

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on February 1, 2001 in Room 527-S of the Capitol.

All members were present except: Representative Nancy Kirk  
Representative Dixie Toelkes

Committee staff present: Bill Wolff, Legislative Research  
Ken Wilke, Legislative Revisor  
Mary Best, Committee Secretary

Conferees appearing before the committee: Mr. Tom Bell, Hospital Association  
Mr. Jerry Slaughter, Kansas Medical Society  
Ms. Kathy Greenlee, Kansas Insurance Department  
Mr. Randy Peterson, Salina Regional Health Center

Others attending: See Attached Guest List

With the meeting being called to order, the Chairman recognized Mr. Tom Bell, Kansas Hospital Association. Mr. Bell gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Mr. Bell gave an overview of the bill and its' intention. Mr. Bell informed the committee that this piece of legislation "clarifies the application of the Kansas Life and Health Insurance Guaranty Association Act." This is a statutory association of life and health insurers who provide coverage for policyholders of insolvent insurers and pay the claims of the "payees, beneficiaries or assignees" of these policyholders. He explained, **HB 2115** "makes it clear that the Guaranty Act provides coverage for health care provider claims in appropriate circumstances and directs that the claims of Heartland's contracting providers be paid."

Mr. Bell continued on to explain, with this bill would remedy many unfair situations for reimbursement, (a claim from a rural Kansas was denied, while Mayo clinic was reimbursed, and for the same amount). The bill also "discourages providers from signing provider contracts with insurance companies." Mr. Bell completed his presentation and stood for questions.

Mr. Jerry Slaughter, Kansas Medical Society, was the next conferee to come before the committee. Mr. Slaughter gave Proponent Testimony and a copy of the testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Mr. Slaughter's testimony also contained a copy of the "Patient Registration Form", showing the statement in part, "authorize and request payment of medical benefits directly to my physician." as part of this form authorizing insurance companies to pay the medical provider on the patient's behalf. Mr. Slaughter explained that this bill has a two fold purpose: 1.) To clarify legislative intent of who is covered in regard to claims and 2.) To reverse a decision by Guaranty Association not to pay the valid claims of contracted providers in the 1999 liquidation of Heartland Health, Inc. which has yet to be resolved. He asked the committee to not get lost in the technical details and all of the complexities of the action surrounding Guaranty Act. Mr. Slaughter covered some of the same points of the bill as discussed by Mr. Bell. Mr. Slaughter stood for questions.

Mr. Kathy Greenlee, General Counsel for Kansas Insurance Department, was the next conferee to be recognized by the Chairman. Ms. Greenlee gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Ms. Greenlee discussed the liquidation of the Heartland Health Plan, Inc. and the "Hold harmless clause." She explained the clause to the committee and where this case stood today. She explained how this is a unique situation,

as this problem was not contemplated by the legislature when the Guaranty Association Act was adopted. She continued on to explain the hold harmless clause and how it affects the industry and the consumers. Ms. Greenlee informed the committee that the Kansas Insurance Department supported the bill because it would accomplish two goals. "First, the bill will clarify that all providers are to be treated the same regardless of whether or not they signed a hold harmless agreement. The guaranty association act is supposed to be liberally construed. It has been narrowly applied in the Heartland network provider situation. Second, the bill will direct the guaranty association to pay the outstanding Heartland network provider claims. She stood for questions.

Questions were posed to Ms. Greenlee by Representatives Mayans, Phelps, Grant, Boston, Ostmeyer.

There were handouts only presented on behalf of Mr. Randy Peterson, Salina Regional Health Center, Salina, Kansas and Ms. Mary L. Barrier, Morrison & Hecker, Attorneys at Law, Kansas City, Missouri. The written copies of their testimonies are (Attachment #'s 4 & 5) attached hereto and incorporated into the Minutes by reference.

The meeting was adjourned at 4:12 p.m. The next meeting will take place February

# HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Feb 1, 2001

HB 2114

NAME	REPRESENTING
B. J. Sneed	KMS
KURT SCOTT	KAMMCO
Rim Jettison	Hearta Midwest
Lee Wight	Farmers Ins.
Alison Benson	Federico Consulting
Aime Spiess	KAIFA
Chas Collins	Kansas Medical Society
Jerry Slaughter	Kansas Medical Society
Sandra McCounsey	KS Ins. Dept
Kathy Greenleaf	KS Ins. Dept
Jeremy Anderson	KS Ins. Dept
Chris Wheeler	Osteopathic Association
MIKE LARKIN	KS EMPLOYER COAL ON HEALTH
Julie Hein	HEIN & WARR
Adam Miller	Kathy Damon Assoc
Larrie Ann Power	KAHP
David Hanson	Ks Insur Assns
Tom Bell	Ks. Hosp. Assn



