MINUTES

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

November 16, 2018
Room 548-S—Statehouse

Members Present

Gary Hayzlett, Chairperson
Senator Anthony Hensley, appointed substitute for Senator Kelly
Representative Richard Proehl
Representative Jim Ward, appointed substitute for Representative Eber Phelps
Darrell Conrade
Dennis George
Dr. Jimmie Gleason
Dr. James Rider
Jerry Slaughter

Members Absent

Senator Laura Kelly
Senator Vicki Schmidt
Representative Eber Phelps
Dr. Dennis Cooley

Staff Present

Melissa Renick, Kansas Legislative Research Department
Jennifer Ouellette, Kansas Legislative Research Department
Scott Abbott, Office of Revisor of Statutes
Randi Walters, Committee Assistant

Conferees

Russel Sutter, Actuary, Willis Towers Watson
Rita Noll, Deputy Director and Chief Counsel, Health Care Stabilization Fund Board of Governors
Charles "Chip" Wheelen, Executive Director, Health Care Stabilization Fund Board of Governors
Kurt Scott, President and Chief Executive Officer, Kansas Medical Mutual Insurance Company
Rachelle Colombo, Director of Government Affairs, Kansas Medical Society

Others Attending

See Attached List.

Afternoon Session

Welcome and Introductions

Chairperson Gary Hayzlett called the meeting to order at 1:30 p.m. The Chairperson welcomed members and asked them to introduce themselves. Following the introductions, Chairperson Hayzlett recognized Melissa Renick, Kansas Legislative Research Department (KLRD).

Staff Review of Committee Resources

Ms. Renick presented an overview of resource materials provided to the Committee. Ms. Renick indicated among the items included is a memorandum outlining recent changes to law and legislation considered during the 2018 Session that are relevant to the Health Care Stabilization Fund's (HCSF) Board of Governors or to health care providers in general (Attachment 1). Ms. Renick provided an overview of SB 217, legislation that updates several statutory references in accordance with 2012 Executive Reorganization Order No. 41. Ms. Renick indicated SB 217 includes clarification that the Board of Governors provide its statutory report to this committee, and in turn the Committee has a responsibility to report to the Legislative Coordinating Council (LCC) and the members of the Legislature at large on this Committee's activities. Ms. Renick next provided an overview of Senate Sub. for HB 2028, legislation that establishes the Kansas Telemedicine Act. Ms. Renick provided background on the Telemedicine Act, pointing out the use of "healthcare" as a single word in the definition of "healthcare provider"rather than health care as two words as this term appears elsewhere in the Health Care Provider Insurance Availability Act (HCPIAA). Ms. Renick referenced the remaining bills included in the memorandum and the KLRD fiscal year (FY) 2019 Appropriations Report which details the actual and approved expenditures for the Board of Governors, as well as two subcommittee reports (Attachment 2). Ms. Renick noted the Committee Report to the 2018 Legislature and reviewed the conclusions and recommendations which is part of the Committee's statutory responsibilities of submitting a report to the LCC.

Health Care Stabilization Fund Board of Governors' Staff and Actuary Reports, 2017-2018

Chairperson Hayzlett next recognized Russ Sutter, Willis Towers Watson, to provide an actuarial report (Attachment 3). The presentation was based on the review of HCSF data as of December 31, 2017, and is an addendum to the report to the Board of Governors dated March 5, 2018.

Mr, Sutter addressed forecasts of the HCSF's position at June 30, 2018, and June 30, 2019, based on the company's annual review, along with the prior estimate for June 2018. Last year, the estimate of the HCSF held assets as of June 30, 2018, was $290.41 million, liabilities of $240.95 million, with $49.45 million in reserve. As of June 30, 2018, the HCSF held assets of $292.08 million, liabilities of $244.19 million, with $47.89 million in reserve. The projection for June 30, 2019, is as follows: assets of $296.93 million, liabilities of $249.26 million, with $47.67 million in reserve. Mr. Sutter noted, based on the analysis provided to the Board of Governors, the HCSF needs to raise its surcharge rates by 2.0 percent for calendar year (CY) 2019 in order to maintain its unassigned reserves at the expected year-end CY 2018 level (estimated $48.0 million). The actuary explained the forecasts of unassigned reserves assume an estimate of surcharge revenue in FY 2019 of $28.4 million, a 2.0 percent interest rate for estimating the tail liabilities on a present value basis, a 3.05 percent yield on HCSF assets for estimating investment income, full reimbursement for University of Kansas (KU)/Wichita Center for Graduate Medical Education (WCGME) claims, and no change in current Kansas tort law or HCSF law. Based on these conclusions, it was suggested the Board of Governors consider a modest increase in rates for CY 2019, perhaps by continuing to lessen the differences in rates by Year of Compliance (YOC) and making adjustments by specialty.

