Approved: 3-18-09
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Brenda Landwehr at 1:30 p.m. on February 10, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:
Norm Furse, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Janet Grace, Committee Assistant

Conferees appearing before the committee:
Richard Morrissey, Kansas Department of Health and Environment (Attachment 1)
Jack Confer, Board of Healing Arts (Attachment 2)
Scott Hess, Board of Healing Arts (Attachment 2)
Jerry Slaughter, Kansas Medical Society (Attachment 3)
Representative Crum (Attachment 4)
Larry Magill, Kansas Association of Insurance Agents (Attachment 5)
Natalie Bright, Bright and Carpenter Consulting (Attachment 6)
Rachael Columbo, Kansas Chamber (Attachment 7)
Corrie Edwards, Kansas Health Consumer Co. (Attachment 8)
Kenneth Daniels, Topeka Independent Business Association (Attachment 9)
Daniel Murray, State Director, National Federation of Independent Business (Attachment 10)
Matt Goddard, Heartland Community Bankers Assn (Attachment 11)
Ashley Sherard, Lenexa Chamber of Commerce (Attachment 12)
Doug Wareham, Kansas Bankers Association (Attachment 13)

Others attending:
See attached list.

Chairman Landwehr called the meeting to order and opened the hearing on **HB 2221**.

HB 2221 - Disclosure of certain child care information.

Richard Morrissey, Interim Director of Health for the Kansas Department of Health and Environment, appeared as a proponent of **HB 2221** (Attachment 1). **HB 2221** was introduced at the Department's request to respond to the needs of the public and especially working parents to access child care records more readily and to create more transparency and efficiency in government. In FY 2008, over 1,000 open records requests were received, mostly from parents. It is clear the public today expects information immediately and they are used to finding consumer information at their finger tips on the Internet. In addition, child care providers want to know about professional development training opportunities in their area of the state. Organizations of persons who are involved in child will be able to access information to further education, professional development, and other interests of the vocation, in keeping with the Open Records Act. A safeguard is provided in Section C by authorizing the Secretary to prohibit the release of the name, address or telephone number of a child care facility, family day care home or maternity center when necessary to protect the health, safety or welfare of the public, patients or children. To clarify the intent of Section C, the Department recommends a change to the language on page 2, line 2 to add the words "that **prohibition of** the release of information in necessary to protect the health..." The Department requests the committee to act favorably on **HB 2221** with the inclusion of **prohibition of** on page 2, line 2.

The hearing was closed on **HB 2221**.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Minutes of the House Health And Human Services Committee at 1:30 p.m. on February 10, 2009, in Room 784 of the Docking State Office Building.

HB 2010 - Board of healing arts; storage, maintenance and transfer of medical record; medical record maintenance trust fund.

Scott Hess and Jack Confer representing the Kansas Board of Healing Arts provided a proponent testimony for **HB 2010** (Attachment 2). This bill will give the agency the authority to retain patients' medical records after a professional in the healing arts' license has been revoked or the professional becomes incapacitated. The agency will have authority only if the professional does not have or does not follow his or her written protocol for transfer of records to another custodian in place. The purpose of **HB 2010** is to protect patients' medical records and ensure proper handling. The Board has brought two cases under the current statutory scheme to obtain abandoned records. In both cases the statute has proven inadequate to protect patients. Statutory Amendments:

Medical Records Maintenance Trust
Written Protocol for Record Retention
Failure to file Written Protocol is Unprofessional Conduct
Expedite Judicial Process (terminology is vague as traditionally written, court has shown good faith)

The records are maintained for 10 years and workers compensation records are kept for 30 years.

Jerry Slaughter, Kansas Medical Society (KMS) (Attachment 3), is an opponent for **HB 2010**. This bill has four parts. The Kansas Medical Society supports a reasonable approach to making funds available to the Board to defray its expenses in the event that it either takes responsibility for the transfer, maintenance and storage of abandoned medical records of its former licensees, or is appointed by the court as custodian of abandoned medical records pursuant to KSA 65-28, 128. The concern is about the proposed assessment process, and about the other provisions in the bill, particularly the requirement that every licensee must submit a written record retention protocol each year prior to license renewal, and that failure to do so constitutes unprofessional conduct.

We recommend that Sections 2 and 3 of the bill be deleted entirely; that Sections 4 through 6 be renumbered accordingly; and that New Section 1, subsection (b) be amended to read as follows:

"(b) The board ~~of healing arts~~ may deposit not more than $10 of each fee for the issuance or renewal of a license in the state treasury credited to the medical record maintenance trust fund. In any year in which the medical record maintenance trust fund balance is less than $100,000 the board shall replenish the fund at the next annual renewal date, in the manner described herein. ~~Shall assess fees of not more than $10 from each licensee and deposit in the state treasury credited to the medical record maintenance trust fund. At any time that the balance remaining in the medical record maintenance trust fund is less than $100,000, the board of healing arts, without delay, shall assess each licensee an additional fee of not more than $10.~~ The board ~~of healing arts~~ may order a licensee to reimburse the amount of expenses incurred by the board ~~of healing arts~~ in a case when such licensee failed to ~~comply with the protocol of medical record~~ designate a custodian or provide for the storage, maintenance, transfer and access to such licensee's medical records upon becoming inactive. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medical record maintenance trust fund."

With the addition of these amendments KMS can support **HB 2010**.

The hearing on **HB 2010** was closed.

HB 2198 - Health insurance, plans for small employers; cafeteria plans; high deductible plans.

Representative Crum is a proponent of **HB 2198** (Attachment 4). This bill expands on provisions of last year's SB 81 in regards to small employer health plans. **SB 81** stated that any insurer that provided health benefit plans would also be required to offer a Premium Only Cafeteria Plans as permitted under Section 125 of the U.S. Code. A Section 125 Premium Only Plan allows an employee who pays any portion of his or her health insurance premium to do so with pre-tax dollars. The employer also benefits because he is not having to pay his share of the employees Social Security and Medicare withholding tax on the money withheld for the insurance. **HB 2198** would also require any employer that provides health insurance coverage for which the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

employee pays any portion of the premium to make available a Section 125 POP. The bill requires any insurer that offers small group health plans to offer a High Deductible Plan in conjunction with the establishment of a Health Savings Account as permitted under Section 223 of the U.S. Code. Representative Crum provided the advantages of HSA's in his written and oral report. A 2007 Blue Cross Blue Shield survey found that participants enrolled in a High Deductible health plan were more likely to research health information, take part in wellness programs, track current and future health care expenses, and use the emergency room less than those in traditional plans. The study also found that consumers that enrolled in High Deductible health plans did not forgo needed health care. This bill would help bring the consumer back into the equation and given a stake in managing their health care expenses and their own wellness. The High Deductible Health Plan is effective because it places emphasis on individual accountability and responsibility.

Page 2, Section 2, number 33 provision encourages employees and employers to participate. The employer will put money in their Health Savings Accounts (HSA). If they had not previously participated, a formula will need to be calculated. The new plan will put this provision in place.

The business pays for a single for everyone to keep the rates low. Section 3, lines 12 and 13, the business pays for the single, the individual pays for the family, the employer is not required to offer HSA's for the family.

This bill is a conservative mandate. It makes health care more available to everyone.

