Approved: April 3, 2007
Date

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 1:30 P.M. on February 19, 2007 in Room 231-N of the Capitol.

Committee members absent:

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Mrs. Terri Weber, Kansas Legislative Research Department
Mr. Jim Wilson, Revisor of Statutes Office
Ms. Nobuko Folmsbee, Revisor of Statutes Office
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Ms. Marta Fisher-Linenbergr, General Counsel, Kansas Health Policy Authority
Senator Jim Barnett
Mr. Chip Wheelen, Director of Public Affairs, Kansas Association of Osteopathic Medicine

Others in attendance: Please see attached Guest List

Approval of Minutes

The Minutes of January 22 and January 30 distributed to the Committee members on February 12, 2007 stand as approved as there was no response from the Committee.

Hearing on SB323 - An act related to the Kansas Health Policy Authority

Upon calling the meeting to order, the Chair announced there would be a hearing on the above bill and called upon Ms. Emalene Correll, Kansas Legislative Research Department, to explain the bill. Ms. Correll stated that, with the Chair's indulgence she plans to give a little background because **SB323** proposes a very major change in state policy. She went on to say that the State basically has three types of entities that are either connected to or parts of state government:

1) Two authorities, that members of this Committee are familiar with are the Kansas Turnpike Authority (KTA) and the Kansas Hospital Authority (KHA) but are not state agencies (not under civil service laws, hire & fire their own employees, not state funded but by funded fees they collect.) Some state tax monies goes to the KS Hospital Authority but only because this authority plays a role in educating medical students and the state reimburses the authority for this role. The other agencies of the state are headed by Boards or Commissions, (Ex. Board of Pharmacy) and are policy making entities all having some type of Executive Administrator who carries out the policies (rules & regs) that are adopted by the Board.

2) The third type is a Cabinet level agency headed by a Secretary and in this instance, the policy making entity. (Ex. Secretary of Agriculture adopts all rules and regs.) The one exception is in the Department of Agriculture. The Chief Engineer of the Division of Water Resources, adopts rules and regs since the Chief Engineer administers water rights in this state.

She stated that this bill proposes to transfer the authority to adopt rules and regs from the authority with the assumption that the Executive Director would be the one who administers and carries out the rules and regs.

Ms. Correll then gave a summary of each section of the bill as follows:

- In new Section 1 of the bill would on July 1, 2007 transfer the powers, duties, and functions of the authority relating to the adoption of rules and regulations, to the Executive Director of the Kansas Health Policy Authority;

- Section 2 amends an existing statute. Ms. Correll explained a small problem with regard to deleting adoption of rules and regulations. Agencies can have policies that are not enforceable, rules and

regulations are, so the authority would be authorized to establish policies, but by deleting the adoption of rules and regulations, would have no way to implement those policies. They would not be enforceable.

- New Section 3 sets out the general powers and duties. There are specific authorizations that usually state agencies don't have, but which are necessary because of the types of programs the authority is responsible for;

- Section 4 amends an existing law found on lines 22 and 23 on page 4;

- Section 5 just adds to agency head's definition (the inclusion of the Executive Director of the Kansas Health Policy Authority and amends a section of the guardianship act, found on page 5 and is added because it now has the Medicaid Program;

- Section 6 also amends an existing statute and refers to the Commissioner of Insurance. This has to do with the collection of premiums and usage dated from insurance companies which used to be a contractual arrangement between the Commissioner of Insurance and the Kansas Department of Health and Environment;

- Section 7 is new and is the most significant issue in this bill and is necessary to comply with the new federal legislation. The Deficit Reduction Act of 2005 has a specific section that sets out some requirements that states have to meet by the end of the first regulatory session following January 1, 2006, dealing with health insurers and all third-party payers, but instead of placing the burden on them this piece of legislation requires the state to enact laws that place that burden on third party payers;

- Section 8 amending into existing law;

- Again, in Sections 9 and 10 the change is to reflect the Executive Director adopting rules and regs rather than the Kansas Health Policy Authority;

- Section 11 is also an amendment of an existing statute which sets out the powers and duties of the authority and on page 10 it would give the Executive Director the authority to adopt rules and regs rather than their being adopted in the name of the Authority (the same is true in Section 12, 13, 14 and 15);

- Section 16 transferred some of the responsibilities of SRS and its Secretary under the Business Health Partnership to the Authority and the amendment here transfers the rules and regs authority (and Section 17 has the same existing law and same type of change.)

