

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 1:05 p.m. on May 2, 2001 in Room 527-S of the Capitol.

All members were present except: Rep. Garry Boston
 Rep. Joe Hummerickhouse
 Rep. Bonnie Sharp
 Rep. Jene Vickery

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

Conferees appearing before the committee: Ms. Patricia Dengler, Wichita Center for Graduate Medical Education

Others attending: See Attached Guest List

SB 366 - Health Care Provider Insurance Availability Act.

Upon calling the meeting to order, the Chairman recognized Ms. Patricia Dengler. Ms. Dengler gave Proponent Testimony to the committee on **SB 366**. A copy of the testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Ms. Dengler, attorney for WCGME, gave an overview of the bill and the proposed changes to the bill. She gave a brief overview of WCGME and how they function. She also explained the "residents of the program are called "health care providers" and are residents of Wichita." These care providers are provided with professional liability coverage through the Health Care Stabilization Fund for both basic and excess coverage mandated by statute. Ms. Dengler continued on to explain the "in-kind" contribution payment from the State and the annual surcharge payment made by WCGME to the "Stabilization Fund on behalf of the employees and residents. "

Ms. Dengler continued on to explain the liability risks the residents and the program are exposed to due to their services. They have sought to minimize that risk by clarifying that they will not be engaged in any of the supervision of the residents. She then informed the committee that WCGME has been named as a defendant in a medical malpractice liability cases. Thus the request for changes to "define WCGME as a "health care provider," as well as the other amendments." She felt if this were done WCGME could access professional liability coverage through the Fund, a prudent action in light of pending cases. If they are not allowed to make these changes the commercial insurance companies will not cover them without covering employed residents. She continued on to explain the pending law suits.

She continued on to explain that they have now found that the information from the Fund was incorrect due to a clerical error and WCGME is not covered by the Fund. In addition, WCGME has ben named in a third lawsuit, which again alleges negligent supervision and training. Researching the issue it was found tat other residency programs sponsored or affiliated with the University or community hospitals and administered by not-for-profit corporations need clarification in this same matter regarding the "health care providers." She then named the other entities involved.

The legislation she is proposing would clarify the situation for the Foundations in addition to helping WCGME situation. Included in her testimony was a copy of the proposed changes and statutes involved. She then stood for questions from the committee. Questions were asked by Representatives Mayans, Edmonds, and the Chairman. These proposals would make the coverage retroactive to July 1, 1997.

Written testimony only was presented by Bradley W. Marples, M.D., Kansas Medical Education Foundation, and Charles Allred, M. D., Smoky Hill Family Practice Residency Program. Copies of their testimonies are (Attachment #'s 2 & 3) attached hereto and included into the Minutes by reference.

The meeting then turned to the committee to work the bill. Representative Mayans made the motion to make the Act retroactive to July 1, 1997. The motion was seconded by Representative Grant. There was discussion on the bill as to whether this would pertain to waiving all or part of the back surcharge. The motion was clarified, suggesting placing a section into the bill making sure there would be no surcharge for the prior years. A section on creation of funding was not made retroactive (section 2, lines 4-30, page 11). It was also suggests no premium surcharge be required for periods prior to the effective date the act. This also covers the concern where the foundation stated it would waive prior payments. Representative Edmonds made the sub-motion to specifically name the three Foundations involved, and felt the terminology being used was too broad. The motion was seconded by Representative Huff. After more discussion the sub-motion failed 4-8. The committee was back on the motion to pass the bill out favorably as amended. A vote was taken and the motion passed.

The meeting was adjourned at 2:10 p.m.

TESTIMONY
TO THE HOUSE INSURANCE COMMITTEE
BY PATRICIA DENGLER
PROPOSAL FOR LEGISLATIVE CHANGES TO
HEALTH CARE PROVIDER INSURANCE AVAILABILITY ACT, K.S.A. 40-3401 et seq
S.B. 366

My name is Patty Dengler; I am legal counsel for WCGME. Thank you Representative Tomlinson and Committee Members for allowing me to speak on behalf of the proposed changes to the Health Care Provider Insurance Availability Act, K.S.A. 40-3401 et seq. , Senate Bill 366.

WCGME is a Kansas not-for-profit, tax-exempt corporation, which was developed to cooperatively employ the resident-physicians training in Wichita. The three member institutions of WCGME are the University of Kansas School of Medicine - Wichita (the University), Via Christi Regional Medical Center and Wesley Medical Center. The University is the educational sponsor of the residency programs, all of which are accredited by the Accreditation Council on Graduate Medical Education (ACGME).

Funding for WCGME is provided by the University, Via Christi and Wesley. WCGME provides centralized employment and administrative services for all resident physicians training in University-sponsored residency programs in Wichita. There are 250 residents in 11 different programs. They train in medical care facilities, physician offices and community hospitals in Wichita and throughout Kansas. Upon graduation, the majority of the residents practice in the state of Kansas.

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Attachment #1 1-1

Full time, part time, and volunteer faculty members teach, supervise and evaluate the residents. All of these medical faculty members have professional liability insurance and are licensed physicians.

The residents are considered "health care providers" pursuant to K.S.A. 40-3401(f). As "health care providers" the Wichita residents are provided professional liability coverage through the Health Care Stabilization Fund for both basic and excess coverage mandated by statute. The basic coverage is provided by an "in-kind" contribution from the State of Kansas. The cost of the excess coverage surcharge, which is a percentage of the assumed aggregate premium of \$400,000, is paid by WCGME. K.S.A. 40-3404(a). WCGME annually pays this surcharge to the Stabilization Fund on behalf of its employees, the residents.

