

Approved: 3-17-99  
Date

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 16, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Kansas Legislative Research  
Norman Furse, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine  
Mark Stafford, Board of Healing Arts

Others attending: See Attached Sheet

The Chairperson stated the committee would be working **HBs 135, 108 and 126** and have a hearing on **SB 216**.

The Chairperson asked what the committee's wishes were on **SB 135 - Health care reform oversight committee, expiration date**.

Representative Henry moved and Representative Storm seconded to pass SB 135 out of committee favorably. The motion carried.

The Chairperson asked what the committee's wishes were on **SB 108 - Off-label drugs**.

Staff reviewed a balloon that was requested by the committee. (See Attachment #1)

Representative Morrison moved and Representative Swenson seconded in place of the first balloon he offered a second balloon. (See Attachment #2)

After discussion Representative Morrison moved and Representative Swenson seconded a substitute motion to strike on page 1, line 22, Section (a) and on page 2, line 20, New Section 4. after "act" add "shall not be construed to limit, restrict or prohibit the prescribing and coverage of off-label use of drugs for any condition not specified in new section 2, nor does this act". The motion carried.

Representative Wells requested to be recorded as voting "NO".

Representative Long moved and Representative Gilmore seconded to move SB 108 out favorably as amended.

The Chairperson asked the committee what their wishes were on **SB 126 - Quality enhancement wage pass-through program for nursing facilities**.

Staff gave a briefing a reviewed a balloon that had been requested at the hearing of **SB 126**. (See Attachment #3).

Chairperson Boston moved and Representative Landwehr seconded to accept balloon and add to the end "expenditures under this Act would be subject to appropriations." The motion carried.

Representative Landwehr moved and Representative Long seconded to move SB 126 out as amended. The motion carried.

The Chairperson opened the hearing on **SB 216 - Compensation of members of board of healing arts review committee**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S of the Capitol at 1:30 p.m. on March 16, 1999.

Staff gave a review of **SB 216**.

Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine, testified as a proponent to **SB 216**. This bill would simply permit the Board of Healing Arts to compensate members of the Review Committees that serve the Board. There are five three-member Review Committees that serve the Board—three MD, one DO and one DC. Members of these Committees are appointed by the Board from each of the noted professions. Committee members are currently compensated for the day in which they meet in session but are asking for them to be compensated \$70 and hour to review records sent to them before the meeting. (See Attachment #4).

Mark Stafford, Board of Healing Arts, testified in support of **SB 216**, stating the bill would enable but not require the board to compensate review committee members for time expended reviewing investigative records and reports in preparation for the review committee meetings. The bill does not change the amount of compensation review committee members would receive for attending the meetings themselves. The bill would provide the Board with the authority to compensate them for outside preparation time. (See Attachment #5).

The Chairperson closed the hearing on **SB 216**.

The meeting adjourned at 2:40 p.m. The next meeting will be March 17, 1999.



1999  
#1  
SHS  
#16  
#3  
#1  
#1

SENATE BILL No. 108

By Committee on Public Health and Welfare  
(By Request of the Health Care Reform  
Legislative Oversight Committee)

1-21

12 AN ACT regarding insurance, relating to coverage for [off-label use of  
13 prescription drugs; amending K.S.A. 1998 Supp. 40-2,103 and 40-  
14 19c09 and repealing the existing sections. certain antineoplastic agents

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. <sup>†</sup>As used in [section] through 4, and amendments [ (a)  
18 thereto, unless the context clearly indicates otherwise:

19 (a) "Coverage of a drug" includes medically necessary services asso- this section  
20 ciated with the administration of the prescription drug.

21 (b) "Medical literature" means scientific studies published in a peer  
22 review national medical journal. [ (a) "Prescription drug" means an  
23 antineoplastic agent that has been approved by the federal food and  
24 drug administration (FDA) for the treatment of a specific type of  
25 cancer.

26 [ (b) ] "Peer-reviewed medical literature" means a published sci- (1)  
27 entific study in a journal or other publication in which original  
28 manuscripts have been published only after having been critically  
29 reviewed for scientific accuracy, validity and reliability by unbi-  
30 ased independent experts, and that has been determined by the in-  
31 ternational committee of medical journal editors to have met the  
32 uniform requirements for manuscripts submitted to biomedical  
33 journals. Peer-reviewed medical literature does not include  
34 publications or supplements to publications that are sponsored to  
35 a significant extent by a pharmaceutical manufacturing company  
36 or health carrier.

