individual who is the subject of the information;

(2) A detailed description of the protected health information to be collected, used or disclosed;

(3) The name and address of the person from whom the information is to be collected or to whom the information is to be disclosed, except that an authorization provided to a carrier to support payment of a claim or benefit may generally describe the sources from which information will be collected or to whom information will be disclosed for claim settlement or benefit purposes ~~and is not required to include the names and addresses of the employees of the insurer;~~

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(4) The purpose of the authorization, including the intended use of the information, and the scope of any disclosures that may be made in carrying out the purpose for which the authorization is requested, provided those disclosures are not otherwise prohibited by law. If the purpose of the disclosure is for the marketing of services or goods, or for other commercial gain, the request for authorization for disclosure shall be made separately from any other request for authorization and shall be limited to that purpose only. The purpose of the disclosure shall appear as a separate paragraph in bold type no smaller than twelve 12 point. The purpose shall be stated in clear and simple terms;

(5) The signature of the covered person, applicant or claimant and the date signed, or, if in electronic form, a unique identifier of the covered person, applicant or claimant and the date on which the covered person, applicant or claimant authenticated the electronic authorization; and

(6) A statement that the covered person, applicant or claimant may revoke the authorization at any time, subject to the rights of any person ~~who~~ that acted in reliance on the authorization prior to revocation.

D. An authorization shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twelve (12) months, except an authorization signed for one of the following purposes:

(1) To support payment of benefits under an insurance policy, in which event the authorization shall remain valid during the entire term of the policy;

(2) To support claims for benefits or compensation, in which event the authorization shall remain valid during the pendency of the claim;

(3) To support an application for, ~~an insurance policy, a~~ reinstatement of ~~a policy~~, or a change in benefits under ~~an existing~~ a life insurance policy, in which event the authorization shall expire in ~~twenty-four~~ thirty (~~24~~30) months or whenever the application is denied, whichever occurs first; or

(4) To support or facilitate ongoing management of a chronic condition or illness or rehabilitation from an injury.

E. A covered person, applicant or claimant may revoke an authorization at any time, subject to the rights of any person who acted in reliance on the authorization prior

to notice of revocation. A revocation of an authorization shall be valid if it is in writing or in electronic form and is dated and authenticated as required under Subsection C(5) of this section. A revocation of an authorization shall be retained by the carrier in the covered person's, applicant's or claimant's record. A carrier shall give prompt notice of the revocation to all persons relying on the initial authorization.

F. A carrier that has collected protected health information pursuant to a valid authorization in accordance with this Act, may use and disclose the information to employees and persons acting on behalf of or at the direction of the carrier for the performance of insurance functions such as claims adjustment and management, fraud investigation, underwriting, loss control or reinsurance. The information shall not be used or disclosed for any purpose other than in the performance of the carrier's insurance functions.

G. A carrier shall develop, give notice to covered persons and implement procedures by which covered persons may request and secure nondisclosure of health information.

H. An authorization to disclose protected health information pursuant to this Act or a production of protected health information pursuant to a court order shall not be construed to constitute a covered person's or claimant's waiver of any other privacy right provided by other federal or state laws, common law, or rules of evidence.

Section 11: Disclosure of Protected Health Information Without Authorization

A. General Rules

(1) A carrier may disclose or use protected health information without the authorization of the covered person or claimant in the following circumstances or as otherwise permitted by law:

(a) To conduct a scientific research project, provided that the project:

(i) Contains adequate safeguards to assure that information in a report of the research project does not identify, directly or indirectly through reference to publicly available information, the individual subject of the information; and

(ii) Does not require direct contact with the covered person or claimant who is the subject of the information unless that covered person or claimant has been notified by the carrier that contact is possible and the covered person or claimant has authorized the contact;

Note to working group: Research language is being developed by Steve Kappel from Vermont.