Mr. Sutter next reviewed the HCSF's liabilities at June 30, 2018. The liabilities highlighted included claims made against active providers as $75.2 million; associated defense costs as $13.1 million; claims against inactive providers, as known on June 30, 2018, as $8.8 million; tail liability of inactive providers as $136.0 million; future payments as $11.0 million; claims handling as $8.6 million; and other, described as mainly plaintiff verdicts on appeals, as $1.1 million. Total gross liabilities were $253.8 million; the HCSF is reimbursed $9.6 million for the KU/WCGME programs, for a final net liability of $244.2 million.

Mr. Sutter next reviewed the HCSF's (surcharge) rate level indications for CY 2019, noting the indications assume a break-even target. Mr. Sutter highlighted payments, with settlements and defense costs of $30,745,000; change in liabilities of $4,924,000; administrative expenses of $1,810,000; and transfers to the Availability Plan and the Kansas Department of Health and Environment are assumed to be $200,000 (assumes no Availability Plan transfer); in total, the cost for the HCSF to "break-even" is $37,679,000. Mr. Sutter stated the HCSF has two sources of revenue: investment income assumption of $8,848,000 based on a 3.05 percent yield on those assets; and surcharge payments from providers of $28,206,000. Mr. Sutter explained the the Board of Governors would need to get $28,831,000 in surcharge revenue to meet the break-even scenario. Mr. Sutter indicated his company's advice to the Board of Governors was in order to maintain the same level of unassigned reserves, the HCSF should raise rates by 2.2 percent .

Mr. Sutter then discussed trends in the HCSF's loss experience and investment income, highlighting the key component to the HCSF's favorable financial performance—the spread of investment yield relation to inflation. Mr. Sutter explained the current assumption is a 205 basis point spread (assumes an investment yield of 3.05 percent; inflation of 1.0 percent). Mr. Sutter commented as long as the spread is in that neighborhood or better, it is believed the HCSF's rates will be able to stay at or near its current level for a few years with maybe modest increases. If that spread narrows significantly either due to a ramp up in inflation or a decline in the investment yield, then there is going to be more pressure on the HCSF's income statement going forward. Mr. Sutter reported on trends in the HCSF's experience for active and inactive providers by program year from 2005 through 2018. Mr. Sutter indicated there were some surprising blips in 2008 and 2010, but over the long term it looks pretty close to zero percent inflation rate in the cost to insure active providers over this 13-year period. Mr. Sutter indicated that inactive providers have shown some positive inflation. Mr. Sutter stated it may be due to the legislative change where the inactive providers do not have to buy additional coverage upon leaving the HCSF that started in 2015. Mr. Sutter indicated the company had to move its estimates of inactive providers up from its 2017 study and will continue monitoring this item. Mr. Sutter also reported on the HCSF's investment yield over the last eight years, indicating it continues to have a gradual decline. Mr. Sutter indicated his company lowered its assumed future yield rate from 3.10 percent in the 2017 study to 3.05 percent in its 2018 review.

Mr. Sutter next provided an overview on the rating by YOC. With the passage of 2014 HB 2516, the HCSF provides tail coverage at no additional cost to all providers upon becoming inactive. Mr. Sutter explained the 2014 legislation made rating by YOC unnecessary. Mr. Sutter indicated the advice to the Board of Governors was to narrow that spread and condense the table, and the Board of Governors has adopted this policy. Mr. Sutter stated by CY 2019 a provider who has participated in the HCSF three years, used to get a 19.0 percent discount, but now pays the full rate; and a provider who is in the HCSF for the first year is now up to 35.0 percent instead of 20.0 percent. Mr. Sutter indicated the Board of Governors decided with CY 2019 to further compress the table and move the first-year rate up to 50.0 percent. Mr. Sutter stated his company is quite pleased with these decisions (*e.g.* lessening the difference in rates by YOC) from an internal equity standpoint.

