

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 1:00 p.m. on April 26, 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:

Rick Kellerman, M.D., Chair of the Department of Family and Community Medicine,  
University of Kansas School of Medicine - Wichita  
Patty Dengler, legal counsel for Wichita Center for Graduate Medical Education  
Dr. Karen Bruce, Program Director, Family Medicine Residency Program, Topeka  
Terry Humphrey, KTL  
Marlin Rein, KUMC

Others attending: See attached list.

**Hearing on SB 366 - Health care provider insurance availability act; certain health care providers**

Rick Kellerman, M.D., Chair of the Department of Family and Community Medicine, University of Kansas School of Medicine - Wichita, provided the Committee with background information on WCGME and expressed his support for **SB 366**. Dr. Kellerman noted that WCGME seeks legislative changes to the Health Care Provider Insurance Availability Act to clarify that it is a health care provider in order to be provided professional liability coverage through the Health Care Stabilization Fund as outlined in his written testimony. (Attachment 1)

Patty Dengler, legal counsel for Wichita Center for Graduate Medical Education, outlined for the Committee the proposed changes they are requesting to the Health Care Provider Insurance Availability Act which would define WCGME as a "health care provider" along with other proposed amendments. The proposed legislation would also include the Salina Health Education Foundation, which administers the Smoky Hill Family Practice residency programs sponsored by the University, and the Kansas Medical Education Foundation which administers a family practice residency program in Topeka sponsored by Stormont-Vail Regional Medical Center and St. Francis Medical Center. These entities would then be able to access professional liability coverage through the Health Care Stabilization Fund. (Attachment 2)

A balloon of the bill showing the proposed amendments were discussed and distributed to the Committee. (Attachment 3)

Dr. Karen Bruce, Program Director, Family Medicine Residency Program, Topeka, expressed her support for the bill as well as a representative from the Salina Health Education Foundation.

Terry Humphrey, KTL, told the Committee they are neutral on the bill, and they have not reviewed all of the proposed amendments as presented to the Committee.

Marlin Rein, KUMC, raised questions regarding how the three entities would contribute to the \$40,000 reserve fund. Patty Dengler reviewed for the Committee the proposed amendments in the balloon of the bill showing equal apportionment among the three entities during Committee discussion.

Senator Feleciano made a motion to adopt the balloon amendments to the bill, seconded by Senator Barnett. The motion carried. Senator Feleciano made a motion that the Committee recommend SB 366 as amended favorable for passage, seconded by Senator Barnett. The motion carried.

**Adjournment**

The meeting was adjourned at 1:45 p.m.



TESTIMONY

TO THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

BY RICK KELLERMAN, M.D.

PRESENTED ON APRIL 26, 2001

PROPOSAL FOR LEGISLATIVE CHANGES TO

HEALTH CARE PROVIDER INSURANCE AVAILABILITY ACT, K.S.A. 40-3401 et seq

Thank you Senator Praeger and committee members for allowing this hearing. I am Rick Kellerman, M.D., Chair of the Department of Family and Community Medicine at the University of Kansas School of Medicine – Wichita and Chair of the Residency Committee for the Wichita Center for Graduate Medical Education, which is referred to as WCGME. 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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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.

It has recently come to our attention that WCGME, as the entity employing the resident-physicians, is not covered by the Stabilization Fund. WCGME seeks legislative changes to the Health Care Provider Insurance Availability Act to clarify that it is a “health care provider”. WCGME’s legal counsel, Patty Dengler, is here to explain the details and review the changes we are seeking to this act.

TESTIMONY

TO THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

BY PATRICIA DENGLER

PRESENTED ON APRIL 26, 2001

PROPOSAL FOR LEGISLATIVE CHANGES TO

HEALTH CARE PROVIDER INSURANCE AVAILABILITY ACT, K.S.A. 40-3401 et seq

My name is Patty Dengler; I am legal counsel for WCGME. Thank you Senator Praeger 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.

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

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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 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.
- 3) K.S.A. 40-3404(a) – define the assumed aggregate premium for the excess coverage for WCGME, SHEF and the KMEF. This is an amendment to our original proposed amendments.
- 4) K.S.A. 40-3414 - deem WCGME, SHEF and the KMEF as self-insurers for purposes of this Act.

## 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.

**SENATE BILL No. 366**

By Committee on Ways and Means

4-25

9 AN ACT concerning health care provider insurance; amending K.S.A.  
10 40-3401, 40-3403 and 40-3414 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 40-3401 is hereby amended to read as follows: 40-  
14 3401. As used in this act the following terms shall have the meanings  
15 respectively ascribed to them herein.

16 (a) "Applicant" means any health care provider.

17 (b) "Basic coverage" means a policy of professional liability insurance  
18 required to be maintained by each health care provider pursuant to the  
19 provisions of subsection (a) or (b) of K.S.A. 40-3402 and amendments  
20 thereto.

21 (c) "Commissioner" means the commissioner of insurance.

22 (d) "Fiscal year" means the year commencing on the effective date  
23 of this act and each year, commencing on the first day of that month,  
24 thereafter.

25 (e) "Fund" means the health care stabilization fund established pur-  
26 suant to subsection (a) of K.S.A. 40-3403 and amendments thereto.

