

## MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 16, 2006 in Room 234-N of the Capitol.

All members were present.

## Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Bev Beam, Committee Secretary

## Conferees appearing before the committee:

Commissioner Sandy Praeger  
Gary Sherrer  
Matt All, Governor's Office  
Senator Barbara Allen  
Terri Roberts, Kansas State Nurses Assn.  
Sky Westerlund, Kansas Chapter Nat'l. Assn. Of  
Social Workers  
Larrie Ann Lower, Kansas Assn. Of Health Plans  
Bill Sneed, America's Health Insurance Plan  
Jerry Slaughter, Kansas Medical Society

## Others attending:

See attached list.

The Chair welcomed everyone to the meeting and asked Melissa Calderwood for an overview of (**SB 522**).

Ms. Calderwood said (**SB522**) would enact new law to provide the insured with certain appeal rights for adverse health care decisions made through a utilization review process. Specifically, the bill would require an insurer, as part of its insurance plan, to provide to each insured a copy of the insurer's process for utilization review. If the health insurer uses the utilization review organization, its insured is to be notified of the name of that organization. If the health insurance plan or process for utilization review contains a provision for two levels of appeal or internal review for the adverse health care decision, that plan would be required to provide written notice to the insured that the insured may voluntarily waive the insured's right to second appeal or internal review.

Additionally, if an insured waives the right to the second appeal or internal review, the insurer's health insurance plan will waive its right to assert that the insured has failed to exhaust administrative remedies because the insured did not elect to submit review of a health care decision which is adverse to the insured to the second appeal or internal review provided by the insurer's health insurance plan and give notice to the insured of the insured's right to external review.

She said the bill also states that if an insured elects to request the second appeal or internal review of a health care decision which is adverse to the insured, the insured shall have the right to appear in person before designated representatives of the insurer's health insurance plan or utilization review organization at the second appeal or internal review meeting. The designated representatives who will be deciding the appeal or internal review shall be present and participate in person, by telephone or by other electronic means.

She continued that upon receipt of a request from the insured for the second appeal or internal review meeting, the insurer's health insurance plan or utilization review organization shall send notice to the insured of the insured's right to request, within five working days, the opportunity to appear in person before an appeal or internal review panel of the insurer's health insurance plan's or utilization review organization's designated representatives.

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Finally, the insurer's health insurance plan or utilization review organization shall provide the insured in writing a decision setting forth the relevant facts and conclusions supporting its decision.

The Chair called on Commissioner Sandy Praeger for her testimony in support of **(SB 522)**. Commissioner Praeger said it is important for insureds to receive coverage for the medical care they need when they need it so long as the care is within the scope of their health insurance contract. She said this bill can expedite the appeal process for the insured when they challenge an insurance company's original ruling. In addition, she said it is important to allow the consumer to have legal representation present throughout the appeal process, if they so desire. She added that it is important to note that this bill does not say that health insurance companies cannot have a secondary internal appeal process. It provides the consumer yet another opportunity for their case to be heard and prevail, she said. This bill does say if a consumer voluntarily wants to forego their right to a secondary appeal, they can. (Attachment 1)

The Chair called on Gary Sherrer for his testimony. Mr. Sherrer gave testimony from a personal experience he had with his insurance carrier. He said that while the issue is personal to him because of his wife's health issues, he feels strongly that this bill is needed public policy. The issue is, he said, should Kansans have protection by statute of some fundamental rights in the health insurance appeal process. Mr. Sherrer said every Kansan, regardless of the company they do business with, should be protected with a guarantee of these basic rights. The health insurance industry does not operate in a pure free market environment, he said. Government regulation is appropriate and necessary.