# Memorandum



Donald A. Wilson  
President

To: House Insurance Committee

From: Kansas Hospital Association  
Thomas L. Bell, Senior Vice President/Legal Counsel

Re: House Bill 2115

Date: February 1, 2001

The Kansas Hospital Association appreciates the opportunity to offer comments in support of House Bill 2115. This legislation clarifies the application of the Kansas Life and Health Insurance Guaranty Association Act found at K.S.A. 40-3001, et seq. The Guaranty Association is a statutorily created association of life and health insurers whose purpose is to provide insurance coverage for the policyholders of insolvent insurers, and to pay the claims of the "payees, beneficiaries or assignees" of such policyholders. In other words, the Guaranty Association is responsible for paying claims owed by an insolvent member-insurer to the same extent that the insolvent member-insurer would have been liable, except for the insolvency.

This issue arose in conjunction with the liquidation of Heartland Health, Inc., which was declared insolvent by the Insurance Commissioner. Because of the insolvency, Heartland Health was not able to pay the valid claims of the hospitals, physicians and other health care providers that had provided health care services to the company's policyholders. Since Heartland was a member in good standing of the Guaranty Association, a request was made to pay these claims. The Guaranty Association paid the provider claims for non-contracting providers, but denied the claims of health care providers that contracted with Heartland. To finally resolve the issue and to ultimately determine legislative intent, House Bill 2115 was introduced. This bill makes it clear that the Guaranty Act provides coverage for health care provider claims in appropriate circumstances and directs that the claims of Heartland's contracting providers be paid.

The decision of the Guaranty Association resulted in numerous situations that we think are unfair and contrary to the legislature's original intent in passing the Guaranty Act. For example, the \$1800 claim of a rural Kansas hospital that contracted with Heartland was denied, but the \$1800 claim of the Mayo Clinic was paid. House Bill 2115 would remedy this situation and reaffirm and clarify the original intent of the legislature when it created the Guaranty Act.

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**Kansas Hospital Association**

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*Attachment #1*

Testimony - House Insurance Committee  
February 1, 2001


House Bill 2115 is also important because the decision of the Guaranty Association discourages providers from signing provider contracts with insurance companies. If the decision by the Guaranty Association to deny the claims of the network providers is allowed to stand, many providers will quite likely decide against entering into provider contracts with insurance companies in the future, especially with new companies wanting to enter and compete in the health insurance market. Providers would justifiably fear that by signing a health insurance company's contract (and thereby agreeing to be paid by the insurance company and not the individual insured) the provider would be waiving the right to protection from the Guaranty Act in the event of the company's insolvency. Such a development would ultimately hurt policyholders by limiting choice.

House Bill 2115 is necessary to clarify legislative intent and correct a situation that has harmed many Kansas health care providers. We urge your favorable recommendation. Thank you for your consideration of our comments.



KANSAS MEDICAL SOCIETY

**To:** House Insurance Committee

**From:** Jerry Slaughter  
Executive Director 

**Date:** February 1, 2001

**Subject:** HB 2115; amending the Life and Health Insurance Guaranty Association Act

The Kansas Medical Society appreciates the opportunity to appear in support of HB 2115, which amends the Kansas Life and Health Insurance Guaranty Association Act, found at K.S.A. 40-3401, *et seq.* The purpose of this bill is two-fold: 1) to clarify that the legislature intended that the act cover the claims of all health care providers who provided covered services to an insurance company's policyholders; and 2) to reverse a decision by the Guaranty Association to not pay the valid claims of contracted providers in the 1999 liquidation of Heartland Health, Inc., a matter which remains open and unresolved.

While it is easy to get lost in the technical details and complexity which surround the application of the Guaranty Act, the fundamental issue before you is one of simple fairness. Because of action by the Guaranty Association, numerous Kansas physicians, hospitals and other health care providers who contracted in good faith and rendered services according to the rules, are now being denied payment on the grounds that a provision in their provider contracts disqualifies them from protection under the Guaranty Act.