37 [ (c) ] "Off-label use of drugs" means prescribing prescription drugs for (2)  
38 treatments other than those stated in the labeling approved by the federal  
39 food and drug administration.

40 [ (d) ] "Standard reference compendia" means the United States phar- (3)  
41 macopeia drug information, the American hospital formulary service drug  
42 information or the American [Medical Association] drug evaluation. medical association

43 [ (e) ] "Experimental drug" means a new drug undergoing clinical (4)

1-2

1 *investigation that has not been approved by the federal food and*  
2 *drug administration for the specific type of cancer it is being tested*  
3 *safe and effective in treating.*

4 [New Sec. 2] An insurance company, nonprofit health service cor-  
5 poration, nonprofit medical and hospital service corporation or health  
6 maintenance organization that provides coverage for prescription drugs  
7 may not issue, deliver, execute or renew any health insurance policy or  
8 health service contract on an individual, group, blanket, franchise or as-  
9 sociation basis which excludes coverage of [a prescription drug] for cancer  
10 treatment and pain management on the grounds the [prescription drug]  
11 has not been approved by the federal food and drug administration for  
12 that covered indication if the [prescription drug] is recognized for treat-  
13 ment of the indication in one of the standard reference compendia or in  
14 substantially accepted peer-reviewed medical literature. The prescrib-  
15 ing physician shall submit to the insurer documentation supporting the  
16 proposed off-label use or uses if requested by the insurer.

(b)

an antineoplastic agent

antineoplastic agent

antineoplastic agent

17 [New Sec. 3] The commissioner of insurance may direct an insurer  
18 or contractor regulated by this section to make payments as required by  
19 this act.

(c)

20 [New Sec. 4] This [act] does not alter existing law regarding provisions  
21 limiting the coverage of [prescription drugs] that have not been approved  
22 by the federal food and drug administration; does not require coverage  
23 for [any prescription drug] when the federal food and drug administration  
24 has determined its use to be contraindicated; and does not require cov-  
25 erage for experimental drugs not otherwise approved for any indication  
26 by the federal food and drug administration.

(d)

section

antineoplastic agents

an antineoplastic agent

27 [Sec. 5] K.S.A. 1998 Supp. 40-2,103 is hereby amended to read as  
28 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-  
29 2,102, 40-2,104, 40-2,105, 40-2,114 and 40-2250, and amendments  
30 thereto and K.S.A. 1998 Supp. 40-2,160 and [sections 1 through 4 of this  
31 act] and amendments thereto, shall apply to all insurance policies, sub-  
32 scriber contracts or certificates of insurance delivered, renewed or issued  
33 for delivery within or outside of this state or used within this state by or  
34 for an individual who resides or is employed in this state.

Sec. 2.

section 1

KMS recommends adding to subsection (d)  
the following: "and shall not be construed  
to limit, restrict or prohibit the  
prescribing and coverage of off-label use  
of drugs for any condition not specified  
in subsection (b)"

35 [Sec. 6] K.S.A. 1998 Supp. 40-19c09 is hereby amended to read as  
36 follows: 40-19c09. (a) Corporations organized under the nonprofit med-  
37 ical and hospital service corporation act shall be subject to the provisions  
38 of the Kansas general corporation code, articles 60 to 74, inclusive, of  
39 chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit cor-  
40 porations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-  
41 219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-  
42 235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252,  
43 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-

Sec. 3.

1 2,116, 40-2,117, 40-2a01 *et seq.*, 40-2111 to 40-2116, inclusive, 40-2215  
 2 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250,  
 3 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301  
 4 to 40-3313, inclusive, K.S.A. 1998 Supp. 40-2,153, 40-2,154, 40-2,160,  
 5 40-2,161, 40-2,163 and 40-2,164 and sections 1 through 4 of this act, and  
 6 amendments thereto, except as the context otherwise requires, and shall  
 7 not be subject to any other provisions of the insurance code except as  
 8 expressly provided in this act.

Section 1

9 (b) No policy, agreement, contract or certificate issued by a corpo-  
 10 ration to which this section applies shall contain a provision which ex-  
 11 cludes, limits or otherwise restricts coverage because medicaid benefits  
 12 as permitted by title XIX of the social security act of 1965 are or may be  
 13 available for the same accident or illness.

