

**MINUTES**

**HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE**

December 9, 2003  
Room 514-S—Statehouse

**Members Present**

Dick Bond, Chairman  
Representative Eber Phelps  
Dr. James Rider  
Gene Schmidt

**Members Absent**

Senator Jim Barnett  
Senator Greta Goodwin  
Representative Jim Morrison  
Dr. Mark Praeger  
Dr. Paul Kindling  
Dick Brock  
Dr. Debra Doubek-Phillips

**Staff Present**

Bill Wolff, Kansas Legislative Research Department  
Amy Deckard, Kansas Legislative Research Department  
Bruce Kinzie, Office of the Revisor of Statutes

**Others Present**

Barb Conant, Kansas Trial Lawyers Association  
Kurt Scott, KaMMCO  
Chris Collins, Kansas Medical Society  
Chip Wheelen, Kansas Association of Osteopathic Medicine  
Jerry Levy, Kansas Trial Lawyers Association  
Bob Hayes, Health Care Stabilization Fund  
Rita Noll, Health Care Stabilization Fund  
Linda Williams, Health Care Stabilization Fund  
Lorie Anderson, Health Care Stabilization Fund  
Russel Sutter, Tillinghast-Towers Perrin  
Jarrod Forbes, Kansas Insurance Department  
Jon Josserand, University of Kansas  
Ron Seeber, HCA  
Mike Hammond, Association of Community Mental Health Centers of Kansas

## Tuesday, December 9

The Chairman called the meeting to order at 9:00a.m. He noted that a number of members would be absent because of the winter weather. He called on Bob Hayes, Executive Director, Health Care Stabilization Fund, to provide the Committee with an overview of the activities of the Fund Board of Governors for 2002-2003 (Attachments 1 and 1a). Highlighted in his presentation were issues of increased claim filings, changes in loss payment projections, lower investment returns, and transfers from the Fund to the Health Care Insurance Availability Plan.

In response to a question, Mr. Hayes acknowledged the office has been contacted by several physicians from Missouri, seeking information about moving their practice to Kansas. He said he would check to see if there has been any significant movement.

Of some concern to the Board of Governors is the number of providers who are currently participating in the Plan. Particularly, the Board is concerned about the amount of money transferred from the Fund to the Plan to cover the losses in the Plan. For this year and the two prior years, the transfers have totaled \$4.3 million. Participants in the Plan will experience a premium rate increase and, since the surcharge is a percentage of the premium, the additional income to the Plan may offset or reduce the size of the transfers from the Fund in the future. Kurt Scott, KaMMCO, indicated that the reduced number of companies writing medical malpractice insurance are more careful about their underwriting. The greater scrutiny results in a higher number of participants in the Plan.

Russel Sutter, Tillinghast Tower-Perrin, actuary to the Fund, reported that as of June 30, 2003, the Fund held assets of \$199.4 million and liabilities of \$155 million, with \$44 million in reserve. Projections for June 2004 are for \$195 million in assets and liabilities of \$153 million, with reserves of \$41.4 million. He told members that the Board of Governors has done a good job of managing the Fund through some difficult times. Of interest to him was the decline in the size of settlements during calendar year 2002, which were about half of what was expected. He also expressed agreement with the Board's decision to significantly raise tail coverage rates effective January 1, 2004. The increase is necessary because, based on a study by the actuary, the current rate structure is inadequate to cover the liability (Attachment 2).

Rita Noll, chief attorney for the Fund, presented a report covering claims against the Fund involving full-time faculty of the University of Kansas School of Medicine and residents in programs in Kansas City and Wichita. With one exception, the level of payments for claims and the amounts reimbursed to the Fund from the State General Fund are consistent with experiences of previous years. However, fees and expenses for handling WCGME resident claims were significantly higher than in the past. The greater defense expense costs arise from the increase in the number of claims (Attachment 3).

Following the formal presentations, the Chairman asked if anyone had any suggested changes to the Health Care Provider Insurance Availability Act. There were no proposals for change.

The Chairman asked if there were additional comments on the current status of the medical malpractice market in Kansas, beyond those already expressed. Both Mr. Hayes and Mr. Scott noted the contraction in the marketplace and the fact that significant premium increases have been approved in other states. Issues driving those increases in other jurisdictions generally arrive in Kansas at some point. Mr. Scott did point out the potential for some new carriers coming to do business in Kansas; however, should that happen, it will take time before there is an impact on the Kansas market.

A second issue relates to the increase in claims being filed against physician extenders, *i.e.*, Physician Assistants and Advanced Registered Nurse Practitioners. The statutes that authorize those providers hold their supervising physician responsible for their act. However, a physician with

an extender pays the same for coverage as a physician with no extender. The Board of Governors has asked the actuary to review this situation and determine whether a higher charge should be made for physicians with extenders.

The Chairman asked the two annual questions: should the Committee seek an independent actuarial evaluation next year, and should the Health Care Stabilization Fund Oversight Committee be continued? Members saw no need at this time for an independent actuarial report. As to the continuation of the Committee, the consensus was that the Committee serves a useful purpose and should be continued.

Finally, while the Committee makes no recommendation for changes in the statutes governing the work of the Board of Governors, *it was moved by Mr. Schmidt, seconded by Dr. Rider, to recommend the following to the Legislative Coordinating Counsel, the Legislature, and the Governor regarding the Health Care Stabilization Fund:*

*The Health Care Stabilization Fund Oversight Committee continues to be concerned about and would be opposed to any possible action to transfer money from the Health Care Stabilization Fund to the State General Fund. The Health Care Stabilization Fund receives its funding from the professional liability coverage surcharge payments by health care providers, as provided for in the Health Care Provider Insurance Availability Act. This source of funding for the Health Care Stabilization Fund is not a fee for a license, registration, certification, government inspection, or other typical government service. The Health Care Stabilization Fund is providing professional liability coverage for Kansas health care providers. Furthermore, as set forth in the Health Care Provider Insurance Availability Act, the Health Care Stabilization Fund is required to be ". . . held in trust in the state treasury and accounted for separately from other state funds."*

*The Committee believes that transferring money to the State General Fund from the Health Care Stabilization Fund is contrary to legislative intent and the provisions of the Health Care Provider Insurance Availability Act, KSA 40-3401, et seq. Further, this Committee believes this kind of "sweeping monies" from the Health Care Stabilization Fund into the State General Fund also is contrary to the obligation of the Health Care Stabilization Fund to provide professional liability coverage for eligible Kansas health care providers, and would impair the ability of the Health Care Stabilization Fund to maintain an actuarially sound program for the benefit of the health delivery system which serves the general public of Kansas. The motion carried.*

There being no further business to come before the Committee, the meeting was adjourned at 11:00 a.m.

Prepared by Bill Wolff

Approved by Committee on:

January 2, 2004

(date)