

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 23, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Norm Furse Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Candy Ruff
Representative Ted Powers
Rebecca Rice, Kansas Chiropractic Association
Kenny Clark, Kansas Coalition for Workplace Safety
Terry Leatherman, Kansas Chamber of Commerce
Brad Smoot, The American Insurance Association
Representative Tom Holland
Paul Rodriguez, Rodriguez Mechanical Contractors
Roy Chaney, Chaney, Inc.

Others attending:
See Attached List.

The Chairman announced the committee would meet Tuesday, February 24 to work some bills.

The Chairman opened the hearing on **HB 2847 - Workers Compensation, choice of physician by injured employee.**

Staff gave a briefing on **HB 2847**, stating in line 16 there was new language “designated by the injured employee”. There was new language in lines 24 through 33 “If the injured employee is dissatisfied with the services rendered by the initial designated health care provider, the injured employee may designate a different health care provider to provide medical services once without showing just cause. Any other changes in the injured employee’s designated health care provider must be for just cause and by order of the director following a preliminary hearing in accordance with K.S.A. 44-534a and amendments thereto. Medical case managers are allowed to attend medical appointments only with prior written approval of both the designated health care provider and the injured employee.

Representative Candy Ruff, author of **HB 2847** stated this topic was before the interim committee. This bill basically turns the tables for employees whereby they would be able to choose their own physician. In twenty-seven other states the employer does not choose the physician.

Representative Ted Powers, author of **HB 2527** which is similar to **HB 2847**, testified as a proponent, stating twenty-two states allow injured workers to seek out the best, most qualified medical care to provide the injured worker maximum satisfaction with the recovery. In doing so these workers have confidence that everything that can be done to promote healing is being performed. Three states allow for choice from a list compiled by a state agency. Three more states allow for choice from a list maintained by the employer. Five additional states allow for the injured workers to have freedom of choice after a specified amount of time if the employer’s selection fails to satisfy the injured worker. In two Midwest states a state agency may change physicians on behalf of the injured worker if the agency believes it to be in the worker’s best interest. Kansas has the most restrictive law of all, giving the entire choice to the employer of the injured worker (Attachment 1).

Rebecca Rice, Legislative Counsel, Kansas Chiropractic Association, a proponent to **HB 2847**, asked consideration of the unorthodox possibility that a patient that is treated in a manner that the patient does not want, by a health care provider the patient does not trust, is not the best approach to health. Kansas should not force workers to choose a health care provider they don’t want and don’t trust especially at a time when a worker may feel extremely anxious, confused and concerned about their future employment. Kansas patients want chiropractic care when they have the choice. The myth of “over-billing” or “run

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away costs” continues to be repeated to legislative committees as reasons for retaining employer control over provider choice despite the protections of Kansas’ fee schedule and peer review provisions. Denying workers the choice of non-invasive, non-prescription drug treatment, however, is an assurance that costs will not be contained (Attachment 2).

Kenny Clark, business agent for Teamsters Local 696 and a representative of the Kansas Coalition for Workplace Safety, a proponent to **HB 2847**, testified Local 696 believes in the old adage that an ounce of prevention is worth a pound of cure. We strive to keep our members safe on the job. Accidents happen and when they do we want the option to seek medical care from a known doctor that can be trusted.

According to a recent report by the Docking Institute, “Kansas is one of a minority of states where employees do not have initial choice of medical provider or the option to change the treating doctor.” If an injured worker chooses to consult with his or her physician, the employer would only pay up to \$500 in medical charges. Given the price of medical care today, that’s not really a choice unless you have a very minor injury. The current work comp system forces injured workers to see a doctor who is selected by the insurance carrier and paid by the insurance carrier (Attachment 3).

Terry Leatherman, Vice President, Public Affairs, Kansas Chamber of Commerce, testified as an opponent to **HB 2847**, stating this would strip from employers the right to select the initial health care provider in workers compensation cases. Selection should remain with the party that pays the bill. Employees make no contribution to workers compensation insurance premiums, pay no deductible or pay a co-payment for medical care they receive. Since Kansas requires employers to pay all the cost for a system for employees, it is essential that employers provide the best coverage at the best price. One of the ways an employer can control the costs in workers compensation is employer choice of the treatment by the health care provider.