(b) Between insurance carriers, provided that the carriers are adjusting or settling related claims and that both are using protected health information to investigate, evaluate, and settle claims pursuant to a valid authorization or court order;

(c) To the extent necessary to investigate, evaluate, settle, or obtain reinsurance for third party claims, provided that the claimant is the subject of the protected health information and the information is used for no other purpose without personal authorization or statutory permission.

(2) A carrier shall disclose protected health information in any of the following circumstances:

(a) The disclosure is to federal, state or local governmental authorities to the extent the carrier disclosing the information is required by law to report protected health information;

(b) The disclosure is to federal or state governmental authorities for use only in the lawful investigation or prosecution of insurance fraud, a violation of laws relating to the provision of health care or the payment for health care or a violation of this Act. Information disclosed by a carrier pursuant to this paragraph may not be used in any administrative, civil or criminal action or investigation directed against the individual who is the subject of the information, unless the action or investigation involves the subject of the information and arises from the provision of health care or payment for health care and related benefits;

(c) The disclosure is based on a reasonable belief that the information is needed for one of the following purposes:

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(i) To identify a deceased individual;

(ii) To determine the cause and manner of death by a chief medical examiner or the medical examiner's designee; or

(iii) To provide necessary protected health information about a deceased individual who is a donor of an anatomical gift.

(d) The disclosure is to state or federal governmental authorities for the purpose of performing a financial audit, quality assurance review or utilization review.

(e) The disclosure is pursuant to a court order issued after the court's determination that the public interest in disclosure outweighs the individual's privacy interest and that the information is not reasonably available by other means.

(3) A disclosure of health care information made pursuant to this section shall not be construed to be or to operate as a waiver of the individual's confidentiality rights provided by other federal or state laws, rules of evidence or common law.

B. Rules Relating to Health Insurance Carriers

(1) A health carrier may disclose protected health information without the authorization of the covered person in the following circumstances or as otherwise permitted by law:

(a) To a health care provider employed by the carrier who is furnishing health care to the covered person or to a referring health care provider who continues to furnish health care to the covered person if the information is necessary to provide ~~appropriate,~~ ongoing health care treatment, and if the disclosure has not been limited or prohibited by the covered person;

(b) To a person acting on behalf of or at the direction of the carrier to perform insurance functions, such as risk management, quality assurance, utilization review and peer review activities, and activities that support the processing and payment of health insurance claims;

(c) To reveal a covered person's presence in a facility owned by the carrier and the covered person's general health condition, provided that the disclosure is limited to directory information, unless the covered person has restricted that disclosure or the disclosure is otherwise prohibited by law. For the purposes of this paragraph, directory information means information about the presence or general health condition of a particular covered person who is an inpatient or is receiving emergency health care in a health care facility. General health condition means the covered person's general health condition or status described as "critical," "poor," "fair," "good," "excellent," or in terms that denote similar conditions; and

(d) To a person engaged in peer review, utilization review or the assessment, evaluation or investigation of the quality of health care furnished by a provider pursuant to statutory or regulatory standards or the requirements of a private or public program authorized to provide for the payment of health care.

C. Special Rules for Workers' Compensation Insurance Carriers

(1) A workers' compensation carrier may collect or disclose protected health information without the authorization of the individual who is the subject of the information in the following circumstances or as otherwise permitted by law:

(a) Where the information to be collected or disclosed is necessary or incidental to the performance of the workers' compensation carrier's obligations under any workers' compensation or related law or contract.

D. Special Rules for Reinsurance Carriers

(1) A reinsurance carrier may disclose protected health information without the authorization of the covered person or claimant in the following circumstances or as otherwise permitted by law:

(a) to a reinsurer for the purpose of underwriting;

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(b) to a reinsurer for the purpose of conducting claim file audits.

Section 12. Disclosure of Protected Health Information Pursuant to Legal Process

A carrier shall make a good faith effort to notify the covered person or claimant who is the subject of protected health information prior to disclosure pursuant to legal process, including a court order, subpoena, subpoena duces tecum or a discovery request, unless otherwise ordered by the court. A carrier or the covered person or claimant who is the subject of protected health information, or both, may object to disclosure under this section by filing an objection or a request for a protective order, or both, in the appropriate forum.