Mr. Sutter provided an overview regarding indications by provider class. Mr. Sutter explained every year his company evaluates the internal equity of these rates in order to minimize subsidization from one class to another. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. Mr. Sutter provided an analysis of the different classes, calling attention to Class 11 (neurosurgeons). Mr. Sutter indicated it was gratifying to see Class 11 finally move from the right-hand column (indicating a need to increase rates by > 15 percent) to the middle column where, in theory, his company would like all participating health care providers (no subsidization).

Mr. Sutter provided a history of surcharge rate changes since 2007. Mr. Sutter stated there has been a fair amount of stability in these rates, indicating the low inflation or no inflation in some cases has helped. Mr. Sutter next provided an overview of the three options for CY 2019 surcharge rates that were provided to the Board of Governors. Mr. Sutter highlighted the Board of Governors' decision stating the Board chose to raise the YOC factor for Group 1 from 35.0 percent to 50.0 percent; and from Group 2 from 70.0 percent to 90.0 percent. Mr. Sutter indicated the estimated overall impact of these changes to equate to a 2.4 percent increase in surcharge revenue.

Mr. Sutter concluded by stating his company will be updating this analysis and will be reporting to the Board of Governors in March with further recommendations for the 2020 rates. Mr. Sutter indicated based on discussions with Ms. Noll, as well as the HCSF's actual balance sheet as of June of 2018, he is confident there will be similarly benign results to report to this committee next year at this time.

In answer to questions from the Committee:

- Mr. Sutter explained regarding Class 15 (the Health Care Provider Insurance Availability Plan ("Availability Plan"), the report suggested a 50.0 percent increase is indicated to get to a rate-neutral situation, but the Board of Governors decided not to move rates on Class 15 for this year.

- Mr. Sutter indicated regarding trends in active providers that the 2010 spike may have been a bad year, but nothing that sustained itself afterward.

- Mr. Sutter indicated regarding provider class for nursing facilities (Class 24) that a few more years in the HCSF is needed before there is enough experience to suggest to the Board of Governors that the percentage rate for this class be changed.

Chairperson Hayzlett next recognized Rita Noll, Deputy Director and Chief Counsel, HCSF Board of Governors, to address the FY 2018 medical professional liability experience (based on all claims resolved in FY 2018 including judgments and settlements) (Attachment 4). Ms. Noll began her presentation by noting jury verdicts. There were 12 cases involving 19 Kansas health care providers tried to juries during FY 2018, 10 were tried in Kansas courts and 2 cases involving Kansas health care providers were tried in Missouri courts. The trials were held in the following jurisdictions: Johnson County (3); Sedgwick County (2); Cowley County (1); Douglas County (1); Lyon County (1); Riley County (1); Saline County (1); Clay County, Missouri (1); and Jackson County, Missouri (1). Of the 12 cases tried, 9 resulted in complete defense verdicts; 3 cases resulted in a verdict for the plaintiff. The HCSF became liable for the entire amount of the first jury verdict of $260,000 because it involved an inactive health care provider with tail coverage from the HCSF. The second case was $920,370; the primary coverage paid the first $200,000 and the HCSF's responsibility was $720,370. The third case was $174,145, all paid by the primary coverage. Ms. Noll noted this year's 12 jury trials set a new record as the fewest cases ever tried in the history of the 42 years of the HCSF. She highlighted the possible reasons for the decrease in the number of cases that are going to trial including fewer claims are being made and economic issues (*e.g.* medical expenses, cost of future care).

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2018, 73 claims in 58 cases were settled involving HCSF moneys. Settlement amounts incurred by the HCSF totaled $24,238,950 (these figures do not include settlement contributions by primary or excess insurance carriers). Ms. Noll noted this fiscal year data represents nine more settlements than the previous year; incurring a $2.5 million increase, but the settlement average was a decrease of about $7,000, so overall FY 2018 in regard to the number of claims and settlements was very similar to 2017. Ms. Noll indicated the Board of Governors has noticed an increased severity of cases especially because of medical costs, in terms of both large past medical bills and the anticipated future cost of care. Ms. Noll also noted, in 2014, the Legislature increased the cap on non-economic damages from $250,000 to $300,000 on July 1, 2014; and this past July 1 increased to $325,000, increasing potential severity. Ms. Noll noted the 73 settlements in categories of the amount of the total settlement, indicating that overall, FY 2018 was an average year. Of the 73 claims involving HCSF moneys, the HCSF incurred $24,238,950; the primary insurance carriers contributed $12,755,050 to these claims. In addition, excess insurance carriers provided coverage for two of these claims for a total of $2,895,000. For these 73 claims involving the HCSF, the total settlement amount was $39,889,000. Further testimony also indicated, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 110 claims in 97 cases. The total amount of these reported settlements was $10,537,420. Ms. Noll's testimony also included a historical report of HCSF total settlements and verdicts, FY 1977 to FY 2018. Ms. Noll indicated for FY 2018, the 73 settlements and 2 jury verdict awards (where the HCSF was liable) added together for a total amount incurred by the HCSF of $25,219,320.