By way of background, the Guaranty Association is a statutorily-created association of life and health insurers whose purpose is to provide insurance coverage for the policyholders of insolvent insurers, and to pay the claims of the "payees, beneficiaries or assignees" of such policyholders. Health care providers are in fact "payees, beneficiaries or assignees" of policyholders, because in virtually every case policyholders assign to their treating providers any benefits due the policyholder. We have attached to our testimony an example of such a document, which I am sure is quite familiar to anyone who has ever gone to a physician, hospital or other health care provider. The Guaranty Association is responsible for paying claims owed by an insolvent member-insurer to the same extent that the insolvent member-insurer would have been liable, but for the insolvency. A provision of the act, K.S.A. 40-3004, provides that the act "shall be liberally construed" to effect its purposes. Virtually every state has a similar law. Prior to its liquidation, Heartland Health was a member in good standing of the Guaranty Association.

This issue arose for the first time since the law's enactment almost thirty years ago, in conjunction with the liquidation of Heartland Health, when the Guaranty Association made the decision to pay the claims of health care providers who were not contracting (non-network) providers, but to deny the claims of contracting (in-network) providers. The Guaranty

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Association's refusal to cover the in-network provider claims is unprecedented, and apparently was based on a provision in the contract between in-network providers and the insurance company. That provision is called a "hold harmless" clause, and they are found in virtually every contract between insurance company and contracting health care provider. They are designed to make sure that providers look to the insurance company for payment for services rendered to policyholders, and to protect the policyholder from being billed for services which the insurance company is obligated to cover on their behalf. Hold harmless clauses are not intended to invalidate or waive any rights the provider may have under the Guaranty Act to have their claims paid. In this instance, however, the Guaranty Association made just such an interpretation.

The Guaranty Association's denial of coverage for in-network provider claims was appealed to the Shawnee County District Court by the Insurance Commissioner, as that office statutorily supervises insurance company insolvencies. The Kansas Medical Society and the Kansas Hospital Association filed briefs with the court in support of the Commissioner. Unfortunately, the court ruled in favor of the Guaranty Association last summer. We believe that the court, apparently relying on the arguments of the Guaranty Association, misinterpreted both the terms of the provider contract, and the plain meaning of the Guaranty Act. Because of this decision, the valid claims of many health care providers that provided services to Heartland's policyholders remain unpaid. The court's order concluded that network providers are not beneficiaries, assignees or payees of Heartland policyholders, and therefore are not entitled to coverage under the law. The way in which the court arrived at this conclusion is not at all clear from the opinion. However, we believe the court's interpretation is wrong, and that Heartland network providers are indeed assignees and/or payees of their patients who were policyholders, and as such, entitled to payment. Because the legal appeal could take another year or more to resolve, the legislature has been asked to intervene and clarify the law so the issue can be resolved more quickly.

If the Guaranty Association's interpretation of the law is allowed to prevail, it will not only be unfair, but could significantly alter the health insurance landscape in our state. Consider the bizarre result of paying claims for out of state, non-network providers, but denying claims of in-state physicians and hospitals (which is exactly what occurred in this case). Many providers will undoubtedly refuse to sign provider contracts with insurance companies in the future, particularly new companies that are trying to establish a presence, and compete, in the health insurance market. Physicians and hospitals would quite likely be concerned that by signing a provider contract with a health insurance company, the provider would be nullifying the right to protection under the Guaranty Act in the event of an insolvency. Such a development would not only severely limit the number of providers a policyholder may choose from, but it would also decrease competition among insurers.

KMS Testimony on HB 2115  
February 1, 2001  
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The public policy behind the creation of the Guaranty Act was to guarantee the payment of claims and expenses incurred under the policies and contracts of an insolvent insurance company. The decision by the Guaranty Association to refuse coverage in this case would set a terrible precedent that could discourage competition, as well as hurt consumers and health care providers in future insurance company insolvencies. The proposed change to the Guaranty Association Act is not intended to create new law. Its purpose is to clarify existing law and reverses a decision that resulted in denying the payment of valid claims by providers who rendered health care services in good faith.

We urge you to report this bill favorably for passage. Thank you for considering our comments.