The Chair thanked Ms. Correll and asked for questions of the Committee which came from Senators Schmidt, Palmer, and Wagle regarding:

- Is the bill mainly a policy change?

- Re: Sec.8 - prior authorization, clarification of the DUE Board (still in the bill);

- Re: to lines 36, 37, & 38, why does it say that the KHPA may not implement it when it is the Executive Director above it?

- Could Section 7 be a stand-alone bill by itself?

- Did this bill come to us through the Authority?

- Does the Authority, as an independent agency, not report to the Governor or the Legislature but rather to the KHPA Board?

As there were no further questions of Ms. Correll, the Chair then called on Mr. Andy Allison, Deputy Director, Kansas Health Policy Authority, who requested to stand in place of Dr. Marta Fisher-Linenberger, General Counsel for KHPA. Mr. Allison asked if he might review the motivation behind the Board's request that clarification in this responsibility is brought to the Legislature this term.

He stated that for the last eight months, the Board has been asked to review specific regulations largely consisting of changes in which drugs are on or off the protective list for purposes of special rebate collection and negotiating better prices with pharmaceutical manufacturers, that is, which drugs have a generic substitute and therefore, which can they place on prior authorization and therefore, which can they take out for bid and negotiate better prices. Most of the regulations that have come before the Board since the Authority took responsibility for the Medicaid program have entailed those decisions and the response they invariably get from Board members is this has already been through the DUR Board process, has already been fully vetted with opportunity for public comments, already published in the register and KHPA gets it at the very last and have no specific background in the content of the regulations.

Mr. Allison went on to say that they have been very frustrated that the Board has needed to take the time to invest in learning about the specific drugs. He asked that the Board have the opportunity to delegate at their choice, the responsibility for those decisions to the Executive Director. He stated, he did not believe it was the Board's intent that they never see those decisions and that certainly is their right as the Executive Director reports directly to the Board as an employee of the Authority, appointed by the Board and Senate confirmation. (That reporting relationship issues that the Board has the prerogative to always review the decisions made by the Executive Director.) The way it was viewed by the Board is that this bill would request that policy opinion to the Board. They would be able to focus on issues of insurance coverage and larger policy discussions and not always go through a vote call votes on which drugs would require authorize and which would not, which regulation would pass and which would not.

Mr. Allison did not provide written testimony, but offered a copy of Ms. Marta Fisher-Linenbergr's testimony (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Chairperson Wagle thanked Mr. Allison and asked for questions which came from Senators Schmidt and Wagle consisting of:

- How does becoming exempt from the rules and regs process affect this rule with the drug utilization review and how do the two correlate?

- Is this the correct interpretation: Mr. Nielsen Lee previously would have been the person to come before rules and regs for the Health Policy Authority and haven't you brought many other issues before the rules and regs process that were not DUR related and request that this be delineated out?

- Would Mr. Gillan provide a list of the times that they have come for drugs to be put on the preferred list and in addition, a list of other things that they have brought before the Legislature?

The Chair made the statement that there would be tremendous reluctance on behalf of the Legislature to exempt KHPA from the rules and regs process.

A discussion ensued among Senators Schmidt and Wagle, Ms. Correll and Mr. Wilson regarding the differences of the interpretation of the exempted change by KHPA, the Revisors, and the Legislature.

The Chair recognized Senator Schmidt who stated that there may be a misconception with the Health Policy Authority as to what has to occur and maybe we don't need this Legislation and if this is the case she suggests the Committee take Section 7 make a stand alone bill and go from there.

It was suggested that KHPA and the Revisor to re-review the specific language of the bill. As there was no further discussion, the Chair closed the hearing on the bill.