Ms. Noll's testimony indicated there were 300 new cases during FY 2018. Ms. Noll commented on 2014 law, which added five categories of new health care providers to the HCSF effective January 1, 2015: physician assistants, nurse midwives, nursing facilities, assisted living facilities, and residential care facilities. Ms. Noll stated in FY 2017, there was an increase of 28 claims, but there were 27 claims against new health care providers, so there really was not an increase in the number of claims against the traditional health care providers. Ms. Noll stated the same holds true for FY 2018, compared to FY 2016, there was an increase of 52 claims; however, she continued, 53 claims were against the new health care providers.

Ms. Noll noted there had been two cases that went to trial in Missouri this past fiscal year and further explained that during the last couple of years she made a prediction to this committee that there would be more claims filed in Missouri because there are more Kansas health care providers rendering services on the Missouri side. Ms. Noll stated that has not yet come true. Ms. Noll indicated about 15.0 percent of cases are generally filed on the Missouri side. .

In response to a question from the Committee, Ms. Noll indicated in regard to the 73 cases involving HCSF moneys, there has not been any type of claim or a practice that is leading to more claims than others that would indicate a trend or an issue. In response to a question from the Committee regarding whether electronic health records have been helping in the defense of claims noting there were nine defense verdicts versus three plaintiff verdicts in FY 2018, Ms. Noll indicated that she believes it has helped and cited fewer discovery issues.

Ms. Noll next addressed the self-insurance programs and reimbursement for KU Foundations and Faculty and residents. Ms. Noll stated the FY 2018 KU Foundations and Faculty program incurred $1,631,654.34 in attorney fees, expenses, and settlements; $500,000 came from the Private Practice Reserve Fund and $1,131,654.34 came from the State General Fund (SGF). Ms. Noll indicated that the program incurred about $1.0 million less than in FY 2017 due to the number of settlements and noted the previous year there were ten settlements involving KU full-time faculty members, and FY 2018, there were four. Ms. Noll pointed out that as requested by the Committee last year, additional information has been included in the report showing the number of settlements and the number of pending claims at the end of the fiscal year.

In regard to the self-insurance programs for the KU/WCGME resident programs including the Smoky Hill residents in Salina,there was an increase of $1.0 million. Ms. Noll commented how fortunate it has been over the past few years that there have not been any settlements against residents. Ms. Noll stated, this year, there have been three settlements against residents; two from Wichita and one from Kansas City. Ms. Noll explained that defense costs went up, and noted that there were 30 claims at the end of FY 2017. Ms. Noll stated a big reason for the large increase in defense costs was due to a case that went to trial in Wichita and indicated it was a seven-week trial with seven defendants involving three residents. Ms. Noll stated it was a compete verdict for all the defendants including theresidents, but it was a very expensive case to try.

Ms. Noll stated the report she provided lists the historical expenditures by fiscal year for the KU Foundations and Faculty and the residents in training. Ms. Noll indicated the ten-year average for the faculty self-insurance program is about $1.7 million; this past fiscal year it was about $1.6 million, which is slightly below average. For the residency program, the ten-year average is about $800,000, which was greatly exceeded. Ms. Noll noted her report also includes the total number of faculty and the total number of residents to illustrate how the program has grown over the last almost 30 years. Ms. Noll provided information about moneys paid by the HCSF as an excess carrier. Ms. Noll stated there was a claim against a resident involving $800,000 and four claims against faculty members involving $1,150,000. These amounts were paid by the HCSF out of its excess coverage and that amount is not reimbursed.