Larry Magill a proponent from the Kansas Association of Insurance Agents (KAIA), discussed Consumer Driven Health Care (CDHC) (Attachment 5). Health insurance is simply reflecting the cost and utilization of health care. It is essential that insurance go back to what it does best, insure for catastrophic loss and that consumers budget for routine health care. One of the glaring faults with our present system is the lack of normal market forces working in health care. Mr. Magill provided a list KAIA supports. KAIA supports a mandatory offer by the insurers selling small business group health insurance a high deductible plan coupled with an HSA account. They suggest employers are presented with the high deductible/HSA option and see what results that brings. They also support the idea of making Section 125 Premium Only Plans mandatory for businesses and ensure the employers are aware of the tax advantages.

Natalie Bright represented the Wichita Independent Business Association (WIBA) as a proponent of **HB 2198** (Attachment 6). Their members are pleased this committee is considering legislation aimed at improving the quality, access, and cost of health care in Kansas, particularly for small businesses. Over the last few years, WIBA had to make changes to the health insurance products they offer as well as expand their products to include both limited-benefit plans and a Health Savings Account (HSA) program in order to meet the needs of our small business members. **HB 2198** proposes to require all insurers that offer small group health plans to offer a high deductible health plan as well and requires any small employer that offers a high deductible plan to also establish an HSA. WIBA likes the idea of HSA because it allows for an insurance product that is portable for the employee and the provision that mandates an employer's contribution be equal to the employer's contribution to any other health benefit plan offered by the employer. For their members, the number one concern is the rising cost of health care. If this provision remains in **HB 2198**, this bill will not assist small employers with reducing their costs to provide coverage. It is WIBA's recommendation that this provision be removed from the bill so that employers will have the incentive to use HSA programs instead of dropping health care coverage altogether. **HB 2198** mandates what employers offer their employees for health care, and this is a concern for their members.

Rachelle Colombo, Senior Director of Legislative Affairs for the Kansas Chamber, provided an opponent view of **HB 2198** (Attachment 7). The Chamber represents small, medium and large employers all across Kansas. **HB 2198** mandates the contribution of premium savings to employee health savings accounts. While the intent of the bill and many provisions have merit, the Kansas Chamber does not support mandates as a method of implementation. Managing health care costs remains one of the top three issues affecting profitability as identified by Kansas CEOs surveyed in the Chamber's annual CEO poll. Business owners are forced to either spend investment capital to provide health benefits or are unable to attract top employees if they cannot meet the expectation to provide benefits. Both options decrease a business's ability to thrive, compete and succeed. It is imperative that we seek solutions which decrease the cost of health care and provide employers with choices over what they purchase. The Kansas Chamber is supportive of consumer driven health care, the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

encouragement of 125 plans, and giving employers incentive to utilize them. However, the Chamber supports the promotion, rather than the mandatary offering, of these options. The mandate is the issue with the Chamber.

Corrie Edwards, Kansas Health Consumer Company (KHCC), provided testimony as an opponent to **HB 2198** (Attachment 8). We object to the legislation for two primary reasons. The first is the intrusion into small business operations and the potential administrative burden of offering multiple health plans. The effect of requiring small business employers to offer and administer an additional health plan complicates an already cumbersome system. Small employers already have the option of offering HDHP/HSA plans if they choose, making this proposal unnecessary. Over the past 25 years, Americans have experienced a 244% increase in health care costs in real dollars. Technology, elder care, and chronic disease care play a huge role in these escalating costs, not the inability of consumers to comparison shop for care. Price transparency would have to be in place before consumers have a realistic chance of comparing costs and service. HDHP/HSA plans require consumers to pay more of the up-front costs of care. HDHP/HSA plans may have the impact of increasing consumer debt because they place so much of the cost of care on the consumer. KHCC recognizes the need to examine different ways to provide health coverage. We need to be cautious that our efforts to provide coverage do not result in increasing our underinsured population. The second issue is the mandate.

Kenneth Daniels, Topeka Independent Business Association, discussed EIRSA and HSA's (Attachment 9). Every impediment had been removed for HSA's. They are correct as they are and they don't need help from the legislature. Mandates are not needed and will not solve anything.

Daniel Murray, State Director, National Federation of Independent business, provided written testimony as an opponent to **HB 2198** (Attachment 10).

Matt Goddard, Heartland Community Bankers Association, provided written testimony as an opponent to **HB 2198** (Attachment 11).

Ashley Sherard, Lenexa Chamber of Commerce, provided written testimony as an opponent to **HB 2198** (Attachment 12).

Doug Wareham, Kansas Bankers Association, provided written testimony as an opponent to **HB 2198** (Attachment 13).

The hearing on **HB 2198** was closed.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 3:10 p..m.

HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 2-10-09

NAME	REPRESENTING
Corrie Edwards	KS Health Consumer Coalition
Tracy Russell	KS. Health Consumer Coalition
Alex Kotoyantz	P.I.A.
Suzanne Cleveland	KLHI
Todd Ficisaw	KOA
Derek Hein	Hein Law Firm
Joyce Kroer	KOHE
Chris Ross-Bace	KDHE
Dick Morrissey	KDHE
Mary murphy	KDHE
SUSAN ICK	KDHE
Dan Morin	KMC
Julia Mowers	KSBHA
Kristi Pan	KSBHA
Scott Hesse	KSBHA
JACK CONFER	KSBOHA
Chris Gigstad	Federico Consulting
Natalie Bright	WIBA
Matt Casey	GBA

Please use black ink

HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 2-10-09

NAME	REPRESENTING
Patrick Vaughan	Kearney
Michelle Butler	Cap Strategies
Chad Austin	KHA
Larry Magill	KAIA
Kevin Sick	TI LRC
Rachelle Colombo	KS Chamber
Doug Smith	Pinegar, Smith & Associates
Karen Bekkerman	SLS
Bill Sneed	AHIP
Kerri Spielman	KAIA
Matt Goddard	Heartland Community Bankers Assoc.
Kurtis J. Cerrico	Washburn University School of Nursing Graduate Student

Please use black ink

(1)

KANSAS

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

Testimony on HB 2221

Presented to
House Committee on Health and Human Services

By
Richard Morrissey, Interim Director of Health
Kansas Department of Health and Environment
February 10, 2009

Chairwoman Landwehr and members of the Committee, my name is Richard Morrissey and I am the Interim Director of the Division of Health for the Department of Health and Environment. Thank you for the opportunity to appear in support of HB 2221.

HB 2221 was introduced at the Department's request to respond to the needs of the public and especially working parents to access child care records more readily and to create more transparency and efficiency in government.

Parents wanting to know compliance history and review inspection results contact our Child Care Licensing and Registration Program regularly. In FY 2008, over 1,000 open records requests were received, mostly from parents. The Department regularly receives comments asking why child care provider compliance and licensing information is not available on the Internet. It is clear the public today expects information immediately and they are used to finding consumer information at their finger tips on the Internet. Current Department practice in order to comply with K.S.A. 65-525 involves redacting the name and address of the child care center or day care home from open records documents. This practice is cumbersome, time consuming and frustrating for parents.

In addition, child care providers want to know about professional development training opportunities in their area of the State. Organizations providing these opportunities have difficulty accessing licensees and registrants to let them know about upcoming professional development events in their areas.

OFFICE OF THE DIRECTOR OF HEALTH
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 300, TOP
Voice 785-296-1086 Fax 785-296-1562

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 1

This bill sets the stage for enabling the Department to provide open records information more timely and efficiently. By no longer making the name and address of a child care facility, family day care home or maternity center confidential, the Department can begin using technology and the Internet to provide compliance information, inspection results and related information to parents and the public.

Internet access will allow parents or consumers to identify child care facilities, family day care homes and maternity centers by address and by individual names of licensees, applicants, and facilities.