Since WCGME is involved in the educational administration of the residency programs in which residents are providing professional medical services, it conceivably faces some liability risk. By WCGME's contractual relationships with the University, Via Christi and Wesley, it has sought to minimize that risk by clarifying that WCGME will not engage in the supervision of residents. Nevertheless, it has been named as a defendant in medical malpractice liability cases. If the current legislation is changed to define WCGME as a "health care provider", as well as some other amendments more fully explained later, WCGME could access professional liability coverage through the Fund, which is considered a prudent business action in light of pending cases. If WCGME is not defined as a health care provider then we have learned that commercial insurance companies will not cover WCGME without also covering the employed residents.

The three pending cases, which also name a hospital, attending physicians and residents as defendants, allege that WCGME was negligent in the training and supervision of the residents

in these cases. When the first two cases were filed in 1999, the Stabilization Fund initially informed WCGME that it would provide defense costs and coverage of any settlement or judgment. In conjunction with that information, WCGME was informed that it was a health care provider pursuant to K.S.A. 40-3401(f). The basis of this information was a compliance document that listed WCGME as being in compliance with Fund requirements. Since 1990, WCGME has paid the Fund the surcharge for the residents' excess coverage. Approximately six weeks ago, WCGME was informed that the initial information from the Fund was incorrect due to a clerical error and WCGME was not covered by the Fund. Subsequent to the receipt of that information, WCGME was named in a third lawsuit, which also alleged negligent supervision and training.

In researching these issues, WCGME learned that other residency programs sponsored by or affiliated with the University or community hospitals and administered by not-for-profit corporations are also in need of clarification of "health care provider" status. These other entities are Salina Health Education Foundation (SHEF), which administers the Smoky Hill Family Practice residency program sponsored by the University, and the Kansas Medical Education Foundation (KMEF), which administers a family practice residency program in Topeka sponsored by Stormont-Vale Regional Medical Center and St. Francis Medical Center and affiliated with the University. Both programs receive state funding. The legislation proposed by WCGME would clarify the situations of these Foundations in addition to the situation of WCGME. We realize to accomplish this, each entity has to pay its fair share for coverage by the Fund. We are proposing mechanisms to determine these costs and for payment of these costs.

Proposed Legislative Amendments

WCGME proposes amendments to the following statutes:

- 1) K.S.A. 40-3401(f) - add a definition so that any “nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine” will be a health care provider and covered by the Stabilization Fund.
- 2) K.S.A. 40-3403(c) (11), (12), (j) (1), (2), and new section (j)(4) and (l)- to allow payment of reasonable and necessary defense costs and judgments or settlements on behalf of these nonprofit corporations, create a \$40,000 reserve fund for the basic coverage similar to the reserve fund for the University of Kansas Medical Center, and deem an election at the highest option of fund coverage limits for these nonprofit corporations. The three entities have agreed to apportion the contributions to this fund based on the number of residents each entity employs.
- 3) K.S.A. 40-3404(a) – define the assumed aggregate premium as \$10,000 for the excess coverage for WCGME, SHEF and the KMEF. The statute reflects that the assumed aggregate premium will be apportioned among these entities.
- 4) K.S.A. 40-3414 - deem WCGME, SHEF and the KMEF as self-insurers for purposes of this Act.

*WCGME
250 residents
Others 12*

X Conclusion

WCGME submits these proposed amendments to clarify the definition of “health care provider” so that WCGME, SHEF and the KMEF are included in this definition and can access the protection of the Fund. Today, there are staff members present from all three of these entities to address your questions. Thank you.

KANSAS MEDICAL EDUCATION FOUNDATION

**Pozez Education Center
1505 SW 8th Avenue
Topeka, Kansas 66606-1630
(785) 234-8148**

May1, 2001


Representative Robert Tomlinson
And Committee
State House, Office 303 N
Topeka, Kansas 66612
Representative Robert Tomlinson

Dear Representative Robert Tomlinson and Committee:

The Kansas Medical Education Foundation (sponsor of the Family Medicine Residency Program of Topeka) supports SB 366 and is in agreement with the other potential parties covered with financial obligations of each program.

Thank you for your support and work with this bill.

Sincerely,


Bradley W. Marples, M.D.
Director

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Attachment 2*



Smoky
Hill
Family
Practice
Residency
Program

501 S. Santa Fe

Suite 200

Salina, Kansas

67401

Phone

(785) 825-7251

FAX (785) 825-1605

Charles Allred, M.D.
Program Director

Paul Jaster, M.D.
Associate Director

David Hanson, M.D.
Associate Director

Karen Doerry, M.D.
Associate Director

Lan Nguyen-Knoff, M.D.
Associate Director

Robert Brown, M.D.
SHEF Director

Sally Anne Leger, M.S.
Behavioral Science
Coordinator

Jan Wildman
Business Manager

Danita Hendrixson
Program Coordinator

May 1, 2001

Representative Robert Tomlinson
Chair, Insurance Committee
State Capitol-Rm. 303-N
Topeka, Kansas 66612-1504

Re: Senate Bill 366

Dear Representative Tomlinson and Committee Members,

I am the Program Director for the University of Kansas School of Medicine-Wichita Family Practice Residency in Salina. I am writing in support of Senate Bill 366 and to state that the Salina Health Education Foundation (SHEF) is in agreement with other potential participants in S. B. 366 with the financial obligations of each program.

Thank you for your attention and support of the many issues surrounding resident education in Kansas.

Sincerely,

Charles Allred, M.D.
Program Director

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Attachment 3