Mr. Sherrer said he was asking the committee to ensure that if their constituents are ever part of an appeal process, they will have the right to waive it; the right to be given a reasonable amount of time to make their case; the right to ask and receive answers to relevant questions; the right to have those who are going to vote hear their appeal; the right to see all the records relevant to the appeal; the right to be represented by an attorney or person of their choosing; and the right at their own expense to record the proceeding. (Attachment 2)

The Chair called on Matt All, Chief Counsel to the Governor. Mr. All testified that of all the things Commissioner Sebelius accomplished when she was Insurance Commissioner, perhaps the most important was her work to enhance the rights and protections of Kansas consumers, particularly in health insurance. Mr. All said **(SB 522)** is another important step in protecting Kansas consumers. It would provide important safeguards for consumers facing a denial of health coverage. It would require health insurers to provide information about their internal review and appeal process, and would make the procedures for these appeals more fair and more sensible for consumers. (Attachment 3)

The Chair called on Senator Barbara Allen for her testimony. Senator Allen relinquished her time to hear other testimony. (Attachment 4)

Next to testify was Sky Westerlund, Executive Director of the Kansas Chapter, National Association of Social Workers. Ms. Westerlund said SB 522 is for the consumer of health and mental health care. It outlines, by statute, what the insurance industry must do when they reject a need for benefits and the insured person requests to appeal the decision. Persons who pay premiums and believe that their health and mental health care needs will be paid for through their insurance coverage can experience an unsettling situation when the insurance company rejects their request for a benefit. She said this is anguishing for all consumers.

Ms. Westerlund said KNASW supports **(SB522)** because it offers a specific process to help the consumer when that person must appeal a decision made by the insurance carrier to reject a benefit. It assures a streamlined and clear appeals process when fighting for benefits. It creates a uniform appeals process for all insurance carriers to follow and it will create necessary oversight of this aspect of insurance industry service to consumers. (Attachment 5)

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The Chair called on Larrie Ann Lower, Executive Director of the Kansas Association of Health Plans. Ms. Lower testified that the Kansas Association of Health Plans is supportive of granting an insured the ability to waive a second level of review within the health insurance companies internal review process of claims decisions. However, from an insured's standpoint, many times that second level of internal review is decided to the benefit of the insured, she said.

Ms. Lower stated that it is the opinion of the Kansas Association of Health Plans that six of the sections need to be clarified. She said her association asks that the committee allow them the opportunity to continue to working to determine language that can be agreed to. (Attachment 6)

The Chair called on Bill Sneed, Legislative Counsel to America's Health Insurance Plans. Mr. Sneed said America's Health Insurance Plans supports passage of (**SB 522**) but requests the Committee consider some amendments to the bill. Mr. Sneed said he looks forward to working with the proponents of this bill in an effort to craft a well-balanced piece of legislation that will protect the rights of individuals, and at the same time, allow for a process that will work effectively and inexpensively, as compared to direct external review and/or litigation. Mr. Sneed requested that the Committee consider the amendments as mentioned in his testimony. (Attachment 7)

Jerry Slaughter, Executive Director, Kansas Medical Society, also testified in support of (**SB 522**). Mr. Slaughter said (**SB 522**) would establish certain appeal rights for individuals when contesting adverse decisions made by health insurers. He said under current law, an individual who contests an adverse decision made by a health plan on whether a certain service should be covered must first exhaust all the internal review procedures of the health plan before appealing the decision to the external review process afforded them. Health insurers must have an internal review process in place, but Kansas law does not prescribe what that process must entail. Because the law isn't specific about requirements for internal review, it can vary considerably from insurer to insurer. It can be simple and straight forward, to quite complex for individuals to navigate. (**SB 522**) provides that when a health insurer has a two-level review or appeal process, an individual may waive the right to a second appeal, and go directly to external review.

Mr. Slaughter stated further that the bill provides in the event an individual elects to request a second-level appeal, the individual has the right to appear in person, the right to be represented by counsel, the right to receive and review all relevant documents, and the right to record the proceedings of the second-level appeal. He said the Kansas Medical Society supports these changes in law. He continued that without question, appeals of health insurers' adverse coverage decisions have immense implications for individuals and families. Because so much is at stake in these matters, it makes sense to do everything we can to make sure the process is fair, timely and transparent, he said. The changes contained in (**SB 522**) will not prevent an insurer from making coverage decisions based on their own medical necessity guidelines. It will, however, allow an individual the right to access the external review process earlier in certain cases. It also provides individuals with a greater opportunity to participate in and understand an insurer's internal review process, which has such a key role in coverage determinations. We believe the proposed changes are reasonable, and we urge support of this bill, he said. (Attachment 8)

The meeting adjourned at 10:30 a.m.