Section 13: Unauthorized Collection, Use or Disclosure of Protected Health Information

A. An unauthorized collection, use or disclosure of protected health information by a carrier is prohibited and subject to the penalties set forth in Section 16. An unauthorized collection, use or disclosure includes, but is not limited to:

(1) Unauthorized publication of protected health information;

(2) Unauthorized collection, use or disclosure of protected health information for personal or professional gain, including unauthorized health research;

(3) Unauthorized sale of protected health information;

(4) Unauthorized manipulation of coded or encrypted health information that reveals protected health information;

(6) Use of deception, fraud, or threat to procure authorization to collect, use or disclose protected health information; and

(6) Negligent or intentional failure to comply with a requirement of this Act.

Section 14. Rights of Minors

A. Notwithstanding Section 10C(5), a minor who may lawfully consent to health care without the consent of a parent or legal guardian may exclusively exercise rights granted under this Act regarding information pertaining to the health care to which the minor has lawfully consented.

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B. With respect to minors who may lawfully consent to health care without the consent of a parent or legal guardian, a carrier shall not disclose to a policyholder or certificateholder any protected health information related to any health care service to which the minor has consented without the minor's authorization. Regarding the mailing of information including a bill or explanation of benefits, the carrier shall obtain from the minor an address to which the information should be sent and shall mail the information only to that address.

Drafting Note: The age of consent and the health care services to which a minor may consent may vary depending on state law. Health care services to which a minor may consent typically include those relating to reproductive health services, sexually transmitted disease, substance abuse and behavioral health.

Section 15. Representative of Deceased Individual

A. An executor or administrator of a deceased individual may exercise all the rights of the deceased individual provided by this Act, subject to any written limitations or restrictions by the decedent that are included in the health information.

B. If there is no executor or administrator, the rights of a deceased individual may be exercised by the following persons, in the following order of priority:

(1) The surviving spouse or domestic partner;

(2) Any other person authorized by law to act for the deceased individual.

Section 16. Sanctions

A. Civil Sanctions

(1) Whenever the attorney general [insurance commissioner] has reason to believe that a person has ~~knowingly violated~~ committed gross negligence in violation of a provision of this Act and that an action under this section is in the public interest, the attorney general may bring an action to enjoin violations of this Act. An injunction issued under this section shall be issued without bond.

(2) In addition to the relief available pursuant to Subsection A(1) of this section, the attorney general may request and the court may order any other

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temporary or permanent relief as may be in the public interest, including any of the following, or any combination of the following:

(a) A civil penalty of not more than $10,000 for each violation, not to exceed $50,000 in the aggregate for multiple violations;

(b) A civil penalty of not more than $250,000 if the court finds that violations of this Act have occurred with sufficient frequency to constitute a general business practice;

(c) Actual damages suffered by the aggrieved individual; and

(d) Reasonable attorney fees, investigation and court costs.

(3) An individual who is aggrieved by a violation of this Act may bring a civil action for the any of the following, or any combination of the following:

(a) Actual damages or $500, whichever is greater;

(b) Temporary, preliminary and equitable relief as the court deems appropriate; and

(c) Reasonable attorney fees, expenses and costs.

(4) No action may be commenced pursuant to Subsection A of this section more than three (3) years after the date on which the violation was or should reasonably have been discovered.

B. Criminal Sanctions

(1) The penalties described in Paragraph (2) of this subsection shall apply to a person who knowingly collects, uses or discloses protected health information relating to an individual in violation of this Act.

(2) A person described in Paragraph (1) shall:

(a) Be fined not more than $50,000, imprisoned not more than one year; or both;

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(b) If the offense is committed under false pretenses, be fined not more than $250,000, imprisoned not more than five (5) years, or any combination of these penalties;

(c) If the offense is committed with the intent to sell, transfer or use protected health information for commercial advantage, personal gain or malicious harm, be fined not more than $500,000, imprisoned not more than ten (10) years, or any combination of these penalties.