Organizations of persons who are involved in child care will be able to access information to further education, professional development, and other interests of the vocation, in keeping with the Open Records Act.

A safeguard is provided in Section (c) by authorizing the Secretary to prohibit the release of the name, address or telephone number of a child care facility, family day care home or maternity center when necessary to protect the health, safety or welfare of the public, patients or children. For example, the identity and location of family foster homes licensed by the Department should be protected as these homes offer safe havens for children who have been removed from their parental home due to abuse or neglect.

To clarify the intent of Section (c) the Department recommends a change to the language on page 2, line 2 to add the words "that **prohibition of** the release of the information is necessary to protect the health …"

The current prohibition on releasing individual identifying information was adopted to protect not only the licensee and registrant but also the children, staff and other individuals living or working in a facility or home. However, the Department believes that the ability to release the name of the licensee, registrant, facility and location in order to make compliance information and other open records information more readily available is necessary to provide consumer protection for parents and the public and provides for efficiency and transparency in government.

Over 20 States currently use web-based technology to make available information ranging from basic provider information, compliance history including reports from routine inspections or complaint investigations to more sophisticated research capabilities. None of the states reviewed restrict the public identity of day care home or center based providers. The Department's child care software system is designed to allow enhancements to provide meaningful and prompt information to parents and consumers if the law would allow more information to be provided.

Accordingly we respectfully request the committee act favorably on HB 2221 with the inclusion on Page 2 line 2 of the bolded language "that **prohibition of** the release of the information is necessary to protect the health …" I stand for questions.

MEMORANDUM

TO: **House Health and Human Services Committee**

FROM: **Kansas State Board of Healing Arts – Executive Director Jack Confer**

DATE: **February 9, 2009**

RE: **House Bill 2010**

The Kansas State Board of Healing Arts supports House Bill 2010. This bill will give the agency the authority to retain patients' medical records after a professional in the healing arts' license has been revoked or the professional becomes incapacitated. The agency will have authority only if the professional does not have or does not follow his or her written protocol for transfer of records to another custodian in place.

The purpose of HB 2010 is to protect patients' medical records and ensure proper handling.

BACKGROUND

The Board has brought two cases under the current statutory scheme to obtain abandoned records. In both cases the statute has proven inadequate to protect patients. In the first instance, the Board temporarily revoked Dr. Stephen Schneider's privilege to practice medicine after he was charged with violating federal law. The United States District Court ordered Dr. Schneider to find a records custodian. When the Board learned that a young patient of Dr. Schneider was not allowed into school because his mother was not allowed access to his inoculation records, the Board brought suit under Kansas law. To date, the Board has been unable to have Dr. Schneider's records placed with a records custodian. [1]

In the case of Peter Lee, D.O., the Board permanently revoked his license in August, 2008. The next day a dumpster diver found 25 boxes of Dr. Lee's records. The information included names, social security numbers and insurance records of Dr. Lee's patients. The citizen notified the local police and Sheriff's Department. Quick action by local law enforcement saved numerous people from identity theft. The Board brought suit to obtain a records custodian. However, under the current statutory scheme the Board has been unable to get a court order for a records custodian to protect the interests of Dr. Lee's patients.

(*continued on back*)

[1] "It is unfortunate that the Kansas Statutes apparently do not provide an expedited procedure for appointment of a records custodian or at least provide for some type of interlocutory order of appointment pending a full hearing on the State Board's petition." *United States of America v. Schneider,* Case No. 07-10234-01-MLB (January 15, 2009).

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 2

STATUTORY AMENDMENTS

Medical Records Maintenance Trust Fund

New Section 1 creates a medical records maintenance trust fund. The purpose of this fund will be to pay for the storage, maintenance, and transfer of medical records that have been abandoned. It will be funded through assessed fees to the Healing Arts licensees.

This fund is essential to necessary to ensure patients' medical records are properly stored and maintained if the healing arts professional is no longer able to do so. Through this fund, the Kansas Board of Healing Arts will be able to ensure that patients have access to their records, and that the records are maintained by a qualified custodian.

Written Protocol for Record Retention

Section 2 amends K.S.A. 65-2809 to require the healing arts licensee, at the time of license renewal, to submit a written copy of their chosen protocol for the maintenance, transfer and access of patients' medical records to the Kansas Board of Healing Arts.

This amendment gives healing arts professionals control and authority to state how they plan to properly maintain and store their patients' records. This will also assist the Kansas Board of Healing Arts in quickly and efficiently protecting the maintenance and storage of such records if the licensee becomes incapacitated or uncooperative.

Failure to file Written Protocol is Unprofessional Conduct

Section 3 amends K.S.A. 65-2837 so that failure of a healing arts licensee to file a written protocol with the agency for the maintenance, transfer and access of patients' medical records is unprofessional conduct.

This ensures that licensees will create and submit a written protocol with the Kansas Board of Healing Arts at the time of license renewal.

Expedite Judicial Process

Section 4 amends K.S.A. 65-28,128 so that the district court must expedite any request by the agency to declare a licensee's records abandoned through review of documentation and affidavits.

This will speed up the judicial process to ensure that situations like what happened to the little boy in Wichita who was unable to start kindergarten on time do not happen again.

KANSAS MEDICAL SOCIETY
KMS

623 SW 10th Avenue
Topeka KS 66612-1627
785.235.2383
800.332.0156
fax 785.235.5114

www.KMSonline.org

To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Date: February 10, 2009

Subject: HB 2010; Concerning abandoned medical records

The Kansas Medical Society appreciates the opportunity to appear today as you consider HB 2010, concerning the handling and disposition abandoned medical records of licensees of the Healing Arts Board. The bill has four parts: 1) it imposes a fee of up to $10 on all licensees of the Board and deposits those amounts in a medical record maintenance trust fund, to be used to pay for storage, maintenance and transfer of abandoned medical records of licensees who do not, or are not able to, make arrangements for a custodian of their records upon becoming an inactive licensee ; 2) it imposes a requirement on all licensees of the Board to submit to the Board a written record retention policy, as specified in rules and regulations of the Board; 3) it makes failure to have such a written record retention policy "unprofessional conduct" and grounds for discipline; and 4) it provides for an expedited process when an action is brought by the Board in district court.

We support a reasonable approach to making funds available to the Board to defray its expenses in the event that it either takes responsibility for the transfer, maintenance and storage of abandoned medical records of its former licensees, or is appointed by the court as custodian of abandoned medical records pursuant to KSA 65-28,128. However, we do have some concerns about the proposed assessment process, and about the other provisions in the bill, particularly the requirement that every licensee must submit a written record retention protocol *each year* prior to license renewal, and that failure to do so constitutes unprofessional conduct.

Current regulations of the Board, K.A.R. 100-24-2, require licensees to maintain patient records for a minimum of 10 years from the date of professional services rendered. K.A.R. 100-24-3 requires licensees who terminate their practice to notify the Board of the location of their patient records, and the name of the agent or custodian of their records. Additionally KSA 65-28,128 provides for a process wherein the Board can petition the court for appointment of a custodian of abandoned records.

We believe current law and regulations are adequate, and that making failure to submit a written record retention protocol annually with license renewal a grounds for discipline (unprofessional conduct) will not appreciably improve the problem the Board is attempting to address with HB

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 3

2010. Unfortunately, there will always be some situations that occur involving licensees (death, disability, bankruptcy, incarceration, or incapacity due to illness or injury) wherein the orderly transfer of medical records to a designated custodian does not take place. However, in those instances the court can order a custodian to take responsibility of the records.

