

Approved:
Date: 2-19-02

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 February 6, 2002 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:

Rebecca Rice, Kansas Chiropractic Association
Steve Rarrick, Consumer Protection Division, Attorney General's Office
Chris Collins, Kansas Medical Society

Others attending: See attached list.

Introduction of bills

The Chair requested introduction of a bill related to buying long-term care insurance. Senator Barnett made a motion that the Committee introduce the proposed legislation, seconded by Senator Teichman. The motion carried.

Rebecca Rice, Kansas Chiropractic Association, requested introduction of a bill that would change the requirements of health care providers conducting utilization review. (Attachment 1)

Senator Feleciano made a motion that the Committee introduce the proposed legislation, seconded by Senator Steineger. The motion carried.

Hearing on SB 459 - Kansas Discount Card Act Supplemental to Consumer Protection

Steve Rarrick, Consumer Protection Division, Attorney General's Office, expressed support for **SB 459** which would provide provisions relating to the Discount Card Act passed by the 2000 legislative session. Mr. Rarrick noted that by amending the Discount Card Act, certain guidelines would be followed by suppliers who sell, market, promote, advertise or distribute this type of discount card. He stated that by making the Act part of the Kansas Consumer Protection Act, businesses and entities not within the definition of "consumer" under the KCPA would no longer have the protections of the Act. He also requested an amendment that would give non-consumer entities a private cause of action for violations of the Act, similar to that provided in the Kansas slamming law as noted in the attached testimony and balloon of the bill. (Attachment 2) During Committee discussion concern was expressed that the bill might be in conflict with Pfizer's new "Share Card" program that allows qualifying low income seniors to obtain access to Pfizer prescription drug products.

Mr. Rarrick also pointed out that he is aware of the concerns expressed by the Kansas Medical Society with language in **SB 459**, and would also be willing to work with KMS and Pfizer to address their concerns.

Chris Collins, Kansas Medical Society, stated that KMS supports the concept of increased consumer protection for patients who are purchasers of medical discount cards, however, they are concerned with the inclusion of the definition of "network of health care providers" in section 1 (c) of the bill as outlined in her written testimony. (Attachment 3)

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for February 7, 2002.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2-6-02

NAME	REPRESENTING
Susan Kennarr	Kansas Health Institute
Bill Sneed	HIAA
Steve Montgomery	United Healthcare
Elizabeth Schlicher	Federico Consulting
Jim Liu	JOB
JARROD FORBES	KID
Kevin Davis	Am Family Ins.
Katrina Rice	KS AG
Stacy A. Jeffress	KS Attorney General
Steve Rarrich	KS Attorney General
Nancy Lindberg	AG
Jason Moore	KPHA
Bob Williams	KS Pharmacists Assoc
Carolyn Medendorp	KS PHNs Assn
Phyllis P	KS Chiropractic Assn



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**Senate Financial Institutions
and Insurance Committee**

February 6 2002

Requested Committee Bill Introduction
By: Kansas Chiropractic Association
Rebecca Rice, Legislative Counsel

Chairman and committee members, thank you for allowing the Kansas Chiropractic Association to request committee introduction of legislation regarding utilization reviews.

The changes we are requesting would amend **K.S.A.40-22a04. Same; standards; rules and regulations; certificate; conditions; annual fee; suspension or revocation of certificate.**

The amendment would change the requirements of health care providers conducting the utilization review. Subject to revisor correction, the requested amendment will read something similar to the following language:

(new section c)

(c) No certificate shall be issued to a utilization review organization unless the review is conducted by health care providers who are licensed in the profession under review by the state of Kansas, are actively engaged in the practice of their licensed profession and do not derive a majority of their income from peer review and witness fees.

Thank you for allowing us to request introduction of this concept as a committee bill.

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Attachment No. 1



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

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Testimony of

Steve Rarrick, Deputy Attorney General

Consumer Protection/Antitrust Division

Office of Attorney General Carla J. Stovall

Before the Senate Financial Institutions & Insurance Committee

RE: SB 459

February 6, 2002

Chairperson Praeger Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of SB459. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Kansas Discount Card Deceptive Practice Act was passed during the 2000 Session and addresses health-related discount cards. It requires certain disclosures, prohibits offering a discount card unless the card is specifically authorized by a separate contract with each health care provider listed in conjunction with the discount card, and prohibits misleading, deceptive or fraudulent claims of discounts. We believe the Discount Card Act should be amended to specify enforcement by the Attorney General and to provide the investigative and enforcement remedies provided under the Kansas Consumer Protection Act (KCPA).

Some agencies and private associations have assumed the Discount Card Act directs the Attorney General to enforce its provisions. While the Act has been placed in Chapter 50, it is not part of the KCPA and does not even mention the Attorney General. The Act authorizes any "person" to maintain an action to enjoin violations and for recovery of damages. The Act defines "person" as "an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, government subdivision or agency or any other legal, governmental or commercial entity."

Amending the Discount Card Act as proposed by the Attorney General in SB 459 would do the following:

- give the Attorney General and county and district attorneys the investigative powers available under the KCPA. The Discount Card Act, as currently written, does not provide any of the investigative tools we use in consumer protection cases, such as subpoenas and the ability to take testimony under oath. Without these tools, our ability to obtain evidence to determine whether violations of the Act have occurred is limited.