14 (c) Violation of subsection (b) shall be subject to the penalties pre-  
 15 scribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

16 Sec. 7. K.S.A. 1998 Supp. 40-2,103 and 40-19c09 are hereby  
 17 repealed.

Sec. 4.

18 Sec. 8. This act shall take effect and be in force from and after its  
 19 publication in the ~~statute book~~ *Kansas register*.

Sec. 5.



HHS  
3-6-99  
Atch #2

1 investigation that has not been approved by the federal food and  
2 drug administration for the specific type of cancer it is being tested  
3 safe and effective in treating.

4 New Sec. 2. An insurance company, nonprofit health service cor-  
5 poration, nonprofit medical and hospital service corporation or health  
6 maintenance organization that provides coverage for prescription drugs  
7 may not issue, deliver, execute or renew any health insurance policy or  
8 health service contract on an individual, group, blanket, franchise or as-  
9 sociation basis which excludes coverage of a prescription drug for cancer  
10 treatment and pain management on the grounds the prescription drug  
11 has not been approved by the federal food and drug administration for  
12 that covered indication if the prescription drug is recognized for treat-  
13 ment of the indication in one of the standard reference compendia or in  
14 substantially accepted peer-reviewed medical literature. The prescrib-  
15 ing physician shall submit to the insurer documentation supporting the  
16 proposed off-limit off-label use or uses if requested by the insurer.

KMS Amendment

17 New Sec. 3. The commissioner of insurance may direct an insurer  
18 or contractor regulated by this section to make payments as required by  
19 this act.

20 New Sec. 4. This act ~~does not~~ alter existing law regarding provisions  
21 limiting the coverage of prescription drugs that have not been approved  
22 by the federal food and drug administration; does not require coverage  
23 for any prescription drug when the federal food and drug administration  
24 has determined its use to be contraindicated; and does not require cov-  
25 erage for experimental drugs not otherwise approved for any indication  
26 by the federal food and drug administration.

shall not be construed to limit, restrict or prohibit the  
prescribing and coverage of off-label use of drugs for any  
condition not specified in new section 2, nor does this act

27 Sec. 5. K.S.A. 1998 Supp. 40-2,103 is hereby amended to read as  
28 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-  
29 2,102, 40-2,104, 40-2,105, 40-2,114 and 40-2250, and amendments  
30 thereto and K.S.A. 1998 Supp. 40-2,160 and sections 1 through 4 of this  
31 act, and amendments thereto, shall apply to all insurance policies, sub-  
32 scriber contracts or certificates of insurance delivered, renewed or issued  
33 for delivery within or outside of this state or used within this state by or  
34 for an individual who resides or is employed in this state.

35 Sec. 6. K.S.A. 1998 Supp. 40-19c09 is hereby amended to read as  
36 follows: 40-19c09. (a) Corporations organized under the nonprofit med-  
37 ical and hospital service corporation act shall be subject to the provisions  
38 of the Kansas general corporation code, articles 60 to 74, inclusive, of  
39 chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit cor-  
40 porations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-  
41 219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-  
42 235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252,  
43 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-

HHS  
3-16-99  
Atch #3

SENATE BILL No. 126

By Committee on Public Health and Welfare

1-25

10 AN ACT establishing the quality enhancement wage pass-through pro-  
11 gram for nursing facilities.

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

13 Section 1. Notwithstanding any provision of law to the contrary, and  
14 within the limits of appropriations therefor, the secretary of social and  
15 rehabilitation services and the secretary on aging shall establish a quality  
16 enhancement wage pass-through program as part of the state medicaid  
17 plan to allow nursing facilities electing to participate in such program a  
18 payment option of not to exceed \$4 per resident day designed to increase  
19 salaries or benefits, or both, for those employees providing direct care  
20 and support services to residents of nursing facilities. The categories of  
21 employees eligible to receive the wage pass-through are the follow-  
22 ing: Nurse aides, medication aides, restorative-rehabilitation aides, li-  
23 censed mental health technicians, ~~hydration and nutrition aides~~, plant  
24 operating and maintenance personnel, nonsupervisory dietary personnel,  
25 laundry personnel, housekeeping personnel and nonsupervisory activity  
26 staff. The program shall establish a pass-through wage payment system  
27 designed to reimburse facilities during the reimbursement period in  
28 which the pass-through wage payment costs are incurred.