Additionally, we cannot imagine that the Board would want to go through the time-consuming and costly process of assessing each licensee up to $10 every time the medical record maintenance trust fund balance fell below $100,000. That process would be unbelievably difficult to administer, and extremely irritating to the 11,000 individuals the Board licenses. Under subsection (b) of New Section 1 of the bill, the Board would be required to assess all licensees, without delay, an additional fee whenever the fund balance fell below that threshold. We would much prefer that the Board simply credit up to $10 of every annual license renewal fee to the trust fund, and do so in a manner that maintains the fund at the required level.

We have suggested several amendments below that we believe would make adequate funds available to the Board to meet its responsibilities relating to serving as, finding or appointing a custodian for abandoned medical records, without creating an unnecessary burden on the vast majority of licensees who carry out their obligations regarding accessibility, confidentiality and security of medical records upon to becoming inactive for whatever reason.

We recommend that Sections 2 and 3 of the bill be deleted entirely; that Sections 4 through 6 be renumbered accordingly; and that New Section 1, subsection (b) be amended to read as follows:

> (b) The board ~~of healing arts~~ may deposit not more than $10 of each fee for the issuance or renewal of a license in the state treasury credited to the medical record maintenance trust fund. In any year in which the medical record maintenance trust fund balance is less than $100,000 the board shall replenish the fund at the next annual renewal date, in the manner described herein. ~~shall assess fees of not more than $10 from each licensee and deposit in the state treasury credited to the medical record maintenance trust fund. At any time that the balance remaining in the medical record maintenance trust fund is less than $100,000, the board of healing arts, without delay, shall assess each licensee an additional fee of not more than $10.~~ The board ~~of healing arts~~ may order a licensee to reimburse the amount of expenses incurred by the board ~~of healing arts~~ in a case when such licensee failed to ~~comply with the protocol of medical record~~ designate a custodian or provide for the storage, maintenance, transfer and access to such licensee's medical records upon becoming inactive. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medical record maintenance trust fund.

With the addition of these amendments we can support HB 2010. Thank you for the opportunity to provide these comments, and we would be happy to respond to any questions.

STATE OF KANSAS

J. DAVID CRUM
STATE REPRESENTATIVE, DISTRICT 77
2903 LAKESHORE DR.
AUGUSTA, KS 67010
(316) 775-6826

STATE CAPITOL TOPEKA, KS 66612
785-296-7642
1-800-432-3924

COMMITTEE ASSIGNMENTS
TAXATION
HEALTH AND HUMAN SERVICES
SOCIAL SERVICE BUDGET

TOPEKA

HOUSE OF
REPRESENTATIVES

Testimony – HB 2198

This bill expands on provisions of last year's SB 81 in regards to small employer health plans. SB 81 stated that any insurer that provided health benefit plans would also be required to offer a Premium Only Cafeteria Plan as permitted under Section 125 of the U.S. Code.

A section 125 premium only plan allows an employee who pays any portion of his or her health insurance premium to do so with pre-tax dollars. The employer also benefits because he is not having to pay his share of the employees social security and Medicare withholding tax on the money withheld for the insurance.

HB 2198 would also require any employer that provides health insurance coverage for which the employee pays any portion of the premium to make available a Section 125 POP.

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 4

The bill goes a step further and requires that any insurer that offers small group health plans to offer a High Deductible Plan in conjunction with the establishment of a Health Savings Account as permitted under Section 223 of the U.S. Code.

HSA's were established by federal law 2003 as a method of stabilizing rising health care costs by encouraging individuals to share in the cost of their health care.

There are significant advantages for employees who establish a HSA.

1. Annual contributions are made with pre-tax dollars and monies paid from the HSA for qualified medical expenses are not taxed as regular income. In other words the money is not taxed going in or coming out.
2. Individuals can use the dollars they save by purchasing the High Deductible Health Plan to fund their HSA.
3, The HSA can accumulate interest and be carried over from year to year and allowed to grow.
4. Under special circumstances health insurance premiums can be paid from the HSA such as when an individual is receiving unemployment compensation or requires continuation coverage under COBRA.
5. Funds from the HSA can be used to purchase a qualified long-term insurance contract.

6. And finally although contributions to the HSA cannot be made after enrolling in Medicare the account can still be used to pay for medical expenses tax free or distributed and declared as regular income.

HB 2198 also requires any employer who offers a health benefit plan to offer to all eligible individuals the option of receiving health care coverage through a High Deductible Health Plan and the establishment of a Health Savings Account.

The bill goes on to say that for any health benefit plan offered on or after January 1st 2010 when the employee elects the High Deductible Plan along with the HSA the employer's contribution shall be equal to the employers contribution to any other health plan with the cost savings to the employer for the High Deductible Plan being deposited into the employees HSA.

Finally the bill amends K.S.A. 75-6501 to require the State Health Care Benefits Program to offer a High Deductible Health Plan combined with an HSA. The High Deductible Plan is currently being offered in the State Employers Health Plan but it is not required by law.

In summary this bill requires both insurers and. employers to make available to their employees along with their other health insurance products a Section 125 or Section 223 Health Plan.

When employees are responsible for all health care costs up to the high deductible they have a strong financial incentive to contain their health care costs. In other words the individual is not insulated from the true cost of health care.

Little or no cost sharing as seen in Medicare, Medicaid and most employer sponsored health plans produces enormous demand on the health care system which in turn drives up costs.

High Deductible Health Plans provide the cost sharing so badly needed in the health care market place.

In a survey by the Wichita Business Coalition on Health Care there was a recognition "that a history of rich benefits has led to a lack of accountability on the part of employees for managing their health care costs and has made them less aware of the true cost of health care and health insurance.

A 2007 BCBS survey found that participants enrolled in a High Deductible health plan were more likely to research health information, take part in wellness programs, tract current and future health care expenses and use the emergency room less than those in traditional plans.

The study also found that consumers that enrolled in High Deductible health plans did not forgo needed health care.

This bill would help bring the consumer back into the equation and given a stake in managing their health care expenses and their own wellness.

The High Deductible Health Plan is effective because it places the emphasis on individual accountability and responsibility.

Kansas Association of Insurance Agents

Testimony on HB 2198
Before the House Health and Human Services Committee
By Larry Magill
February 9, 2009

Thank you madam Chairwoman and members of the Committee for the opportunity to appear today to support many of the general concepts in HB 2198. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members employ approximately 2,500 Kansans. Most of our agencies have a staff member who is licensed for life and health insurance and provide health insurance for their clients.

The past two sessions have seen the legislature spend a great deal of time and energy on health care reform with little measurable impact. That can be a good thing using the medical profession's dictum of "first do no harm" as a guide. In our view, there is much more potential for doing harm to the health care system and the health insurance system by the ideas being floated, than for good.

We challenge you to use one simple test of any idea brought to you: ***will this do anything to lower the cost of health care?*** Remember that health insurance is simply reflecting the cost and utilization of health care. To attack the cost of health insurance is simply "shooting the messenger". To replace health insurance companies competing for your business with an inefficient government bureaucracy will ultimately increase cost, reduce choice and create waiting lists for services.

Some of you may have heard us appear on various health care reform bills in the past two years and support Consumer Driven Health Care (CDHC) and specifically the use of high deductible health plans coupled with a Health Savings Account. We feel that it is essential that insurance go back to what it does best, insure for catastrophic loss and that consumers budget for routine health care. In addition, one of the glaring faults with our present system is the lack of normal market forces working in health care.