D. In any claim made under this section relating to an unauthorized disclosure in which a carrier is being sued under a theory of vicarious liability for the actions or omissions of the custodian's employee, it shall be an affirmative defense that the carrier substantially complied with the requirements of Section 5 of this Act.

E. An individual may not maintain an action against a carrier that disclosed protected health information in good faith reliance on the individual's authorization, if that authorization meets the requirements of Section 10 of this Act and if the disclosure was made in compliance with the requirements of this Act.

Section 17. Regulations

The commissioner may, after notice and hearing, promulgate regulations to carry out the provisions of this Act. The regulations shall be subject to review in accordance with [insert statutory citation providing for administrative rulemaking and review of regulations].

Section 18. Separability

If any provision of this Act, or the application of the provision to any person or circumstance shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 19. Effective Date

This Act shall take effect on [insert a date which allows at least a one year interval between the date of enactment and the effective date].

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2627 KFB Plaza, Manhattan, Kansas 66503-8155 / (785) 587-6000

February 5, 1998

David A. Hanson
Glenn, Cornish, Hanson & Karns
900 Mercantile Bank Tower
800 SW Jackson Street
Topeka, KS 66612-1259

Re: Senate Bill No. 463 - Health Information Privacy Act

Dear Mr. Hanson:

Our company has grave concerns about this bill. It appears to be broad enough to include the property and casualty insurance business, since it includes workers compensation and indicates it applies to any "other person engaged in the business of insurance or subject to the insurance laws and regulations of this state or subject to the jurisdiction of the commissioner." Farm Bureau certainly agrees with the right to privacy, the protection of that right and does take precautions to insure that right. We are very careful with personal information on an individual and I can not remember one complaint concerning the releasing of privileged information. We would like to hear the statistics that indicate a need for this bill. We do not support the creation of new law without a justifiable need.

I've just finished reading (for the second or third time) the ten pages of this bill. I am still confused about when it would apply and when it wouldn't in an investigation of a property and casualty insurance situation. It seems to be overly burdensome, cumbersome and confusing. It requires a multitude of procedures and documentation to the Insurance Department, policyholders, claimants and the company's own files. It begins with first party situations, but ends up including "claimants" within its purview. It allows the disclosure of protected health information to federal, state or local governmental authorities for use "only in the lawful investigation or prosecution of insurance fraud." How is an insurance company to know for sure that federal, state or local governmental agency is conducting a "lawful" investigation? It requires a company to notify a covered person or claimant prior to disclosure of protected health information "pursuant to legal process, including a court order, subpoena duces tecum or a discovery request." This is seems to be overly burdensome since these situations are governed by statutes, the rules of civil procedure or the court.

Farm Bureau believes, in a claim for medical benefits under a policy, such as PIP benefits, or in a third party bodily injury situation, the individual making the claim puts his or her medical health at issue and the company should have the right to investigate such claim without the procedural encumbrances included in this act. We can not even receive this information from the individual's health care providers without an authorization from the individual and we certainly honor the rescission of such authorization. It is becoming

more and more difficult to obtain the information from the health care providers because they are concerned about releasing privileged information on a patient. This act will only increase that problem and probably increase litigation.

Farm Bureau is opposed to this act as written.

Very truly yours,

Robert W. Stites
Asst. Director of Claims

MEMORANDUM

TO: Senator Don Steffes, Chair
Senate Financial Institutions and Insurance

FROM: Teresa L. Sittenauer
The State Farm Insurance Companies

DATE: February 5, 1998

RE: SB 463

Mr. Chairman, members of the committee, my name is Teresa Sittenauer and I represent the State Farm Insurance Companies. We appreciate this opportunity to express our concerns and our opposition to SB 463, which attempts to create a health information privacy act for the state of Kansas.