Hearing on SB309 - An act enacting the Kansas Health Care Connector Act

The next order of business was a hearing on the above bill with Chairperson Wagle mentioning that when the Committee was reviewing the above bill last week, there were some questions about ERISA and referred them to (Attachment 2) the attached hereto and incorporated into the Minutes as referenced.

The Chair then called on Senator Barnett, who chaired the Health Care Task Force and asked for his comments on **SB309**.

Senator Barnett began by saying that they had discussed a lot of issued in the President's Task Force's meetings on health care reform, but would not be talking about all four major proposals they had brought forth (Ex. Dealing with newborn screening, prevention efforts to tobacco), but feels the real issue before this Committee is the idea of **SB309**.

He offered some of the data that Mr. Ed Haislmaier brought to a prior meeting from the Kansas Health Foundation that looks at the number of uninsured in Kansas, approximately 300,000, and stated that a lot of people are only uninsured for a small portion of time. (Ex. They change jobs, they loose their coverage. They go to another job and regain that coverage, then out of coverage again.) And so, he said, one of the things that the Task Force wanted to try and address is how can they increase the stability of insurance. This is what part of the connector is about, to change ownership of the insurance policy from the employer to the employee so that when that person changes jobs, they don't become uninsured. This is one of the ways we can address the uninsured in Kansas and it is estimated this could impact probably half of these 300,000 uninsured by allowing them to have portability of their health care insurance. (Portability is available now through COBRA, but it is short term and fairly expensive.)

He went on to say that another area of concern is children, how can they touch families as well. This also is embodied in **SB309** by the use of subsidies, of premium assistance for low income families and would allow us to take premium subsidies and get people insured in the private market place as well (because the Task Force is not interested in expanding the government's role in health care and feels public/private relationships will be part of how some of these problems are solved.

Senator Barnett went on to say:

A.) Pre-tax dollars are key;

B.) Some people can enjoy the use of pre-tax dollars to buy health care coverage and this bill broadens that dramatically so that more Kansans can obtain those same tax benefits when they purchase health care insurance and by doing so the cost of insurance is lowered in that process;

C.) He can safely say the federal government is looking for states who are innovative with health care reforms and this bill provides Kansas with a vehicle to go to Washington and say we want to make changes, look at true Medicaid reform, and we want to insure more children and we have an opportunity here to bring more federal dollars;

D.) It is also a good idea for small businesses, especially those that struggle in our state with providing health insurance in that this is a way to partner with small businesses.

E.) If you are a working couple and you obtain insurance from your job and your husband has it from his job, this is a way to bring both defined contributions towards the purchase of health care insurance.

So, he stated these are some of the basic principles of the health care connector. We are operating in this state now under federal legislation requiring us to take care of patients but how can we now make it easier to insure more, make it more affordable, and make it better for business as well.

He then called the Committee's attention to the second page of the handout regarding subsidies and with the potential for subsidies being in the percent of federal poverty level (200% and above) and is looking forward to seeing how far they can take this bill during the 2007 Legislature. As no written testimony was offered a copy of Mr. Haislmaier's charts are (Attachment 3) attached and hereto incorporated into the Minutes as referenced.

The Chair thanked Senator Barnett and called upon the first proponent, Mr. Chip Wheelen, Director of Public Affairs, for the Kansas Association of Osteopathic Medicine (KAOM) , who stated he feels this is the first time a health bill has been introduced that actually talks about who should be responsible for assuring that they have health care, the one central issue that has never been discussed in the past.

KAOM sees problems with the existing system such as:

A.) Adverse selections;

B.) Portability (Ex. Individuals who have pre-existing conditions, cannot afford to change jobs, cannot afford to change health plans, and they get trapped because of their health plan they cannot take that employment opportunity that might actually promote them.

He stated that KOAM believes this bill would address some of the major problems in this system. (Ex. Providing consumer protection for consumers that have a preexisting condition and need to change insurance for whatever reason, important coverage for newborns and adopted children, portability of health insurance, and the employer controls the cost of participation in the exchange.)