With most fully insured plans, consumers are not spending their own money in their minds. Instead they are using a fringe benefit paid for largely by the employer. The more they use the insurance, the more they "benefit" but that drives up utilization and it takes the normal market forces that encourage consumers to do comparison shopping and consider price out of the equation.

KAIA Supports:

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 5

- The possibility of a mandate of Section 125 Plans or Premium Only Plans (POPs) to gain tax benefits for everyone who buys health insurance
- Encouragement to use Health Savings Accounts with qualified high deductible plans to move toward Consumer Directed Health Care (CDHC). We have suggested that there be a mandate to quote an HSA with every small group quote using an actuarially justified discount for the high deductible plan and with a two-year sunset. We believe that consumer directed health care, getting the consumer to have some "skin in the game", is the only way we can effectively control costs and a way to incent wellness.
- Transparency of health care pricing to go with CDHC
- A single, electronic depository for individual medical records from all providers for a person's entire life.
- Consumer access to their medical records and greater education of consumers to help them make informed medical care decisions with their providers

HB 2198 Needs Tweaking

We support a mandatory offer by the insurers selling small business group health insurance of a high deductible plan coupled with an HSA account. We stop short of supporting a mandate that the employer must offer a high deductible plan and HSA to their employees. We certainly commend the sponsors' enthusiasm for HSAs and agree that this would be the fastest way to dramatically increase their use but from a practical political standpoint it will be much harder to pass.

We suggest that you make sure employers are presented with the high deductible/HSA option and see what results that brings.

Second, while we give our employees at KAIA the savings from the high deductible plans and firmly believe that is the way to make them successful, we stop short of supporting a mandate that the employer give the employee the savings. You could argue that the employee is the one taking the higher deductible that is responsible for generating the premium savings and therefore entitled to receive it. And that would be correct. You could also argue that the employer's benefit from the HSA comes when premium increases years down the road are less than under a conventional plan. And that would be correct. But it may be problematic to put a "best practice" into statute.

Finally, we support the idea of making Section 125 Premium Only Plans mandatory for businesses but want to caution the committee that we need to be sure the business can take advantage of the tax savings. In other words, if due to IRS rules, the business is structured in such a way or so small that the savings in payroll taxes and income tax savings are not available, then you wouldn't want to require that they maintain a POP. We are not experts on the tax code in this area by any means but think that someone who is could help with an amendment that would take care of this concern.

Thank you for the opportunity to appear today. If we can provide any additional information or if you have time for questions, we would be happy to respond.

Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Kansas House Taxation Committee
Testimony in support of:
House Bill 2198
February 10, 2009

Presented by Natalie S. Bright

Chairman Landwehr and honorable committee members:

My name is Natalie Bright and I am appearing on behalf of the Wichita Independent Business Association (WIBA). I would first like to tell you that our members are pleased this committee is considering legislation aimed at improving the quality, access, and cost of health care in Kansas, particularly for small businesses. As a representative of small businesses, I can assure that the rising cost of health care reform is at the top of our legislative priorities.

For those of you who are not familiar with WIBA, it is an organization that has been in existence for seventy-six years and has been providing health insurance for the past twenty years to independent, mostly small businesses. Any non-publicly traded company in Kansas can be a member and access our health insurance options. We currently provide two High Deductible plans, two PPOs, and two HMOs. We are unique among Kansas associations in that our members are rated as a group rather than as individual companies. We offer coverage down to the sole proprietor and can quote six other companies if an individual does not like the rates in our six plans. Of the 591 companies taking insurance through WIBA, 121 are from outside Sedgwick County.

Over the last few years, WIBA had to make changes to the health insurance products they offer as well as expand their products to include both limited-benefit plans and a Health Savings Account (HSA) program in order to meet the needs of our small business members. The limited benefit program allows WIBA to offer an insurance product for those small businesses who cannot afford WIBA's traditional health insurance products, but who want to provide their employees with some level of coverage. In addition, this limited product allows individuals' access to a physician and begins to establish a medical home for individuals who otherwise may never develop such a relationship. The HSA product we are able to recommend offers employers an insurance alternative that gives employees both portability as well as more ownership in their health insurance.

HB 2198 proposes to require all insurers that offer small group health plans to offer a high deductible health plan as well and requires any small employer that offers a high deductable

445 N. Waco Street / Wichita, KS 67202-3719
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.org / Wel

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 6

plan to also establish a HSA. While the members of WIBA are never crazy about the Legislature mandating how they run their businesses, our members do recognize the need to create alternative products for employees of small businesses. The members of WIBA like the idea of HSA because it allows for an insurance product that is portable for the employee and give the employee some ownership in his health care decisions. The only reservation our members have about HB 2198 is the provision that mandates an employer's contribution be equal to the employer's contribution to any other health benefit plan offered by the employer. For our members, their number one concern is the rising cost of health care. If this provision remains in HB 2198, this bill will not assist small employers with reducing their costs to provide coverage. It is our recommendation that this provision be removed from the bill so that employers will be incentivized to use HSA programs instead of dropping health care coverage all together.

On behalf of the members of WIBA, I would like to thank you for holding hearings on HB 2198 and for the opportunity to show our support for the health reform measures it proposes.

445 N. Waco Street / Wichita, KS 67202-3719
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.org / Web Site: www.wiba.org

Legislative Testimony

HB 2198

February 10, 2009

House Health and Human Services Committee

Rachelle Colombo, Senior Director of Legislative Affairs

Chairman Landwehr, members of the Committee:

The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.

We appreciate the opportunity to provide testimony in opposition to HB 2198 which mandates the offering of specific plans by both insurers and employers. Furthermore, the bill mandates the contribution of premium savings to employee health savings accounts. While the intent of the bill and many of the provisions have merit, the Kansas Chamber does not support mandates as a method of implementation.

The Kansas Chamber opposes the use of mandates to regulate the market and impose further cost on the health care system. The growing cost of health care is already prohibitive to employers.

Managing health care costs remains one of the top three issues affecting profitability as identified by Kansas CEOs surveyed in the Chamber's annual CEO poll. Kansas business owners tell us that they want to provide health insurance and remain competitive, but the cost is too high. Already the cost of health care put business owners at a competitive disadvantage.

Business owners are forced to either spend investment capital to provide health benefits or are unable to attract top employees if they cannot meet the expectation to provide benefits. Both options decrease a business's ability to thrive, compete and succeed.

As our economy has grown weaker, businesses are forced to make tough decisions and more and more small businesses are opting not to offer health insurance – because they can't afford to. It is imperative that we seek solutions which decrease the cost of health care and provide employers with choices over what they purchase.

> The Kansas Chamber is supportive of consumer driven health care, the encouragement of 125 plans, and giving employers incentive to utilize them. However, the Chamber supports the promotion, rather than the mandatory offering of these options.
>
> Thank you for the opportunity to offer these comments today.

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 7

KANSAS HEALTH CONSUMER COALITION

STRENGTHENING THE VOICE OF KANSANS ON CRITICAL HEALTH CARE ISSUES.

534 S. Kansas Ave, Suite 1220 | Topeka, Kansas 66603 | Ph: 785.232.9997 | F: 785-232.9998 | corrie@kshealthconsumer.org

Testimony in Opposition to HB 2198

House Health and Human Services Committee

Tuesday, February 10, 2009

Corrie Edwards, Executive Director, Kansas Health Consumer Coalition

Madam Chair and members of the committee:

I serve as the Executive Director of the Kansas Health Consumer Coalition (KHCC), representing individuals, medical professionals, and small business owners who care about access, quality, and cost of health care in Kansas. KHCC opposes HB 2198, which mandates that small employers provide high deductible health plans with health savings accounts (HDHP/HSA) if a health benefit plan is offered to employees.