**PATIENT REGISTRATION FORM**

**PATIENT INFORMATION**

Name \_\_\_\_\_ Account # \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, ST \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Birth date \_\_\_\_\_  
 Social Security Number \_\_\_\_\_ Race \_\_\_\_\_  
 Sex of Patient [ ] Male [ ] Female Marital Status \_\_\_\_\_  
 Employer \_\_\_\_\_ Occupation \_\_\_\_\_ Work # \_\_\_\_\_

**RESPONSIBLE PARTY INFORMATION**

Name \_\_\_\_\_ Birth date \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, ST \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Relationship \_\_\_\_\_  
 Employer \_\_\_\_\_  
 Telephone \_\_\_\_\_ Occupation \_\_\_\_\_

**PRIMARY INSURANCE CARRIER**

Company \_\_\_\_\_ Telephone \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, ST \_\_\_\_\_ Zip \_\_\_\_\_  
 Member # \_\_\_\_\_ Group # \_\_\_\_\_

**SECONDARY INSURANCE CARRIER**

Company \_\_\_\_\_ Telephone \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, ST \_\_\_\_\_ Zip \_\_\_\_\_  
 Member # \_\_\_\_\_ Group # \_\_\_\_\_

**EMERGENCY NOTIFICATION / NEXT OF KIN / RELATIVE NOT LIVING WITH YOU**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, ST \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone (H) \_\_\_\_\_ (W) \_\_\_\_\_ Relationship \_\_\_\_\_

**RELEASE OF AUTHORIZATION/ASSIGNMENT OF BENEFITS**

I authorize the release of any medical information necessary to process my insurance claim(s). I authorize and request payment of medical benefits directly to my physicians. I understand that I am financially responsible for all charges incurred. I give this practice permission to treat the above patient, or myself. I agree that a photocopy of this form may be used in place of the original.

\_\_\_\_\_  
Signed (Patient or Representative)

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date



**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

TO: House Insurance Committee  
FROM: Kathy Greenlee  
General Counsel  
RE: House Bill 2115  
DATE: February 1, 2001

I appear today in support of House Bill No. 2115.

On May 10, 1999, the Kansas Insurance Department placed Heartland Health Plan, Inc. into liquidation in Shawnee County District Court. We immediately began the process of determining the assets and outstanding liabilities of the insolvent company. As soon as we compiled an accurate list of outstanding hospital and provider claims, we submitted them to the Kansas Life & Health Guaranty Association for payment. The Guaranty Association agreed to pay the claims of non-network providers, which totaled approximately \$900,000. The Guaranty Association denied the \$4.5 million dollars of network providers claims. The Guaranty Association then intervened in the liquidation proceeding and asked the Judge to affirm the Guaranty Association denial. On June 28, 2000, Judge Bullock affirmed the Guaranty Association decision. As the liquidator of Heartland, we continue to believe that the \$4.5 million in outstanding provider claims should be paid.

The Heartland insolvency presents a unique situation that was not contemplated by the legislature when it adopted the Guaranty Association Act. The District Court and the Guaranty Association have capitalized on this unique situation to the great

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disadvantage of Kansas hospitals and doctors. The unique issue is the presence of a hold harmless provision in the Heartland provider contracts.

By law, health maintenance organizations are required to insert hold harmless clauses in the contract between the HMO and providers. In event of an HMO insolvency, the provider cannot collect from the consumer the money that the HMO owes to the provider. Since we do not have a guaranty association for HMOs, the outstanding provider claims are not paid if a HMO becomes insolvent.

Heartland is not an HMO. Yet, Heartland provider contracts contain a hold harmless provision. In today's health insurance market, traditional health insurers are starting to insert hold harmless clauses into their contracts. By signing these contracts, health insurers agree not to bill consumers if the health insurer becomes insolvent. We believe that Heartland providers did not intend to give up their right to receive payment from the guaranty association in the event Heartland became insolvent.

The Kansas Insurance Department supports House Bill 2115 because it will accomplish two goals. First, the bill will clarify that all providers are to be treated the same regardless of whether or not they signed a hold harmless agreement. The guaranty association act is supposed to be liberally construed. It has been narrowly applied in the Heartland network provider situation. Second, the bill will direct the guaranty association to pay the outstanding Heartland network provider claims.

We believe this legislation will clarify the intent of the current guaranty association act. We urge you to vote in favor of this bill.



Salina  
Regional  
Health  
Center

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and  
139 N. Penn  
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Salina, Kansas  
67402-5080  
(785) 452-7000

A healthcare  
organization of



February 2, 2001

To: Chairman Tomlinson and Members of the House  
Insurance Committee

From: Randy Peterson, President/CEO  
Salina Regional Health Center, Salina, Kansas

Re: HB 2115

Salina Regional Health Center

- Rural referral center in central Kansas
- 250 bed acute care hospital
- Comprehensive health care services
- Secondary and tertiary care services for the surrounding area.