A Committee member complimented Ms. Noll on her presentation, stating it is exciting what the University of Kansas is doing for our medical profession noting since the year of 2010 faculty members educating future physicians went from 412 to over 735 this year. The Committee member indicated it is a great service to address physician shortages for our communities across Kansas. The Committee member believes the information provided by Ms. Noll will be valuable for legislators as well.

In response to a question by a Committee member, Ms. Noll addressed issues with KU's expanded footprint statewide. Ms. Noll indicated she believed there are six physicians employed by KU/St. Francis in Topeka who are full-time faculty members; with no full-time faculty members at either the Great Bend or Hays' facilities. Ms. Noll explained when there is a new physician from KU coming into compliance with the HCSF as full-time faculty with self-insurance, the physician has to provide confirmation of three items before they are put into compliance: a full-time faculty appointment; employment by the University of Kansas Medical Center; and membership in the University of Kansas Physicians Foundation.

Chairperson Hayzlett recognized Chip Wheelen, Executive Director, HCSF Board of Governors (Attachment 5). Mr. Wheelen began by introducing two staff members: Lorie Anderson, Director of Compliance, and Lise Ullery, Chief Financial Officer. Mr. Wheelen began his remarks by providing a brief history of the HCPIAA and its three principal features that have always remained intact: 1) a requirement that all health care providers, as defined in KSA 2017 Supp. 40-3401, maintain professional liability insurance coverage; 2) creation of a joint underwriting association, the "Health Care Provider Insurance Availability Plan," to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and 3) creation of the HCSF to (a) provide excess coverage above the primary coverage purchased by health care providers, and (b) to serve as reinsurer of the Availability Plan.

Mr. Wheelen next provided the Board of Governors' statutory annual report (as required by KSA 2017 Supp. 40-3403(b)(1)(C)). Mr. Wheelen presented the report for FY 2018 and also provided some statistics from the FY 2008 report for comparison. The report for FY 2018 indicated net premium surcharge revenue collections amount to $27,708,987. The report indicated the lowest surcharge rate for a health care professional was $100 (for a first-year provider, opting for the lowest coverage option) and the highest surcharge rate was $17,336 for a neurosurgeon with three or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon (if licensed in Missouri) would result in a total premium surcharge of $22,537 for this health care practitioner. If the same Kansas neurosurgeon obtained basic professional liability insurance *via* the Availability Plan, the surcharge would have been $25,615 and if also licensed to practice in Missouri, the surcharge would have been $33,299. The report detailed the medical professional liability cases. The average compensation per settlement (58 cases involving 73 claims were settled) was $332,040. These amounts are in addition to compensation paid by primary insurers (typically $200,000 per claim). The report stated amounts reported for verdicts and settlements were not necessarily paid during FY 2018 and total claims paid during the fiscal year amounted to $27,385,897. The statutory report also provided the balance sheet, as of June 30, 2018, indicating total assets of $290,884,992 and total liabilities of $246,840,942.

Mr. Wheelen provided an overview of the Availability Plan. Mr. Wheelen indicated that the Availability Plan insures only a primary layer of coverage ($200,000 per claim subject to $600,000 annual aggregate coverage); participants in the Availability Plan still pay a surcharge in addition to that. Mr. Wheelen stated there is no incentive to participate in the Availability Plan. Individual health care providers insured by the Availability Plan pay about 33.0 percent more premium for basic coverage than those providers would if they were insured by a commercial insurance company. Mr. Wheelen indicated those providers also pay a higher HCSF surcharge rate than they otherwise would, which compounds the difference. Mr. Wheelen explained that in Kansas, the HCSF reinsures the Availability Plan. Mr. Wheelen indicated when the Availability Plan experiences a surplus at the end of the fiscal year, the surplus is transferred to the HCSF; in those years when losses exceed income, the HCSF transfers that difference to the Availability Plan. Mr. Wheelen's testimony indicated at the conclusion of FY 2018, $551,504 was transferred from the HCSF to the Availability Plan. Mr. Wheelen noted over the most recent ten fiscal years, transfers from the Availability Plan to the HCSF have exceeded transfers from the

HCSF to the Availability Plan. The net result has been $4,883,640 of additional income to the HCSF.

Mr. Wheelen provided an overview of SB 217, a technical bill updating statutory references, noting future technical updates to the HCPIAA may be needed (*e.g.* “healthcare”). Mr. Wheelen indicated that at this time, the Board of Governors does not have any recommendations for legislation. Mr. Wheelen then discussed some issues regarding the interstate practice of medicine and telemedicine that may require some updates to the HCPIAA in the future. Mr. Wheelen stated the Board of Governors believes this is something they need to study thoroughly before asking the Legislature to make any changes.