We object to the legislation for two primary reasons. The first is the intrusion into small business operations and the potential administrative burden of offering multiple health plans. The effect of requiring small business employers to offer and administer an additional health plan complicates an already cumbersome system. Rather than take on this additional duty, employers may choose not to offer health benefits instead. At a time when the data indicates that small business employees are less likely to have access to health coverage, why would we adopt a policy that discourages employers from offering coverage? Small employers already have the option of offering HDHP/HSA plans if they choose, making this proposal unnecessary.

The second concern is about the benefits HSA plans for consumers. While these plans have been touted as a way to give consumers more choices and drive down health care costs, the evidence suggests a different outcome. Over the past twenty-five years, Americans have experienced a 244 percent increase in health care costs in real dollars (Kansas Rural Health Options Project October 2006). Technology, elder care, and chronic disease care play a huge role in these escalating costs, not the inability of consumers to comparison shop for care. Buying health care is not the same as buying a car. Many

534 S. Kansas Avenue, Suite 1220, Topeka, KS, 66603
Ph: 785.232.9997 Fax: 785.232.9998
www.kshealthconsumer.com
corrie@kshealthconsumer.org

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 8

providers do not know the cost of their services, particularly when different rates are negotiated individually with insurers. How is a consumer to compare prices when they vary because of many factors? Price transparency would have to be in place before consumers have a realistic chance of comparing costs and services.

HDHP/HSA plans require consumers to pay more of the upfront costs of care. The minimum deductible is $1,100 for an individual and $2,300 for a family. Because of this high threshold, will consumers forego preventive care and opt for sickness care when it becomes absolutely necessary and more expensive? This seems to contradict the trend of moving toward wellness care as a way to reduce overall health care costs and improve health outcomes. In a survey conducted by The Commonwealth Fund, thirty-five percent of consumers with HDHP/HSA plans delayed or avoided care, as compared to only eighteen percent of those with traditional, comprehensive care (Findings From the 2007 EBRI/Commonwealth Fund Consumerism in Health Survey). According to the Government Accountability Office, the average income of a taxpayer with a HDHP/HSA plan was $139,000 in 2005 dollars. (United States Government Accountability Office GAO-08-474R Health Savings Accounts). Participants also tend to be healthier than the average population, reducing the need for health care services.

HDHP/HSA plans may have the impact of increasing consumer debt because they place so much of the cost of care on the consumer. For a family, out of pocket costs may be as high as $11,600. This is comparable to what people pay in the individual insurance market, which is double the average out of pocket costs for the group market (The Access Project Issue Brief 2007 Health Insurance Survey of Farm and Ranch Operators).

KHCC recognizes the need to examine different ways to provide health coverage. We need to be cautious that our efforts to provide coverage do not result in increasing our underinsured population.

(9)

TESTIMONY ON HOUSE BILL 2198
HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
By Kenneth Daniel
February 10, 2008

Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for the Topeka Independent Business Association and other Kansas small businesses. He is publisher of KsSmallBiz.com, a small business e-newsletter and website. He is Chairman of the Board of Midway Wholesale, a business he founded in 1970. Midway has eight locations and 118 employees.

Madame Chairwoman and Members of the Committee:

Reluctantly, I must speak in defeat of House Bill 2198. I know this bill is well-intentioned, but it will not work.

This bill:

- Requires all employers and insurers to offer the option of an HSA-compatible insurance policy and an H.S.A. This is in direct violation of the federal ERISA law. Only ERISA, not states, can require an employer to do anything concerning employee benefits.

- Requires all employers, no matter how small, to establish a basic Section 125 Cafeteria plan so employees can purchase insurance with pre-tax dollars. At present there is only one state with such a requirement, that being Massachusetts. They require employers with 11 or more employees to provide a Section 125. Only 920 employees have taken up the 125. It is highly likely that this provision of Massachusetts law is in violation of federal law.

Thank you. I would be happy to answer any questions.

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 9

ERISA – GREG SCANLEN
1/16/08

Problems with ERISA

But there is a larger meaning to all of this. There is no doubt that ERISA is a mess. It was bad law when it was enacted and it hasn't gotten any better with time. It is because of ERISA that the states have gone crazy with mandated benefits and other regulations. Only small employers who buy coverage from insurance companies are affected by these state laws. Large employers who can self-fund their benefits are exempt, so they don't care what screwball laws are passed by the states. Without the help of the large companies, small employers aren't politically powerful enough to prevent such bills from passing.

The premise never made sense in the first place. There is no particular reason national employers can't comply with varying state regulation of benefits. They manage to comply with varying state laws on everything else - wages, working conditions, licensing, environmental issues, zoning, building codes, and so on. It also makes little sense that ERISA does not apply only to multi-state employers, but to all employers. Only those that have to buy coverage from an insurance company are affected by state laws because the insurance company itself continues to be state-regulated. If Congress was so concerned about national consistency, why didn't it create a national insurance regulatory system at the same time?

But the law is the law and the Courts should follow it and not create new law by judicial fiat. Congress may change ERISA, and has done so from time to time. HIPAA is an ERISA amendment, and Congress exempted Hawaii's employer mandate from ERISA. But Congress has not seen fit to change the fundamental law.

The States Have Plenty of Power

In the meantime, the states have many powers, but they may not pass laws that "relate to" employee benefit welfare plans. They may license and regulate hospitals, physicians, nurses, and every other provider. They control the malpractice system. They set wage and safety standards for employers. They have control over insurance companies and may (and frequently do) enact and enforce any harebrained idea a legislator may come up with. They control the Medicaid program and state employee benefits. They may mandate that individuals purchase health insurance. They may tax employers, providers, insurance companies, and individuals to pay for state programs.

The only thing they can not do is dictate an employer's welfare benefit program, including not only the specific benefits, but also whether an employer provides benefits at all and how much it must pay if it does. San Francisco is perfectly free to impose a payroll tax on employers to pay for a city health plan. It gets in trouble only once it allows employers who provide coverage to offset their taxes.

People have asked me why the Massachusetts law that imposes a tax of $295 per employee on employers of 11 or more workers who do not provide coverage isn't a violation of ERISA. It is. And it too would be thrown out if Massachusetts' employers challenged the law. But it is expensive to bring an ERISA suit and the cost of compliance doesn't justify the cost of litigation. Plus, employers in Massachusetts are trying to score political points by cooperating with the law. If Massachusetts raised the assessment to

$2,400 per employee per year as San Francisco has done, you can bet the business community would change its mind about challenging the law.

ERISA needs to be rethought and revised, but the Ninth Circuit ruling will prevent that from happening, as Professor Zelinsky writes in his article. Now advocates of greater state power will be looking for the magic formula, just the right words, that will survive an ERISA challenge - Maybe if we call the fine for non-compliance a "tax" or a "fee" or a "contribution," the Supreme Court will allow it. Maybe if we don't require a certain benefit, but just require a certain amount of money. Maybe if we don't call it a "requirement," but an "expectation" or an "obligation." There must be some way of phrasing this mandate so it will fool the Supreme Court into thinking it is not really a mandate. After all, it worked with the Ninth Circuit, didn't it?

That kind of thinking will be great for attorneys and it will tie up the federal judiciary for a decade. But it won't do a damn thing to solve any problems.