29  
30 [(2)] Nursing facilities shall have the option to elect to participate in  
31 the quality enhancement wage pass-through program. The wage pass-  
32 through moneys are to be paid to nursing facilities outside of cost center  
33 limits or occupancy penalties as a pass-through labor cost reimbursement.  
34 The pass-through cost shall be included in the cost report base.

35 [(3)] The quality enhancement wage pass-through program shall re-  
36 quire quarterly wage audits for all nursing facilities participating in the  
37 program. The quarterly wage audits will require facilities to submit cost  
38 information within 45 days of the end of each quarter reporting on the  
39 use of the wage pass-through payment under the quality enhancement  
40 wage pass-through program. This quarterly wage audit process shall be  
41 used to assure that the wage pass-through payment was used to increase  
42 salaries and benefits to direct care and other support staff as specified in  
43 this subsection or to hire additional staff that fall into the eligible person-

(a)

(b)

(c)



2  
3

1 nel categories specified in this subsection.

2 [(4)] No wage pass-through moneys shall be expended to increase man-  
3 agement compensation or facility profits. A nursing facility participating  
4 in the quality enhancement wage pass-through program which fails to file  
5 quarterly enhancement audit reports shall be terminated from the pro-  
6 gram and shall repay all amounts which the nursing facility has received  
7 under the quality enhancement wage pass-through program for that re-  
8 porting period.

(d)

9 Sec. 2. This act shall take effect and be in force from and after its  
10 publication in the statute book.

(e) As used in this section, "nursing facility" means a nursing facility as defined under K.S.A. 39-923 and amendments thereto or an intermediate care facility for the mentally retarded as defined under K.S.A. 39-923 and amendments thereto.

# nsas Association of Osteopathic Medicine

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March 15, 1999

To: Chairman Boston and Members, House Health & Human Services Committee  
From: Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine  
Subject: Testimony in Support of SB 216

Thank you for this opportunity to express our support for passage of SB 216. This proposal is a rerun. It passed the Senate in an "earlier life", but failed passage in the House.

This Bill would simply permit the Board of Healing Arts to compensate members of the Review Committees that serve the Board. Several years ago, when the Board authorized payment of Review Committee members for time spent outside the formal Committee meetings, in preparation for the meetings. An informal opinion of the Attorney General, however, ruled there was no statutory authority to compensate these persons. This Bill would provide such authority.

There are five three-member Review Committees that serve the Board--three MD, one DO and one DC. Members of these Committees are appointed by the Board from each of the noted professions. Review Committee members are currently compensated for the day in which they meet in session. They are not compensated for the time they spend reviewing cases and records relevant thereto, on their own time outside a formal meeting. It is this time that would now be compensated.

It is important to note what this Bill would not do. It would not require the Board to provide such compensation nor would it suggest a starting time for payment were the decision made to proceed. Neither would the Bill provide compensation at any specific level. Such payment levels would be determined by the Board within Board budgetary and appropriation limits.

These persons provide a great service to their professions. When the Board of Healing Arts has occasion to hire outside consultants, hearing examiners, etc., they are always compensated for their service. We think Review Committee members should be, also.

Opponents of the Bill and of this payment, primarily from the Chiropractic Profession, suggest that Review Members are no different than Board members who are compensated on a per diem basis. We respectfully disagree. With Board membership come the "honor and glory" of being a member of a major State Agency Board of Directors. Appointment is by the Governor, major press releases are issued, and considerable recognition occurs within their respective professions and communities. For Board of Review Members, recognition occurs only when publicized or initiated among their colleagues. We think this is a major difference. In some respects, Review Board members might be compared to staff of the Board.

It should be repeated—the amount of compensation per hour and even the decision to commence payment, rests with the Board. All this Bill would do is eliminate the legal deterrent to payment.

I will be pleased to respond to questions.