Salina Regional Health Center History with Heartland Health Insurance Company

- Provider agreement 1996
- North Central Kansas Physician Hospital Organization (NCKPHO) 1995
- January 1997, NCKPHO signed an agreement with Heartland Health Insurance Company
- North Central Kansas Health Plan
- SRHC is substantial creditor at over \$400,000

Payment to Non Contracting Providers

- The Guaranty Association has paid claims to providers who did not contract with Heartland Health
- Guaranty Association acknowledges their obligation to pay providers
- Providers cannot be expected to relinquish a right to payment by signing contracts if there is no protection under the Guaranty Act
- Guaranty Association is treating the non-network providers and network providers differently

Heartland Health Insurance Policy

- Policyholders have the right to have their healthcare services paid to providers in exchange for premium payments
- The providers did not waive their statutory right to payment from the Guaranty Association by entering into these agreements with Heartland Health
- The providers merely agreed not to hold policyholders liable should Heartland become insolvent

Conclusion and Plea

- Request that the committee clarify the intent of the Guaranty Association Act
- Recommend passage of House Bill 2115

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Attachment #4*



**MORRISON & HECKER** L.L.P.  
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February 1, 2001

The Honorable Bob Tomlinson, 303-N  
House of Representatives  
State Capitol, 300 SW 10th Avenue  
Topeka, KS 66612-1504

Re: House Bill No. 2115

Dear Representative Tomlinson:

I represent the Kansas Life and Health Insurance Guaranty Association ("the Association"). The Association understands that the Committee on Insurance is presently considering House Bill No. 2115, which would repeal and replace Sections 40-3005 and 3008 of the Kansas Life and Health Insurance Guaranty Act to expand the types of claims reimbursable under the Act to include the claims of certain providers of service to Heartland Health Inc., a now insolvent health insurance company which was declared insolvent in May 1999. The Association neither advocates, nor opposes, House Bill No. 2115. Because the Association's duty is to protect policyholders, pay benefits, and continue coverages, as determined by the legislature, however, the Association has asked that we draw your attention to the following issues which may be raised by the current form of the amendments:

1) Retroactive Application

Section K.S.A. § 40-3008(r), as proposed, provides that "[t]he association shall pay any and all persons who, as a provider, may have claims as a result of a member insurer being found insolvent between March 1, 1999 and June 1, 1999." A new definition included as Section 40-3005(j) defines provider as a person entitled to compensation for medical services provided to policyholders under health insurance policies issued by member insurers, even if the policyholder has no liability for the services provided. Currently, only the policyholders, or their beneficiaries, assignees, or payees are covered persons under the Act. By expanding coverage retroactively, Section 40-3008(r) may alter substantive rights and create a liability that does not exist under the current version of the statute. Retroactive legislation affecting vested rights can constitute the taking of

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property without due process. In accordng constitutional protection to vested interests, the Kansas courts have drawn no distinction between a vested right of action and a vested right of defense. Therefore, the Committee may wish to address the question of whether the current statute creates substantive interests which will be destroyed by the amended statute's retroactive application.

2) Conflict in Statutory Provisions

Whether the intent of the amendments is simply to alter the statute retroactively, or whether the amendments also are intended to have prospective application, providing coverage to medical service providers who have no claim against a policyholder also appears inherently inconsistent with K.S.A. §§ 40-3002 and 3003 of the Act which set forth the Act's purpose and scope. Specifically, the articulated purpose of the Act is to protect policyholders, and their assignees, payees, or beneficiaries. Only claims by these four categories of covered persons are covered claims. Although the proposed amendment to K.S.A. 40-3005(j) and (l) will include a provider as a person who is entitled to receive compensation for providing medical services to an insured without regard to whether the policyholder is obligated to the provider, and K.S.A. § 40-3008(r), as amended would direct the Association to pay the claims of these providers, these provider claimants still remain outside the category of claimants who are covered persons under K.S.A. § 40-3003.

3) Prospective Application

To the extent the intent of the amendments is also prospective, no constitutional issue would be raised, but the inherent conflict between the definitional sections and the purpose and scope provisions as articulated above would remain.

As previously stated, the Association takes no position with respect to the desirability of the changes proposed. These comments are offered solely to highlight potential areas of drafting concern which may impact subsequent administration of the provisions at issue.

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If you have any questions concerning these comments, please do not hesitate to call me.

Very truly yours,

MORRISON & HECKER L.L.P.



Mary L. Barrier

MLB/atp

cc: Kathleen Sebelius, Insurance Commissioner  
Kathy Greenlee, Kansas Insurance Department  
Dave Hanson

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