Mr. Wheelen concluded by noting what appears to be a few minor technical flaws and offers and an addendum to his testimony for review by the Committee's staff and drafting of appropriate amendments. A copy of his testimony and proposed addendum is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Adjournment

As the Senate was about to go into session, Chairperson Wagle announced the hearing would continue tomorrow. The time was 2:35 p.m.

The next meeting is scheduled for February 20, 2007.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: 2-19-07

NAME	REPRESENTING
Jim McLean	Ks. Health Institute
Pat Ehres	KCDC
Fred Palenske	BCBSKS
Ken Daniel	KsSmallBiz.com
[illegible]	DAC
Tim Hopkins	SELF
Vivian Mundy	Cognitive Care Connection
Mark P. Mattz	Via Christi Health System
Scott Brunner	KHPA
Cynthia Smith	SCL Health System
Tom Bruno	EDS
Linda Lubensky	KS Home Care Assoc.
Matthew Goddard	Heartland Community Bankers Assn.
Jim Turner	" " " "
Bob Vancrum	Greater KC Chamber
Chip Wheelen	Ass'n of Osteopathic Med.
Larry Magill	Ks. Assn of Ins Agents
Kerri Sbielman	" "
Sheena Smith	KS Chamber

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more coming next sheet

36 in att

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: 2/19

NAME	REPRESENTING
Jamie Ross	KCSL
Dan Morin	Ks Medical Society
Jeff Bottenberg	American's Health Ins Plans
Ramie Anhower	KAHP
Cheryl Dillard	Coventry Health Care
Craig Austin	KS Hosp Assoc
[illegible]	United Healthcare

KHPA
Kansas Health Policy Authority
Coordinating health & health care for a thriving Kansas

MARCIA J. NIELSEN, PhD, M.
Executive Director

ANDREW ALLISON, PhD
Deputy Director

SCOTT BRUNNER
Chief Financial Officer

Testimony on:

SB 323: Kansas Health Policy Authority Technical Corrections Bill

presented to:

Senate Health Care Strategies Committee

by:

Marta Fisher-Linenberger
General Counsel

February 19, 2007

For additional information contact:
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Senate Health Care Strategies Committee
Date: February 19, 2007
Attachment 1

Senate Health Care Strategies Committee
February 19, 2007

SB 323: Kansas Health Policy Authority Technical Corrections Bill

Good afternoon, Madame Chair. I am Marta Fisher-Linenberger, General Counsel for the Kansas Health Policy Authority. Thank you for the opportunity to address the Senate Health Care Strategies Committee on the Kansas Health Policy Authority's technical corrections bill, SB 323. On behalf of the Authority, I would like to express support for passage of the bill and also provide a brief summary on each section of the bill.

The bill in Sections 1, 2, and 9 through 17 proposes changes to various laws to authorize the Kansas Health Policy Authority's executive director to approve regulations. It is an addition to the Health Policy Authority statute governing rules and regulations. It functionally provides an exception from another statute (K.S.A. 77-421) requiring a roll call vote by the Board for the approval of regulatory enactments.

New Section 3 is a new statute. It sets forth investigative powers and a fair hearing process. This statute is based upon a similar statute for SRS (K.S.A. 75-3306). It eliminates any potential confusion between that statute and the KHPA.

Section 4 amends a provision of the administrative procedures act (K.S.A. 77-529). It would permit the Kansas Health Policy Authority's executive director to be the "agency head" for the purposes of reviewing and deciding motions for reconsideration of hearing officers' decisions.

Section 5 amends a provision of the probate laws dealing with guardians and conservators (K.S.A. 59-3080) to add the Kansas Health Policy Authority as an agency that must be notified when a guardian or conservator seeks to establish an irrevocable trust in order to preserve a ward's or conservatee's eligibility for public benefits.