SB 463 is patterned after a circulating draft of a proposed NAIC Health Information Privacy Model ("Draft"). This Draft has not been approved by the NAIC and is still the subject of heated debate at the NAIC working group level. State Farm has been intensely involved in the discussions to this point, and has registered several concerns with the Draft at the NAIC level.

As quick background on this issue, the NAIC several years ago adopted an Insurance Information and Privacy Protection Model Act ("Model Act"). Though there are differences, the Model Act addresses many of the same issues proposed to be addressed in the Draft. A number of states have adopted some form of this model. State

Senate FI&I
Attachment 6
2/12/98

Farm currently follows the requirements of the Model Act on a voluntary basis in every state. There are concerns at the NAIC level, which State Farm shares, that the Draft is duplicative of the already existing Model Act.

Further, there are a number of proposals pending at the federal level which would address the very issues sought to be addressed in the Draft. From what we understand, Congress is likely to act on one of the various privacy bills which have been introduced. In addition, these bills apply to providers, hospitals, and other entities which process health information as well. SB 463 does not. Again, this has raised concerns at the NAIC level that it would be counterproductive to take further action on the Draft before Congress has had the chance to address the issue.

State Farm shares these concerns with regard to SB 463. First, the Draft upon which SB 463 is based is not NAIC approved, is not in final form, and in fact has been changed several times since it was in the form set out in the bill. Second, we believe that it would be prudent to wait and see what Congress does with the issue before taking action on the state level. The need for uniformity in addressing the issue is great--there is no compelling reason to pass a law which may or may not be consistent with federal legislation and/or subsequent legislation passed in the various states.

Without getting into a detailed analysis of State Farm's objections to the Draft and SB 463, we would like to provide two major concerns with SB 463.

First and foremost, we are concerned with several burdensome and costly requirements in the bill. One good example is contained in the provisions requiring carriers to audit all persons under contract with the carrier to determine and enforce

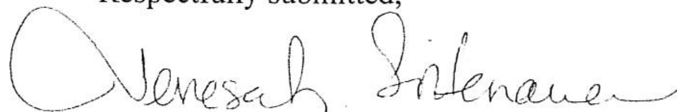
compliance with the act. The resources required to conduct such audits would subject policyholders to unreasonable costs.

Our second major concern is that SB 463 applies to property/casualty carriers. Auto, casualty, and workers compensation policies provide benefits or compensation beyond the mere payment of medical bills, for instance lost wages, replacement services, disability coverage, and other ancillary items. There are many issues involved in coordinating the payments of health benefits and indemnity benefits that require special consideration for access to and disclosure of health information by property and casualty carriers. The provisions of SB 463 will create special problems for property/casualty carriers which will likely impede the claim settlement process and lead to unnecessary litigation.

In sum, State Farm believes that protecting the privacy of individuals' health information is an important issue, but one that must be carefully considered. The issue must also be considered in light of entities other than insurance carriers, such as providers, hospitals, and other repositories of health information. The bottom line is that we believe a "wait and see" approach would be best--allow the NAIC and Congress to fully consider the issue before taking action on the state level.

We appreciate the opportunity to present our testimony on this issue. Please don't hesitate to contact me if you have questions or need further information.

Respectfully submitted,



Teresa L. Sittenauer

MEMORANDUM

TO: Senator Don Steffes, Chair
Senate Financial Institutions and Insurance

FROM: William W. Sneed
Health Insurance Association of America

DATE: February 5, 1998

RE: SB 463

Mr. Chairman, members of the committee, my name is Bill Sneed and I appear today on behalf of the Health Insurance Association of America ("HIAA"). HIAA is an association of health insurance companies which do business in the state of Kansas and nationwide. We appreciate the opportunity to present testimony in opposition to SB 463.