Mr. Wheelen stated the HCPIAA is a successful public-private partnership; it creates a favorable environment for professional liability insurance companies; it provides a reliable source of recovery when it is determined that compensation should be paid for an unintended medical outcome; and it assures Kansas health care providers they will always have access to professional liability insurance coverage.

Mr. Wheelen concluded by announcing that he informed the Board of Governors that he planned to retire in early 2019. Mr. Wheelen stated his position was offered to Clark Shultz who is currently the Assistant Commissioner of Insurance. Mr. Wheelen stated he wants to thank everyone for their kindness and courtesy. A Committee member thanked Mr. Wheelen, stating he has done an excellent job, and it is nice the Committee has had his expertise through the years. Another Committee member added to the comments, stating it is often perceived that the HCSF was a benefit to the physician community, the hospital community, or the provider community, but as Mr. Wheelen has pointed out, it was really intended to protect the patients and citizens of the state of Kansas. The Committee member stated Mr. Wheelen has done the State a great service; has been a good steward of the Fund, and has served not only the citizens of the state well, but also the provider community.

Update on the Current Status of the Medical Malpractice Insurance Market, Update on the Health Care Provider Insurance Availability Plan, and Comment from Health Care Provider Representatives

Kurt Scott, President and Chief Executive Officer, Kansas Medical Mutual Insurance Company (KaMMCO) was recognized to address the current status of the medical malpractice marketplace in Kansas. Mr. Scott first highlighted the types of providers in the Availability Plan and reasons providers may need to be in the Availability Plan. Mr. Scott next discussed what is going on in the medical professional liability insurance marketplace, observing, at present, it is a soft-market cycle meaning there are a lot of companies writing malpractice insurance in Kansas. Mr. Scott indicated that the marketplace is very active, very competitive and rates are kind of at an all-time low which is good for health care providers. Mr. Scott explained this business moves in cycles, noting the population of the Availability Plan has a tendency to change over time, as well. Mr. Scott explained why the population changes and provided a graph showing the insureds in the Availability Plan back to 1994 (Attachment 6).

Mr. Scott indicated KaMMCO is starting to see an increased frequency of severe claims; stating those are usually pre-cursors to some instability in the marketplace and claims environment. Mr. Scott stated that with this less favorable environment, A.M. Best, the rating agency that rates insurance companies, has indicated the medical professional liability line of insurance has a negative outlook. Mr. Scott next described some of the things that have an impact on the industry and the HCSF including accident year and calendar year results and inflation. Mr. Scott highlighted some other factors that may also have an impact on the industry including the federal Affordable Care Act, federal MACRA (the Medicare Access and CHIP Reauthorization Ace), and MIPS (Merit-Based Incentive Payment System) changes in Kansas such as hospital acquisitions and closings; and the opioid crisis. Mr. Scott indicated there is a lot of pressure on the provider community right now as it relates to a variety of substantive changes at present, which puts pressure on providers from both a health care delivery and a professional liability standpoint.

Mr. Scott concluded by pointing out the importance of this committee and those at the Board of Governors, and noting the HCSF will have a number of issues they will have to pay attention to over the course of the next few years.

In answer to a question from a Committee member regarding whether telemedicine will increase liability, decrease liability, or stay neutral and should such providers have their own provider class:

- Mr. Scott indicated one of the things KaMMCO is looking at is how to underwrite the telemedicine risks, so the questions will be: what are you doing; where are you doing it; and under what circumstances are you doing it.

- Mr. Scott explained that rather than a provider class of telemedicine doctors, it might be similar to how orthopedics is now with different rates for orthopedics-no spine; or orthopedics-with spine. As an example, this might be: radiology-no telemedicine or radiology-with telemedicine; or pathology-no telemedicine or pathology-with telemedicine.

- Mr. Scott added that the question would then have to be: where are you doing it as it relates to medical professional liability; no low tort forms or not as advantageous of a jury system in that state.

- Mr. Scott explained they will have to make decisions about whether they write a particular risk or not and then how to price it. Mr. Scott indicated they will also need to decide if there is going to be some pricing differential like the HCSF has for providers who also practice in Missouri with the additional surcharge because they have that additional risk component to their practice.