HHS  
3-16-99  
Atch#4

# KANSAS BOARD OF HEALING ARTS


**BILL GRAVES**  
Governor



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## MEMORANDUM

TO: House Committee on Health and Human Services

FROM: Lawrence T. Buening, Jr.   
Executive Director

DATE: March 16, 1999

RE: **SENATE BILL NO. 216**

Chairman Boston and members of the Committee, thank you for the opportunity to appear before you and provide information in support of Senate Bill No. 216. The Board did not request introduction of this bill. However, the bill contains language which was amended into both Senate Bills No. 221 and 244 during the 1997 legislative session and was supported by the Board at that time. The effect of the bill is very simple—it would enable but not require the Board to compensate review committee members for time expended reviewing investigative records and reports in preparation for the review committee meetings.

Review committees in the three branches of the healing arts were created by the 1984 Legislature to provide assistance to the Board in the analysis of investigative information and to make recommendations to the Board when, in the judgment of the review committee, a violation of the healing arts act had occurred. The review committee for the practice of podiatry was created by the 1992 Legislature. Currently, the Board has 5 three-member review committees—one each for osteopathic medicine and surgery, chiropractic and podiatry and two for medicine and surgery.

Several years ago, the Board recognized the increasing number of investigative cases being presented to the review committees and the amount of time expended by each of the members in reviewing investigative materials and preparing for the committee meetings. For instance, in FY1985 the Board received a total of 190 complaints, not all of which were made into investigative cases. In FY1998, the Board opened 476 investigative cases. For FY1999, 550 investigative cases are expected to be opened. Therefore, in the early 1990s, the Board authorized payment of hourly

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR

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TOPEKA  
DONALD B. BLETZ, M.D., VICE-PRESIDENT  
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LAUREL H. RICKARD, MEDICINE LODGE  
CHRISTOPHER P. RODGERS, M.D., HUTCHINSON  
HAROLD J. SAUDER, D.P.M., INDEPENDENCE  
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HAI K. TRUONG, D.O., WICHITA  
ROGER D. WARREN, M.D., HANOVER

HHS  
3-16-99  
Atch #5

compensation to the members for time expended outside of the review committee meetings themselves. When a question was raised as to the statutory authority of the Board to pay this compensation, the Board sought the advice of the Attorney General. In August 1996, the AG issued an informal opinion stating that, in the absence of statutory authority which authorizes compensation for time spent reviewing files outside of a meeting, review committee members may not receive additional compensation for reviewing files. The Board immediately discontinued the payment of any compensation over and above that authorized by K.S.A. 65-2840c. In FY 1996, the Board had authorized compensation at the rate of \$70 per hour for time expended outside of review committee meetings. The Board paid compensation of \$13,653.50 to 8 review committee members for their preparation time prior to 16 review committee meetings. This is less than 1% of the Board's current expenditure limitation for FY99.

In preparing for review committee meetings, the members can spend more than two hours reviewing investigative material compiled in one investigative case in preparation for the meeting. At a review committee meeting held February 15, 1999, the three medicine and surgery review committee members were asked to review 19 investigative cases. The investigative materials in those 19 cases completely filled two bank boxes. Reviewing nineteen cases is actually a short review committee meeting. At times, the review committees have dealt with as many as 50 cases at one meeting.

Review committee members are appointed by the Board. They operate in relative obscurity as the peer review function they perform is confidential. Review committee members are generally not recognized and they do not have their names on the Board's letterhead. However, the review committees perform a vital function in the manner in which the Board operates. Review committees are utilized not only to review investigative materials following the conclusion of an investigation, but also to review information and complaints received in the Board office to determine whether an investigation should be commenced. The review committees recommend to Board staff whether an investigation should be closed, whether additional information should be obtained, or whether the matter should be presented to the Board for the initiation of formal disciplinary proceedings. For performing these functions, the review committee members currently receive \$35 for attending the meeting plus their mileage expenses.

Senate Bill No. 216 does not change the amount of compensation review committee members would receive for attending the meetings themselves. Further, Senate Bill No. 216 does not require the Board to compensate review committee members for any of their time expended in preparation for the meetings. It would provide the Board with the authority to compensate them for this outside preparation time. However, whether and if the Board would exercise this authority would depend on the Legislature authorizing these expenditures through the budget process and on whether the Board's fee fund balance could accommodate such additional expenditures.

In conclusion, the Board asks your support for Senate Bill No. 216 so that the extremely important function review committees perform can continue and the Board can continue to attract and retain competent and willing individuals to perform this vital work. Thank you for allowing me to appear before you today. I would be happy to respond to any questions.