Section 6 deals with the substitution of the Kansas Health Policy Authority for the Department of Health and Environment as the entity that is empowered to jointly propose rules and regulations with the Insurance Commissioner related to the health care database In 2006, similar technical amendments were made to these statutes, but this correction was not included (K.S.A. 40-2252; 60-5801 *et seq.*). In relation to the database, there have been discussions related to defining terms; however, due to the complexity of the topic, staff is still evaluating the potential issues raised by developing definitions of this type.

New Section 7 is a new statute that is mandated by the Deficit Reduction Act and is related to recovery from other third party payors. The DRA added parties who could fall into this category; required states to assure that its laws require health insurers provide eligibility and claims information about individuals who qualify for Medicaid to the appropriate agency; that companies accept assignment of rights to the state; required that companies respond to state requests for payment of items and services provided within three years; and that companies agree not to deny a claim submitted by the state solely on the basis of the date of submission or claim form if the claim is submitted within three years and action by the state to enforce its rights is within six years. Implicit in this enactment is the repeal of K.S.A. 39-719d that formerly provided a shorter time frame for exercise of the state's rights. It is contemplated that KHPA will work with the Insurance Commissioner's office and other agencies on this issue.

Section 18 lists the statutes that should be repealed if the bill is enacted.

Section 19 lists the effective date for laws enacted under this bill.

Thank you for this opportunity to provide background information. I would be happy to stand for any questions.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 19, 2007

Background Information on ERISA

(Source: U.S. Department of Labor Publications)

- ERISA - Employee Retirement Income Security Act.
- Initially enacted in 1974, ERISA is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.
- In general, ERISA does not cover group health plans established or maintained by governmental entities; churches for their employees; plans which are maintained solely to comply with applicable workers compensation, unemployment, or disability laws; plans maintained outside the United States primarily for the benefit of nonresident aliens; or unfunded excess benefit plans.
- ERISA requires:
  - Plan administrators provide participants with plan information including a summary plan description of what the plan provides and how it operates and a copy of the plan's summary annual report;
  - Plan fiduciaries (*e.g.*, plan trustees, plan administrators, and members of a plan's investment committee) run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses; act prudently and diversify the plan's investments in order to minimize the risk of large losses; follow the terms of plan documents to the extent they are consistent with ERISA; and avoid conflicts of interest. Fiduciaries who do not follow these principles of conduct may be personally liable to restore any losses to the plan or to restore any profits made through improper use of plan assets;
  - Plans establish a grievance and appeals process for participants to get benefits from their plans; and
  - Plan participants be given the right to sue for benefits and breaches of fiduciary duty.
- A number of amendments have been made to ERISA that expand the protections available to health benefit plan participants and beneficiaries including:
  - COBRA - the Consolidated Omnibus Budget Reconciliation Act provides some workers and their families with the right to continue their health coverage for a limited time after certain events, such as the loss of a job; and

Senate Health Care Strategies Committee
Date: February 19, 2007
Attachment 2

- HIPAA - the Health Insurance Portability and Accountability Act provides protections for working Americans and their families who have preexisting medical conditions or might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health.

- Other amendments include the Newborns' and Mothers' Health Protection Act; the Mental Health Parity Act, and the Women's Health and Cancer Rights Act.

The Heritage Foundation
heritage.org

Coverage Instability Problem

Coverage Patterns of Uninsured (48 month period)	Number (millions)	Share	Potential to Solve
Repeatedly uninsured	28.2	33%	Easiest (62%)
One coverage gap	24.4	29%	
Transition in or out of coverage	17.2	20%	Varied
Temporary coverage	4.8	6%	Hardest (18%)
Always uninsured	10.1	12%	
TOTAL	84.8	100%	

Source: 1996-1999 SIPP data as reported in: P. F. Short and D. R. Graefe, "Battery-Powered Health Insurance? Stability In Coverage Of The Uninsured," *Health Affairs* 22, no.6 (2003): 244-255.