In response to a question regarding whether premiums will be impacted with the reinsurance industry being affected by hurricanes, wildfires, and events of nature, Mr. Scott explained most companies are not retaining all of the risk of the policies that they write. Mr. Scott explained they are reinsuring that in the insurance market; KaMMCO does this as well. Mr. Scott indicated there is a variety of things that are affecting the reinsurance industry right now. Mr. Scott stated cost is cost, and the only way those costs get paid over time is by people paying premiums; therefore, premiums likely will go up. Mr. Scott stated the medical professional liability reinsurance lines are all losing a substantial amount of money, and have been for the last few years. Mr. Scott noted the only mitigating factor right now, is capital is flowing very freely around the globe. Mr. Scott explained that it may not cause them to get out of the business or cease providing that reinsurance, but pricing may come up and create an additional kind of risk of high pricing that would occur in our marketplace as well.

Mr. Scott concluded with a point of personal privilege. Mr. Scott stated Mr. Wheelen believes the main goal of the HCSF is stabilization, and they have done a great job of that. Mr. Scott indicated part of the reason that we have got a nice stable marketplace in Kansas, that is predicable, reasonable, and balanced is because of Mr. Wheelen's leadership. Mr. Scott stated he wanted to extend KaMMCO's thanks and appreciation for a job well done.

Chairperson Hayzlett next recognized Rachelle Colombo, Director of Government Affairs, Kansas Medical Society (KMS). Ms. Colombo stated it is their duty to come before the Committee and make comment on whether or not they believe the HCSF is performing adequately and whether it should have an additional outside actuarial analysis (Attachment 7). Ms. Colombo indicated they believe the HCSF is performing exactly as it was intended; that it is stabilizing the market and that it is providing that adequate *quid pro quo* which the Supreme Court commented on. Ms. Colombo's testimony indicated they do believe the Committee should be continued and they do not believe an additional outside actuarial analysis is necessary. Ms. Colombo concluded by stating on behalf of the KMS, they would like thank Chip Wheelen. She indicated they believe he has done an excellent job in stewarding his role in the HCSF, and extended a thank you to Mr. Wheelen.

Proposed Amendments to the Health Care Provider Insurance Availability Act

The Chairperson asked for any proposed amendments to the HCPIAA. Mr. Wheelen stated they may have some amendments in the future, but nothing at this time. No amendments were brought before the Committee.

Committee Discussion for the Purposes of Reaching Conclusions and Recommendations to the 2019 Legislature, and Direction to Staff for the Committee Report to the Legislative Coordinating Council

Chairperson Hayzlett invited the Committee discussion for the purpose of reaching conclusions and making recommendations to the 2019 Legislature. Ms. Renick was recognized to summarize issues presented to the Committee and topics that could be highlighted in the report, at the direction of the Committee.

Ms. Renick outlined the following topics for the Committee's consideration:

- Note there were no HCPIAA amendments presented to the Committee this year;
- Comment on the continuation of the HCSF Oversight Committee and whether an independent analysis of the HCSF is necessary;
- Note the present status of the HCSF and the actuarial report; and compliance with SB 217 as the technical amendment clarified, indicating this Committee is to receive the HCSF balance and the statutory report;
- Comment on the contemporary issues requiring the Committee's oversight, including the Board of Governors' study of the issue of claims-based versus occurrence-based coverage and the status of the marketplace with professional liability coverage;

    - The Committee requests the HCSF prepare a progress report regarding the issue of itinerant practitioners and the problems it creates with coverage;

- Direct the Committee's report to the standing committees on health and insurance, as well as to the appropriate budget and subcommittees of the standing committees on appropriations; and

- Recognize Mr. Wheelen and thank him for his service.

Items requested by the Committee for inclusion in the Committee report will continue as follows:

- **Funds to be Held in Trust.** The Committee recommends the continuation of the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the Health Care Stabilization Fund:

    - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be "held in trust in the state treasury and accounted for separately from other state funds."
    - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such HCSF shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The topics highlighted previously and comments noted were adopted by consensus.

Adjourn

The Chairperson thanked the Committee members, staff, and attendees for their participation.

The motion to adjourn was made by Dennis George and seconded by Dr. Gleason, the motion carried.

Prepared by Randi Walters

Edited by Melissa Renick and Jennifer Ouellette

Approved by the Committee on:

January 2, 2019
(Date)