Employee choice of the health care provider would significantly increase workers compensation cost. The National Council on Compensation Insurance indicated the change would produce significant insurance premium increases. The 1997 estimate suggests workers compensation medical costs would increase 10 to 20%, while indemnity costs would soar 10 to 20%. That would prompt insurance premium increases in excess of \$40 million, with tens of millions more spent by employers who self-insure their workers compensation exposure.

The current system encourages the delivery of quality health care. Employee choice of the health care provider would undercut current preferred provider programs. Employee choice of the health care provider would promote litigation. Employee safeguards exist in the current system (Attachment 4).

Brad Smoot, Legislative Counsel, The American Insurance Association, testified as an opponent to **HB 2847**. This bill would reverse Kansas’ longstanding practice of “employer choice of physician” for the workers compensation system. Based on the NCCI analysis of **HB 2527**, which is similar, the estimated increase in Kansas workers compensation medical costs would range between 3% and 6%, or \$14.6 million to \$29.1 million. An additional cost to the system could be expected on the indemnity side of the cost structure up to 4% or \$19.4 million. Studies cited by NCCI in **HB 2527** analysis indicate that states with unrestricted employee choice have higher medical costs than those where the employer selects the initial health care provider. This is probably due to the ability of employers or their carriers to negotiate better prices and control utilization (Attachment 5).

Representative Pauls requested that NCCI provide pricing comparison on **SB 181**.

Mr. Smoot said he would get that information.

The Chairman stated that he had just received a fiscal note that stated the Department of Administration estimated that **HB 2847** would result in an additional expenditure of \$868,164 in FY 2005 and asked if Mr. Smoot had an idea of how they arrived at that?

Mr. Smoot said he did not know how they arrived at that?

A person in the audience from the Department of Administration said he had seen the fiscal note and it’s basis was essentially two-fold: (1) the state does not belong to NCCI and (2) a cursory look at where we

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currently have contracts in the large metropolitan areas, i.e., Manhattan, Topeka, Kansas City and Lawrence. There are discounts with the providers for injured workers. It is an estimate of what that potential loss would be if our employees could chose their own, outside physician. There is a PPO network that we contract with, a third party, and we get considerable discounts if our employee goes through that network throughout the state. We came up with an estimated increase in cost of \$700,000 the first year and for the following years we simply added 10%. We did not include costs of equipment, supplies or that type of things and can negotiate those as well by having some control over where the employee goes to receive those items.

The Chairman closed the hearing on **HB 2847**.

The Chairman opened the hearing on **HB 2818 - Knowingly employing an illegal alien, increase penalty to close a nonperson misdemeanor and mandatory fine on second or subsequent offense; hotline to receive tips.**

Staff gave a briefing on **HB 2818** stating on Page 1, line 37 “C” was changed to “A nonperson” and added, “On the second or subsequent conviction of a violation of this section, in addition to any other sentence imposed, a person shall be fined \$25,000. Paragraph (c) was added. On page 2, Section 3, (b) line 16 start the sentence with “Except as otherwise provided in statute.”

Representative Tom Holland testified as a proponent on **HB 2818**. The key is “knowingly employing” on page 1, line 36. Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States”(Attachment 6).

Paul Rodriguez, Rodriguez Mechanical Contractors, testified as a proponent to **HB 2818**, stating this bill helps to level the playing field in providing a livable wage and providing for a quality of life for those who choose to work in the construction industry in the state of Kansas (Attachment 7).

Roy G. Chaney, President, Chaney, Inc., testified as a proponent to **HB 2818**, stating the use of illegal aliens is unfair to the citizens of this state. Often exploit the illegal workers. Contractors and owners that use this type of labor. Aliens are worked six to seven days a week, ten to twelve hours a day with no overtime compensation because they are treated as subcontractors. The IRS has specific guidelines for subcontract labor and these people do not qualify as subcontract labor (Attachment 8).

The Chairman closed the hearing on **HB 2818**.

The Chairman announced the committee would meet tomorrow and asked the members that were present from the Workers Compensation Advisory Council to please come up with a workable solution for **SB 181**.

The following written testimony was distributed: Kenneth Hays, Proponent, Co-owner of Cornerstone Construction, Lawrence, Kansas (Attachment 9) and Elias L. Garcia, Executive Director, Kansas Advisory Committee on Hispanic Affairs, Opponent (Attachment 10).

The meeting adjourned at 10:35 a.m. and the next meeting will be February 24, 2004.