The Heritage Foundation
heritage.org

Subsidy Implications

Coverage Patterns of Uninsured (48 month period)	Income as % of FPL			
	<100	100-199	200-399	400+
Repeatedly uninsured	8.0%	12.1%	10.1%	3.0%
One coverage gap	4.5%	7.1%	11.5%	5.7%
Transition in or out of coverage	3.8%	6.7%	7.4%	2.9%
Temporary coverage	1.2%	2.4%	1.7%	0.4%
Always uninsured	2.7%	5.4%	8.0%	0.8%
	Little or none = 41%	Some = 43%	Substantial = 16%	

43%

16%

>41%

>43%

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Statement in Support of Senate Bill 309
Senate Health Care Strategies Committee
February 19, 2007
By Charles L. Wheelen

The Kansas Association of Osteopathic Medicine generally supports the provisions of SB309. We agree with the fundamental premise that individuals should be responsible for assuring access to health care for themselves and their dependents.

One of the core principles of osteopathic philosophy is disease prevention. Osteopathic physicians strive to promote wellness among their patients and thereby improve their quality of life. We know that patients who have health care resources available to them are more likely to establish a relationship with a primary care physician and obtain those services that either prevent disease entirely, or detect indications of disease early so that appropriate interventions can avoid acute illness, surgery, and other expensive remedial health care. We believe that by assuring access to health insurance or publicly assisted health care, SB309 would encourage Kansans to prevent disease and obtain early interventions. In the long-term it will avoid health care costs, and improve the quality of life for Kansans in general.

The existing health care system; particularly the insurance milieu, is replete with problems. It creates advantages for large groups at the expense of smaller groups, and promotes adverse selection for certain individuals and groups. Because of lack of portability of health insurance, individuals who have a preexisting condition, or have a dependent with a preexisting condition, cannot afford to change insurance plans or pursue new employment opportunities. They are trapped by their insurance plan.

Perhaps the worst flaw in the existing health care system is cost shifting. Some citizens choose to not purchase health insurance, and others do not have health insurance because of circumstances beyond their control. When these uninsured individuals are injured or experience a major episode of illness, they still receive health care services. We may call this charity care, uncompensated care, or uncollectible accounts. But regardless of how we describe it, it means the cost of uncompensated care is shifted to those of us who pay insurance premiums or pay cash for our health care services.

We believe SB309 would address some of the major problems in our existing health care delivery system. We particularly support the protections afforded consumers in section seven, and we agree with the definition of "major medical coverage" in subsection (g) of section seven. Section eight would also provide important consumer protections for those individuals who have a preexisting condition and need to change insurance plans for whatever reason. Subsection (e) of section eight provides important coverage for newborns and adopted children. Section nine allows portability of health insurance when an individual changes jobs, marital status, or is no longer eligible to be carried as a dependent. These are all very important features of SB309.

Our members are all physicians, and most of them are also employers. For that reason, we appreciate the provisions in section eleven that allow the employer to determine the extent to which the employer wishes to sponsor participation by employees. The employer retains the right to determine eligibility criteria for employees, and the amount of contribution. In other words, the employer controls the cost of participation in the exchange.

We note what appear to be a few minor technical flaws in SB309. We have attached an addendum to this statement for review by your staff, and drafting of appropriate amendments.

Thank you for reviewing our statement of support. We respectfully suggest amendment for technical corrections, and request that you recommend passage of SB309.

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Date: February 19, 2007
Attachment 4

Subsection (m) of section two refers to KSA 40-2118, but in that section of law we do not find a definition of "health benefit plan," whereas we do find definitions of "group health plan" and "plan." This appears to need clarification.

Also in section two, subsection (t) refers to KSA 2006 Supp. 40-4903 for a definition of "producer." That section of law does not contain definitions, whereas 40-4902 defines "insurance producer" to mean a person licensed under the laws of another state. Eventual use of the term "producer" in section twelve refers to "a producer licensed in the state of Kansas." This seems inherently inconsistent. It would appear that SB309 should rely upon the term "agent" which would include the term "producer" within its meaning.

We also note on page six in line 22 [subsection (c) of section six], the words "enrollment period" appear to be missing following the word "open."

And on page 15 in line 16 [item (C)(3) under subsection (e) of section fifteen] the word "in" appears to be missing following "escrow."