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Attachment No. 2

- provide the same remedies for violations as provided for any violation of the KCPA, including injunctive relief, consumer damages, civil penalties, and investigative fees and expenses.
- define “network of healthcare providers” to mean “two or more health care providers who are contractually obligated to honor discount card contracts entered into by the network of healthcare providers.”
- add a new provision at page 2, lines 24-26 of the bill that would require, prior to selling the discount card, that sellers of discount cards provide and disclose to all consumers in writing, the name, address and phone number of all health care providers that are contractually obligated to honor the card. We believe this information must be provided before a consumer may make an informed decision to purchase a discount card. We have received complaints from consumers that there are no health care providers in their area that accept the card.
- make a violation of the act an unconscionable act and practice under the KCPA.

By making the Act part of the KCPA, businesses and entities not within the definition of “consumer” under the KCPA would no longer have the protections of the Act. As a result, we have drafted the attached proposed balloon amendment that would give non-consumer entities (corporations, partnerships, associations, churches, etc.) a private cause of action for violations of the Act, similar to that provided in the Kansas slamming law. This would add a new paragraph (d) at page 2, line 42.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably with the balloon amendment we have proposed today. I would be happy to answer questions of the Chair or any member of the Committee.

1 *obligated to honor discount card contracts entered into by the network of*
 2 *health care providers.*

3 Sec. 2. K.S.A. 2001 Supp. 50-1,101 is hereby amended to read as
 4 follows: 50-1,101. ~~It shall be unlawful for any person to sell, market,~~
 5 ~~promote, advertise or otherwise distribute any discount card where:~~

6 ~~(a) The discount card does not expressly state in bold and prominent~~
 7 ~~type that such discount is not insurance;~~

8 ~~(b) any discount offered by such discount card is not specifically au-~~
 9 ~~thorized by a separate contract with each health care provider listed in~~
 10 ~~conjunction with the discount card, or~~

11 ~~(c) the discount or range of discounts offered by such discount card~~
 12 ~~or the access to any range of discounts offered by such discount card are~~
 13 ~~misleading, deceptive or fraudulent, regardless of the literal wording used~~
 14 ~~on such discount card~~

15 *Any supplier who sells, markets, promotes, advertises or otherwise dis-*
 16 *tributes any discount card in Kansas shall:*

17 *(a) State in bold and prominent type that such discount is not insur-*
 18 *ance on all advertisements and on all discount cards;*

19 *(b) have a separate contract with each health care provider or net-*
 20 *work of health care providers listed in conjunction with the discount card;*

21 *(c) not make misleading, deceptive or fraudulent representations re-*
 22 *garding the discount or range of discounts offered by such discount card*
 23 *or the access to any range of discounts offered by such discount card; and*

24 *(d) prior to selling the discount card, provide and disclose to all con-*
 25 *sumers in writing, the name, address and phone number of all health care*
 26 *providers that are contractually obligated to honor the card.*

27 Sec. 3. K.S.A. 2001 Supp. 50-1,103 is hereby amended to read as
 28 follows: 50-1,103. Any ~~person~~ *supplier* who sells, markets, promotes,
 29 advertises or otherwise distributes any discount card in Kansas shall des-
 30 ignate a resident agent, who is a resident of Kansas, for service of process
 31 and such resident agent shall register with the secretary of state *pursuant*
 32 *to K.S.A. 60-306 and amendments thereto.*

33 Sec. 4. K.S.A. 2001 Supp. 50-1,105 is hereby amended to read as
 34 follows: 50-1,105. (a) K.S.A. 2001 Supp. 50-1,100 through 50-1,105
 35 shall be known as the Kansas discount card ~~deceptive practice~~ *act.*

36 *(b) This act shall be part of and supplemental to the Kansas consumer*
 37 *protection act.*

38 *(c) Any violation of this act shall constitute an unconscionable act and*
 39 *practice under the Kansas consumer protection act and amendments*
 40 *thereto and shall be subject to any and all of the remedies and enforcement*
 41 *provisions of the Kansas consumer protection act.*

42 Sec. 5. K.S.A. 2001 Supp. 50-1,100, 50-1,101, 50-1,102, 50-1,103 and
 43 50-1,105 are hereby repealed.

(d) Any person alleging a violation of this section may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section, and amendments thereto, and such person shall be considered a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.



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TO: Senate Committee on Financial Institutions and Insurance Ways and Means Committee

FROM: Chris Collins *Chris Collins*
Director of Government Affairs

DATE: February 6, 2002

RE: SB 459: Health Related Discount Cards

Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today on SB 459. The Kansas Medical Society supports the concept of increased consumer protections for patients who are purchasers of medical discount cards. However, KMS has some concerns with the inclusion of the definition of "network of health care providers" in section 1(c) of the bill. In its amended form the bill would permit sellers of discount cards to enter into contracts with networks of physicians instead of with individual physicians. We are concerned that this may have some negative consequences for physicians who are participating in insurance networks who may now be unwittingly contractually bound to honor discount cards. Mr. Rarrick has graciously agreed to continue to discuss the issue with the KMS and we are hopeful we can reach resolution on the issue.

Senate Financial Inst. & Insurance
Date: 2-6-02
Attachment No. 3