SB 463 is based on a draft of the NAIC Health Information Privacy Model Act. This draft is somewhat controversial and is, as we understand it, nowhere near a final form and has not been approved by the NAIC. Further, a number of privacy bills are currently pending before Congress. The issue is certainly one of concern to lawmakers at various levels, however, there has not been time for the federal government or the NAIC to adequately explore it.

HIAA would caution the committee to hold consideration of this issue, at least until the NAIC has approved the model and Congress has had a chance to address the various pieces of similar legislation before it. We believe it would be counterproductive

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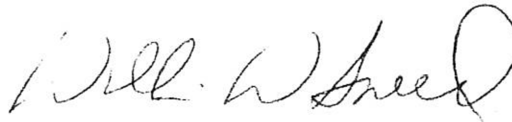
to move too quickly on this issue only to later face a conflicting federal law or a significantly different NAIC model.

Further, HIAA is concerned with the burden that SB 463 places on insurance carriers. HIAA fears that the onerous requirements set out in the bill will serve only to increase costs and delay administration of claims.

We respectfully request you to reject SB 463. Please feel free to contact me if you have questions or need further information.

Respectfully submitted,



William W. Sneed

Michelle Peterson

Statement

POSITION OF THE
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA (PhRMA)
ON KANSAS SENATE BILL 463,
HEALTH INFORMATION PRIVACY ACT

The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes, as currently written, Kansas Senate Bill 463, legislation that attempts to provide confidentiality of patient health information. While PhRMA and our member companies applaud and support the intent of this legislation to protect the confidentiality of individual patient information, we also believe that any legislation on this issue must protect the continued viability of research that promotes improved health care for all patients.

PhRMA has significant concerns with Kansas S.B. 463, as currently written:

- **First, any new legislation or regulations should preserve researchers' access to the full range of potentially useful information about the incidence, prevalence, and outcomes of illness — as long as the confidentiality of personally-identifiable medical information is properly safeguarded.** Only those data sources that directly identify individuals need to be keep confidential. Anonymized data sources, including encrypted or key-coded databases in which the encryption key is securely held and protected, should be available for research.

- **Second, PhRMA is concerned that requirements for patient-identifiable health information confidentiality should acknowledge the extent of existing federal laws and regulations that govern clinical and other medical research — including safety and efficacy surveillance and reporting — and should not impose additional requirements on such research or activities.** These laws and regulations already provide assurance that the confidentiality interests of patients participating in such research are well-served through oversight by the U.S. Food and Drug Administration and independent Institutional Review Boards (IRBs). Both voluntary and mandatory safety and efficacy surveillance and reporting contribute to continued safe and effective use of medicines and must be preserved without additional burdensome restrictions. We believe that Kansas S.B. 463, as currently written, has an unintended negative effect on biomedical research, potentially increasing the cost of research and delaying decisions affecting research.

- **Generally, PhRMA recommends a nationally uniform set of rules that could be applied consistently from state-to-state.** If individual states each have different requirements, then the benefits of these uniform rules will be lost and researchers will again be faced with a patchwork of requirements that will impede research and potentially hurt patients in the long term. To that end, we recommend that states work with the U.S. Congress to develop these consistent policies rather than enact separate state confidentiality measures.

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Pharmaceutical Research and Manufacturers of America
1100 Fifteenth Street, N.W. Washington, D.C. 20005 (202) 835-3400

- **<u>In conclusion, the research-based pharmaceutical industry respects the privacy of patients and the confidentiality of individually-identifiable health information. PhRMA member companies could not conduct their research if they did not. PhRMA urges the members of the Kansas Legislature to take care that any legislation designed to better protect privacy also ensures that medical research can continue to yield new remedies and better ways of caring for patients. PhRMA and its member companies stand ready to work with the members of the Kansas Legislature on this important issue.</u>**

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading research-based pharmaceutical and biotechnology companies, which are devoted to inventing medicines that allow patients to lead longer, healthier, and more productive lives. Investing nearly $20 billion in discovering and developing new medicines, PhRMA companies are leading the way in the search for cures.