SOURCES:

There is a wealth of material out there on all this. The sources listed below include links to the original San Francisco ordinance, the Ninth Circuit ruling and a whole lot of other supporting information. For background on the ins and outs of ERISA, you might want to start with a paper I wrote eight years ago for the Cato Institute. The context for the paper was the pending federal Patient Bill of Rights legislation, but I explain in detail how state remedies already existed in spite of the constraint or ERISA,
See: Legislative Malpractice: MIsdiagnosing Patients' Rights.

Other sources include:
Oxford University blog (Zelinsky write-up).
SFGate article (John Graham's write-up).
Workforce Management article.
National Association of Manufacturers blog.
Reuters write-up.
San Francisco Bay Guardian blog.
San Diego Tribune blog.
California Insurance Law blog.

NOTE: The ideas presented in this newsletter represent the views of the authors. They do not necessarily reflect the policies and positions of Consumers for Health Care Choices, its members, or its Board of Directors

Legal Issues in State Requirements that Employers Offer Cafeteria (Section 125) Plans

by Patricia A. Butler, J.D., Dr.P.H.

State health policy makers interested in expanding access to uninsured working populations have begun to consider requiring employers to offer employment-based "cafeteria" (section 125) plans, which allow employees to use pre-tax funds to pay for their share of employer-sponsored coverage or (subject to certain caveats) buy their own coverage in the individual insurance market. The substantial tax subsidies available through these plans can reduce the effective cost of insurance for uninsured employees, such as part-time workers not eligible for a firm's plan or those in firms not offering coverage.

This paper outlines the legal requirements employers must meet to establish and maintain cafeteria plans, with particular focus on those involving health insurance purchased solely by employees (without employer contributions). It also discusses other federal laws affecting these plans. It is important for state health policy makers to understand these legal issues, because some federal laws may affect whether and how states can require employers to offer section 125 plans. Furthermore, if state policy makers are aware of the responsibilities imposed on employers by federal law, they may be able to help employers comply with both state and federal requirements.

Because section 125 plans are "group health plans" under the Internal Revenue Code, it appears they are subject to both employer notice provisions under COBRA and employer and insurer nondiscrimination and benefit design requirements under HIPAA. But because the definition of employer group health coverage is different under ERISA than under the federal tax code, as long as employers do not endorse or promote specific individually purchased health insurance policies, these policies should not be subject to ERISA. Nor should a state requirement that employers offer section 125 plans be preempted by ERISA.

I. Section 125 Plans

Section 125 of the Internal Revenue Code allows health coverage (and other similar qualified benefits) to be excluded from employee income even though the employee can choose whether to elect a payroll deduction for this coverage or retain the cash wages. Without section 125, the employee would be deemed to have "constructively received" income and then "spent it" on health coverage. The amount spent on coverage would have been taxed as income and only a limited deduction (for amounts exceeding 7.5% of adjusted gross income) would have been available for the premium cost.

Cafeteria Plan Requirements. In August 2007, the Internal Revenue Service (IRS) issued a set of proposed regulations outlining requirements for section 125 plans.[1] These regulations restate and clarify prior IRS policy and incorporate references to health savings accounts (HSAs) and other recent statutory changes applicable to cafeteria plans. The rules provide that health coverage can be offered under section 125 for employee-paid premiums of an employer-sponsored group plan,

This paper was developed in conjunction with the Institute for Health Policy Solutions under a grant from the California HealthCare Foundation, based in Oakland, California.

disease- or accident-specific policies, contributions to an HSA, reimbursement for medical expenses (but not insurance premiums) under a "flexible spending account," payment of COBRA premiums for employees not eligible for the employer's plan,[2] or reimbursement to the individual employee for individually-owned health insurance policies as long as the employer assures that the insurance is currently in force and is being paid by the employee.[3] If health insurance is the only benefit, the cafeteria plan may be called a "premium-only plan," "premium conversion plan" or a "premium reimbursement account," and often is referred to as a "POP."[4] The proposed rule includes three ways that employers can substantiate that the payroll withholding pays for individually-purchased health insurance.[5] Even when insurance is purchased only with the employee's wages, the IRS considers such payment to be an "employer contribution" for purposes of section 125 so as to bring it within the Internal Revenue Code section 106 requirement of "employer-provided" health coverage that is excludable from income.[6]

Employers must establish a section 125 plan in a written document that lists the specific benefits that can be paid for via payroll deductions as an alternative to cash wages, [7] outlines eligibility policies (only employees may participate), procedures for employee elections, maximum amount of elective contributions,[8] and the plan year. An election to pay for qualified benefits under a cafeteria plan is irrevocable for a year except in the case of status changes, such as change in the number of work hours, marriage, birth, adoption, or a dependent aging out of the employee's coverage.[9] Failure to follow the plan's terms invalidates the plan and results in tax liabilities for the employer and its employees.[10]

Self-employed people, partners, or certain shareholders of Subchapter S corporations are not employees and therefore cannot be participants in section 125 plans. Employees may pay for covered benefits for their dependents, but the dependents themselves are not plan participants who can elect or purchase benefits. Former employees who are treated as employees may be able to buy benefits through a section 125 plan, but the plan cannot be established or maintained predominantly for their benefit.

Nondiscrimination Provisions. Consistent with the tax code and provisions of federal pension law, the proposed regulations also prescribe standards for nondiscrimination in cafeteria plan benefits on behalf of "highly compensated individuals" and "key employees."[11] (Self-insured employer medical plans offered outside a cafeteria plan, which are not our focus here, are subject to somewhat different nondiscrimination rules under section 105(h) of the tax code.[12]) If the plan discriminates in favor of either of these groups, it remains a qualified cafeteria plan, but the employees will be taxed on the value of the excess benefits (and employers may be subject to additional employment [FICA] taxes). The discussion below focuses on cafeteria plans allowing salary reduction without a direct employer contribution to health coverage; Appendix A includes examples of how the nondiscrimination rules apply and calculations for how to assess their impact.

Highly Compensated Employees. With respect to highly paid employees as defined in tax code section 125, the law provides that lower paid employees must have a similar opportunity to become eligible for the plan and have access to similar benefits and employer contributions.[13]

10

NFIB
The Voice of Small Business®

House Health & Human Services Committee
Daniel S. Murray: State Director, NFIB-Kansas
Testimony in Opposition to HB 2198
February 10, 2009

NFIB-KS advocates free-market reforms that allow small-business owners to decide which benefits they can and cannot afford to offer.

Madam Chair, Members of the Committee: My name is Dan Murray and I am the State Director of the National Federation of Independent Business-Kansas. NFIB-KS is the leading small business association representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB-KS represents the consensus views of its 4,000 members in Kansas. Thank you for the opportunity to comment on HB 2198.

Since 1986, the National Federation of Independent Business' members have said that healthcare costs are their No.1 concern. For this presidential election, a national survey conducted by NFIB confirmed that healthcare remains a top issue in voters' minds. Nearly 81 percent of small business owners say that finding affordable healthcare for themselves and their employees is a challenge. Fifty percent of small business owners say they anticipate having difficulty keeping up with the cost of healthcare over the next four years. And, of the nearly 46 million Americans without healthcare, more than 26 million are small business owners, employees and their dependents.

So, with the rising cost of providing healthcare benefits, an increasing number of employers are looking for innovative ways to stretch their healthcare dollars. This includes market-driven reforms aimed at empowering individuals and employees to become better consumers by giving them the freedom to choose how they are spending their healthcare dollars.

The primary tools available to small business owners, their employees and their families include health savings accounts (HSAs), health reimbursement arrangements and flexible spending accounts. These plans provide the consumer with the choice to control and spend healthcare dollars as they see fit.

