

Approved: 3-6-01  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 1, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Tom Bell, Vice President/Legal Counsel, Kansas Hospital Association  
Randy Peterson, President/CEO, Salina Regional Health Center  
Jerry Slaughter, Executive Director, Kansas Medical Society  
Kathy Greenlee, General Counsel, Kansas Insurance Department

Others attending: See attached list.

**Post Audit Report**

The Chair called the Committee's attention to a Legislative Post Audit Report entitled, *Employee Credits Against Premium Taxes: Reviewing Issues Related to Those Credits*, which will be presented to members of the Committee at a later meeting.

**Hearing on HB 2115 - Kansas life and health insurance guaranty association, claim reimbursement**

Tom Bell, Vice President/Legal Counsel, Kansas Hospital Association, testified before the Committee in support of **HB 2115** which clarifies the application of the Kansas Life and Health Insurance Guaranty Act. The bill directs the Kansas Life and Health Insurance Guaranty Association to 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. This issue arose in conjunction with the liquidation of Heartland Health, Inc., which was declared insolvent by the Insurance Commissioner. Since Heartland was a member in good standing of the Guaranty Association, a request was made to pay these claims, but the claims of network providers were denied. Mr. Bell pointed out that the bill is necessary to clarify legislative intent and correct a situation that has harmed many Kansas health care providers. (Attachment 1)

Randy Peterson, President/CEO, Salina Regional Health Center, testified in support of the bill, and gave a background history of his hospital's association with Heartland. Mr. Peterson requested that the Committee clarify the intent of the Guaranty Association Act, and pointed out that the Guaranty Association is treating the non-network providers and network providers differently. The Guaranty Association has paid claims to providers who did not contract with Heartland Health. (Attachment 2) During Committee discussion Mr. Peterson noted that small rural hospitals who had contracted with Heartland Health are especially hurt by non-payment from the Guaranty Association, and Salina Regional Health Center is a substantial creditor at over \$400,000.

Jerry Slaughter, Executive Director, Kansas Medical Society, expressed his support for **HB 2115** and noted that the purpose of the 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. Mr. Slaughter pointed out that the Guaranty 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 the insurance company and the contracting health care providers. 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

## CONTINUATION SHEET

their behalf. Mr. Slaughter noted that 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. (Attachment 3)

Kathy Greenlee, General Counsel, Kansas Insurance Department, expressed her support for **HB 2115** and noted that the Heartland insolvency presents a unique situation that was not contemplated by the legislature when it adopted the Guaranty Association Act. Ms. Greenlee explained to the Committee the actions taken by the District Court that affirmed the Guaranty Association's decision to deny network provider claims as it relates to the presence of a hold harmless provision in the Heartland provider contracts. By signing these contracts, health insurers agree not to bill consumers if the health insurer becomes insolvent. Ms. Greenlee felt that Heartland providers did not intend to give up their right to receive payment from the guaranty association in the event Heartland became insolvent. She pointed out that the bill would clarify that all providers are to be treated the same regardless of whether or not they signed a hold harmless agreement, and that the bill does clarify legislative intent. (Attachment 4)

There were no opponents to the bill.

During Committee discussion the Chair noted that the bill passed the House of Representatives by a vote of 121-0. The Chair further noted that it was clear that due to the action of the Guaranty Association, this bill was the best means available to the legislature to clarify its intent that the current Guaranty Association Act does in fact require the payment of claims of all health care providers, even those where hold harmless clauses were in effect, including the Heartland Health insolvency, which is still ongoing. Several members of the Committee expressed concern that the action of the Guaranty Association in the Heartland case was contrary to the intent of the law and unfair to health care providers who provided services to policyholders.

Senator Feleciano made a motion that the Committee recommend **HB 2115** favorable for passage, seconded by Senator Barnett. The motion carried.

### **Adjournment**

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for March 6, 2001.





# Memorandum



Donald A. Wilson  
President

To: Senate Financial Institutions and Insurance Committee

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

Re: House Bill 2115

Date: March 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**

215 SE 8<sup>th</sup> Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/

Senate Financial Inst. & Insurance  
Date: 3-10 /  
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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.

Pre-Insolvency

Heartland Health Plan

Payments

Payments

Contracting Health care providers performing services for policyholders

Non-Contracting Health care providers performing services for policyholders

Post-Insolvency

Guaranty Association

Payments

Contracting Health care providers

Non-Contracting Health care providers



# Salina Regional Health Center

400 S. Santa Fe  
and  
139 N. Penn  
P.O. Box 5080  
Salina, Kansas  
67402-5080  
(785) 452-7000

A healthcare  
organization of



March 1, 2001

To: Chairman Praeger and Members of the Financial Institutions and 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

Senate Financial Inst. & Insurance

Date: 3-1-01

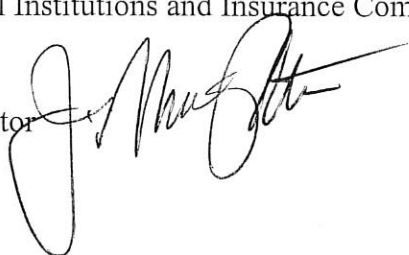
Attachment No. 2





KANSAS MEDICAL SOCIETY

**To:** Senate Financial Institutions and Insurance Committee

**From:** Jerry Slaughter  
Executive Director 

**Date:** March 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



f 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.

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Although the Guaranty Association took no position on the bill during House consideration, it sent a letter to the House Committee and raised two issues. The two issues were: (1) does the new language in HB 2115 found on page 10, lines 12-14, create retroactive application, and if so, is such application constitutional; and (2) the inclusion of the new term "provider" found on page 3, line 30 (and defined on that same page at lines 11-16) does not accomplish our objective without making it clear that providers are covered persons or claimants specified in K.S.A. 40-3003.

As to the issue of whether making this bill apply retroactively creates constitutional problems, we had this legislation analyzed by two different law firms, both of which have concurred that the amendment, if it was even deemed to be "retroactive," would in fact be constitutional under current Kansas case law. First, both firms believe that the amendment is not retroactive inasmuch as the Heartland liquidation has not concluded, and no final rights have been "vested." However, even if a court were to accept an argument that this legislation has retroactive application, it is well-established that the legislature may retroactively apply curative and expository legislation to substantive laws to interpret, clarify and explain earlier legislation. In other words, we believe the legislation would withstand a constitutional challenge, which we expect the Guaranty Association to undertake, notwithstanding the action by the legislature to enact HB 2115.

As to the issue of whether the original bill actually accomplished what was intended, we offered an amendment to make it abundantly clear, and that amendment was adopted by the House committee. The amendment appears on page 1, line 22, and it just adds the term "providers" to K.S.A. 40-3003. We believe this amendment should clear up any ambiguity over whether the legislature intends that providers are covered under the act.

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 sets 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 reverse 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 HB 2115 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**

TESTIMONY

TO: Senate Committee on Financial Institutions and Insurance  
FROM: Kathy Greenlee  
General Counsel *Kathy Sebelius*  
RE: House Bill 2115  
DATE: March 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 disadvantage of Kansas hospitals and doctors. The unique issue is the presence of a hold harmless provision in the Heartland provider contracts.

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.