27 (f) "Health care provider" means a person licensed to practice any  
28 branch of the healing arts by the state board of healing arts with the  
29 exception of physician assistants, a person who holds a temporary permit  
30 to practice any branch of the healing arts issued by the state board of  
31 healing arts, a person engaged in a postgraduate training program ap-  
32 proved by the state board of healing arts, a medical care facility licensed  
33 by the department of health and environment, a health maintenance or-  
34 ganization issued a certificate of authority by the commissioner of insur-  
35 ance, a podiatrist licensed by the state board of healing arts, an optom-  
36 etrist licensed by the board of examiners in optometry, a pharmacist  
37 licensed by the state board of pharmacy, a licensed professional nurse  
38 who is authorized to practice as a registered nurse anesthetist, a licensed  
39 professional nurse who has been granted a temporary authorization to  
40 practice nurse anesthesia under K.S.A. 65-1153 and amendments thereto,  
41 a professional corporation organized pursuant to the professional corpo-  
42 ration law of Kansas by persons who are authorized by such law to form  
43 such a corporation and who are health care providers as defined by this

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1 who practice as a group to provide physician services only for a health  
 2 maintenance organization, any professional corporations, partnerships or  
 3 not-for-profit corporations formed by such group and the health main-  
 4 tenance organization itself. The premiums for each such provider, health  
 5 maintenance organization and group corporation or partnership may be  
 6 aggregated for the purpose of being eligible for and subject to the stat-  
 7 utory requirements for self-insurance as set forth in this section.

8 (g) The provisions of subsections (a) and (f), relating to health care  
 9 systems, shall not affect the responsibility of individual health care pro-  
 10 viders as defined in subsection (f) of K.S.A. 40-3401 and amendments  
 11 thereto or organizations whose premiums are aggregated for purposes of  
 12 being eligible for self-insurance from individually meeting the require-  
 13 ments imposed by K.S.A. 40-3402 and amendments thereto with respect  
 14 to the ability to respond to injury or damages to the extent specified  
 15 therein and K.S.A. 40-3404 and amendments thereto with respect to the  
 16 payment of the health care stabilization fund surcharge.

17 (h) Each private practice corporation or foundation and their full-  
 18 time physician faculty employed by the university of Kansas medical cen-  
 19 ter and each nonprofit corporation organized to administer the graduate  
 20 medical education programs of community hospitals or medical care fa-  
 21 cilities affiliated with the university of Kansas school of medicine shall be  
 22 deemed a self-insurer for the purposes of the health care provider insur-  
 23 ance availability act. The private practice corporation or foundation of  
 24 which the full-time physician faculty is a member and each nonprofit  
 25 corporation organized to administer the graduate medical education pro-  
 26 grams of community hospitals or medical care facilities affiliated with the  
 27 university of Kansas school of medicine shall pay the applicable surcharge  
 28 set forth in subsection (a) of K.S.A. 40-3404, and amendments thereto,  
 29 on behalf of the private practice corporation or foundation and their full-  
 30 time physician faculty employed by the university of Kansas medical cen-  
 31 ter or on behalf of a nonprofit corporation organized to administer the  
 32 graduate medical education programs of community hospitals or medical  
 33 care facilities affiliated with the university of Kansas school of medicine.  
 34 [The surcharge applicable to such nonprofit corporations shall be the an-  
 35 nual premium surcharge upon the employers of persons engaged in resi-  
 36 dency training as described in paragraph (2) of subsection (r) of K.S.A.  
 37 40-3401 and amendments thereto.]

Section 4. K.S.A. 40-3404 is hereby amended to read as follows:

**40-3404. [Annual premium surcharge; collection by insurer; penalty for failure of insurer to comply; basis of amount of premium surcharge.]**

(a) Except for any health care provider whose participation in the fund has been terminated pursuant to subsection (i) of K.S.A. 40-3403 and amendments thereto, the board of governors shall levy an annual premium surcharge on each health care provider who has obtained basic coverage and upon each self-insurer for each fiscal year. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on or after July 1, 1995, nor to health maintenance organizations on and after July 1, 1997. Such premium surcharge shall be an amount based upon a rating classification system established by the board of governors which is reasonable, adequate and not unfairly discriminating. The annual premium surcharge upon the university of Kansas medical center for persons engaged in residency training, as described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto, shall be based on an assumed aggregate premium of \$600,000. The annual premium surcharge upon the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, shall be based on an assumed aggregate premium of \$400,000. The surcharge on such \$400,000 amount shall be apportioned among the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, based on the number of residents employed as of July 1 of each year.

(b) In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, [40-1113] and 40-2801 et seq., and amendments thereto. The amount of the premium sur-

paragraph (1) of

paragraph (2) of

paragraph (2) of

The annual premium surcharge upon 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 shall be based upon an assumed aggregate premium of \$10,000. The surcharge on such assumed aggregate premium shall be apportioned among all such nonprofit corporations.

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charge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer, but in the event basic coverage is in effect at the time this act becomes effective, such surcharge shall be based upon the unearned premium until policy expiration and annually thereafter. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222 and amendments thereto until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a non-resident health care provider or a self-insurer, the premium surcharge shall be collected in the manner prescribed in K.S.A. 40-3402 and amendments thereto.

(c) In setting the amount of such surcharge, the board of governors may require any health care provider who has paid a surcharge for less than 24 months to pay a higher surcharge than other health care providers.

**History:** L. 1976, ch. 231, § 4; L. 1980, ch. 143, § 2; L. 1983, ch. 160, § 2; L. 1984, ch. 238, § 4; L. 1985, ch. 166, § 3; L. 1986, ch. 229, § 29; L. 1986, ch. 179, § 4; L. 1986, ch. 184, § 4; L. 1986, ch. 181, § 7; L. 1987, ch. 176, § 3; L. 1990, ch. 175, § 4; L. 1991, ch. 139, § 5; L. 1994, ch. 155, § 4; L. 1995, ch. 145, § 4; L. 1997, ch. 134, § 3; July 1.

5 38 Sec. 4. K.S.A. 40-3401, 40-3403, and 40-3414 are hereby repealed.  
 6 39 Sec. 5. This act shall take effect and be in force from and after its  
 40 publication in the Kansas register.

[ , 40-3404