NFIB is a huge proponent of HSAs. We believe HSAs will help reduce the number of uninsured Americans by allowing small businesses and their employees more choice in the current small-group market. Further, by allowing portability and more flexibility, HSAs will afford employers a better opportunity to offer employees health insurance at reasonable rates. Some small businesses have saved up to 42 percent when they have chosen a medical savings account over traditional insurance products.

That said, NFIB must oppose HB 2198. We applaud the bill's ultimate goal of making HSAs more available. However, we believe the marketplace, not the government, should determine the type and amount of benefits that Kansas employers provide to their employees. With all due respect, lawmakers are not elected to micromanage the daily affairs of Kansas employers.

In closing, Kansas small businesses are facing real challenges—healthcare costs are of chief concern. NFIB ***strongly*** believes that HSAs are a key tool in addressing increasing healthcare costs. However, we philosophically oppose government efforts to direct how much and what kind of health benefits employers provide to employees. Thank you for your time and consideration.

National Federation of Independent Business – KANSAS
5625 Nall Ave., Roeland Park, KS 66202 • 785-217-3442 • Fax – 785-232-1703 •

HEALTH AND HUMAN SERVICES
DATE: 2/10/09
ATTACHMENT: 10

11

HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: House Health and Human Services Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 10, 2009

Re: House Bill 2198

The Heartland Community Bankers Association appreciates the opportunity to share with the House Health and Human Services Committee our opposition to the high deductible health plan mandate contained in House Bill 2198.

HCBA represents savings and loans and savings banks in Kansas. All of our members offer health insurance as an employee benefit and some pay 100 percent of the insurance premium.

House Bill 2198 mandates that all Kansas businesses that offer health insurance to their employees must offer a high deductible health plan and health savings account. In addition, the bill mandates that the employer must contribute to the HSA an amount equal to the cost savings of the high deductible plan versus the cost of any other health plan offered by the employer.

While we understand the benefits of HSA's, HCBA believes that the sweeping mandate contained in HB 2198 is unnecessary for employers already committed to providing quality health insurance. For the first time last year, the health plan we endorse to our membership offered an HSA option but none of our members took advantage of it. Most did not feel the cost savings to them were enough to offset the inconvenience to the employee. For example, the monthly savings on a single insured with the high deductible plan would only be between $100 and $130, depending on the "traditional" plan they offered.

While there are certainly pros to be considered when looking at an HSA, there is also a downside. Much of the cost savings associated with a high deductible plan are derived from the increased out-of-pocket costs for the employee. For example, with an HSA, certain items such as office visits and prescription drugs are subject to the deductible whereas under our current health plan employees benefit from co-pays and a drug benefit that costs only $15 for a generic and no more than $45 for a nonformulary brand.

House Bill 2198 also mandates a minimum employer contribution based on their monthly "savings." Depending on options such as single or family coverage, those savings can be difficult to calculate. Employers who pay a flat percentage of the premium regardless of the cost for single or family coverage may suddenly be discriminating against other employees when they contribute the "savings" to the HSA.

An HSA makes a great deal of sense for some employers and employees. For others, it may not. Many of our members are proud that they offer a high quality health plan. Although they could save money by switching to an insurance program with less benefits, they know quality health insurance is important to their employees and their families. These employers should be applauded, not subject to new government mandates.

Thank you for your kind consideration of our concerns with House Bill 2198.

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 11

Lenexa
Chamber of Commerce

The Historic Lackman-Thompson Estate
11180 Lackman Road
Lenexa, KS 66219-1236
913.888.1414
Fax 913.888.3770

TO: Representative Brenda Landwehr, Chairperson
Members, House Health & Human Svcs Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: February 10, 2009

RE: **HB 2198 – Health Insurance for Small Employers**

The Lenexa Chamber of Commerce would like to express its concerns regarding HB 2198, which includes a number of new mandates in the provision of health care coverage for both insurers and small employers.

Most health care coverage in the U.S. is provided through an employer. Unfortunately, employers have absorbed years of significant cost increases for employee health benefits. These higher costs mean fewer employers can afford to provide quality health care coverage for their employees. The prevention or loss of health care coverage endangers employees and their families, promotes costly emergency health care, and makes it more difficult for businesses to attract and retain quality employees. For these reasons, affordable health care coverage is a critical issue for the business community.

While we appreciate and support what we believe is the intention behind this bill – to facilitate and encourage affordable health care coverage – we cannot support broad mandates as the means by which these goals are to be achieved. We believe providing employers and employees with incentives, allowing insurers additional flexibility in the design of insurance plans, and preventing new coverage mandates are better approaches to helping control costs and ensure that businesses and employees have a range of affordable coverage options from which to choose.

Accordingly, the Lenexa Chamber of Commerce urges the committee not to recommend HB 2198 favorable for passage. Thank you for your time and consideration of this important issue.

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 12

Kansas Bankers Association

Date: February 10, 2009

To: House Health and Human Services Committee

From: Doug Wareham, Senior Vice President-Government Relations

Re: H.B. 2198 – Regarding Health Insurance

The Kansas Bankers Association (KBA) appreciates the opportunity to share concerns regarding H.B. 2198. For the record, KBA's membership includes 347 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA opposes certain sections of H.B. 2198. We do support the concept of High Deductible Health Plans (HDHP) and Health Savings Accounts (HSAs), but it is our belief that employers (including banks) that provide medical benefits, and typically pay the majority of the costs associated with those benefits, should retain control over what benefits are offered. **Adoption of H.B. 2198 would create an administrative hardship for small employers by mandating them to administer a dual option plan.**

Experience has taught us that High Deductible Health Plans and Health Savings Accounts can be very complicated and it requires a tremendous amount of time, effort and expertise to successfully offer these options to employees and there will be added costs to employers by mandating businesses to offer such plans, even when they currently provide other health insurance options for their employees. **As written, H.B. 2198 will increase the administrative burden on employers and could lead to increased premiums paid by employees because of the costs associated with these mandates.**

KBA is also opposed to forcing employers to payroll deduct HSA contributions and deposit them into the employee's HSA account. Current HSA rules allow money to go into the HSA through payroll deductions and a Section 125 plan or the employee can directly deposit the HSA contribution into their HSA account. Under either method the employee enjoys the same tax advantages. **The payroll deduction option, while convenient, is not necessary and should be the employer's choice, rather than a mandate.**

For the record, KBA strongly supports Section 125 plans, but mandating that a small employer adopt a Section 125 plan would also create additional administrative burden and expense, especially for the very small employer. We do not believe it is beneficial for a small employer that is making an effort to provide medical coverage to its employees to be saddled with additional expenses that would be non-existent if they were not providing medical benefits in the first place. It is difficult for small employers to continue offering their employees health benefits, as evidenced by the number of small employers terminating their medical plans, and adding increased administration, complexity and expense will do nothing to encourage the small employers to continue to offer medical benefits.

Once again, thank you for the opportunity to share concerns regarding H.B. 2198. KBA works closely with our member banks to assist them in providing health care coverage for their employees and employee dependents. While we encourage banks to consider all of the various options available for medical coverage, we know at the end of the day, the bank (employer) will choose the option that best suits their business and their employees' needs. **Therefore, KBA is opposed to the HDHP and HSA mandates contained in H.B. 2198 and we respectfully ask members of the House Health and Human Services Committee to oppose this measure.**

610 S.W. Corporate View 66615 | P.O. Box 4407, Topeka, KS 66604-0407 | 785-232
kbaoffice@ksbankers.com | www.ksbankers.com

HEALTH AND HUMAN SERVICES
DATE: 02/10/09
ATTACHMENT: 13