

## 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 March 13, 2008 in Room 136-N of the Capitol.

All members were present.

## Committee staff present:

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

## Conferees appearing before the committee:

Senator Barbara Allen  
Dr. Roy Jensen, Director, KU Cancer Center  
Larrie Ann Lower, Kansas Assn. Health Plans  
Bill Sneed, America's Health Insurance Plans  
Jerry Slaughter, Kansas Medical Society

## Others attending:

See attached list.

The Chair called the meeting to order. She thanked Senator Wysong, Vice Chair of the F I & I Committee, for chairing the meeting the previous day in her absence.

The Chair said discussion will continue on **SB 629 - concerning insurance; relating to coverage for patient care services in a cancer clinical trial**

The Chair said she has done a lot of research on this bill. She said one of the things that struck her was the importance of the grant that could be coming to the State of Kansas for research. She said that prompted her to talk to Senator Allen and decide that she would go ahead and work the bill. She said she asked Senator Allen if, because of the complexity and some concerns about the bill in its entirety, there could be some cooperation and negotiations on the part of both sides of the issue. She said she did not hear anything back from Senator Allen as to any cooperation. She then asked Senator Allen for any comments.

Following are excerpts from the discussion that ensued.

Senator Allen distributed an article that appeared in the Kansas City Star business section on March 11. The article was very supportive of the bill. She also distributed a balloon amendment that would allow for the creation of a clinical trials advisory committee. This committee would assess the costs for insurance coverage. Also distributed was a letter from the Insurance Commissioner. Senator Allen said she felt very confident that she has enough votes of the committee to pass the bill out.

The Chair recognized Senator Barnett. He stated that the Chair has made it very clear that no mandates would come from this committee until they were heard in an interim. He said the committee has varying requests for various studies, etc. Is this a mandate, or not?

Senator Allen replied that it would depend on who you ask. She said there are those who would say it is not a mandate and there are those who would say it is a mandate. It is a clarification of current law. She said she has a study that shows the cost increase would be less than 1% if this was interpreted to be a mandate. She said we don't feel that it would raise costs because if patients can't have their routine costs covered in the trial, they simply would not participate in the trial.

Senator Barnett said he just wanted to be clear for himself and the committee at large so there is fair and equal treatment to anybody who comes before this committee with a request, do you consider this to be a mandate or not?

The Chair responded that when she was first approached, she considered it a mandate and she said she still

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does consider it a form of a mandate because of the question of who pays for the costs. She said how do you separate out the costs from what is normally done in a clinic for cancer patients and what is done for research. She said she believes that is the part of it. There is no delineation as to where that would cross the line, and there are insurance companies who do not provide this, so it would be a mandate on those insurance companies.

Senator Barnett said, so this committee will allow mandates to be heard and it is just a matter of committee choice then, whether they are going to put mandates out?

The Chair said she is leaving it up to the will of the committee. She said Senator Allen says she has talked to all the committee members and if the committee members want to make that decision over what has been the practice of this committee, that is their decision.

Senator Barnett asked for further comments on mandates and how the committee handles them.

Jerry Slaughter, Kansas Medical Society, said the Kansas Medical Society, from the beginning when they were first approached by Senator Allen on this matter, have talked to a lot of their physicians across the state and they have never felt this bill was a mandate. It is a more clear expression of what the law is. We believe most of these things are covered as routine costs as they would be whatever their origin or however they came about, so believe this is just a clarification.

Senator Steineger asked to hear from Bill Sneed, representing America's Health Insurance Plans and Larrie Ann Lower, Kansas Association of Health Plans for their views on whether or not they think this is a mandate.

Bill Sneed said he has been around the block a time or two and he knows the political realities that go around in the State Senate and this is something very dear and personal to Senator Allen and I commend her for her work on this particular issue. However, any way you want to spin it, this is a mandate. Right now there are companies who are not covering this and if you pass the bill, they are going to have to cover it, that is what a mandate is. Mr. Sneed said he recognizes how important this issue is not only to Senator Allen, but many Senators and Representatives to try to soften the blow to make it at least politically salvageable to us and our clients. He said in his personal opinion, he wished every insurance company paid for it, but we are not there. He said he appreciates the Chair bringing this back because it is an issue of great importance to a lot of people in this body.

Larrie Ann Lower, Kansas Association of Health Plans, stated that this bill would require health plans to provide coverage for many services related to participation in a clinical trial. She said a few weeks ago several members of the KAHP met with the proponents of this bill. She noted at that time the proponents explained that they were only seeking coverage for "routine costs" for services that would otherwise be covered had the patient continued routine cancer treatment and not chosen to participate in a clinical trial. She said many plans currently provide this coverage for phase 2, 3 and 4 clinical trials. She continued, stating the few that don't were quite close to joining the majority of the plans and are still considering the change. She said the request seemed quite reasonable and steps were being taken to initiate the change. She noted one avenue that was and is still being pursued is for the Insurance Commissioner to issue a formal direction to plans requiring them to cover the routine costs of care normally provided a cancer patient according to certain protocols.

(Attachment 2)

Senator Barone said he remains concerned that 95% of the insurance companies cover these clinical trials and there are only a few who don't. Do we know why most insurance companies cover and why just a few do not?

I have never gotten this clear and I think this is a discussion we should have.

Discussion followed regarding this issue. Larrie Ann Lower said they are willing now to change that. They are going to pay for clinical trials, but this bill does go beyond routine costs associated with clinical trials. She said they met with the proponents and that is what they desire. An example, she said, is if you are not in clinical trial and formerly your care would only require you have an MRI every six weeks but the clinical trial wants you to have it every three weeks, the proponents don't want that extra MRI to be required to be

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paid for, at least that is what they told us, but we feel the bill would require the insurance company to pay for it.

Senator Barone commented that they have spent hours working on other issues and asked why we can't ask the parties to see if they can get together?

The Chair said she did ask Senator Allen to talk about it to see if there was any kind of compromise, but it didn't happen.

Dr. Jensen stated that one thing that prompted movement was a letter from Insurance Commissioner, Sandy Praeger. He referred the committee to two lines where she was considering drafting a bulletin which would be a clarification of current law. In the letter she states, "As to the proposed bulletin regarding cancer clinical trial, it is the Department's position that the bulletin is a statement of current law and that what you hope to accomplish in SB 629 is already a part of state law. However, I have also reviewed SB 629 again, and recognize that a clarification of law could be accomplished with its passage. Thus, I support the passage of SB 629."

Dr. Jensen said with regard to Phase One trials, they are trials in which it is the first time a drug is being introduced into a patient. They are set up for cancer Phase One trials. The target patient population are individuals who have exhausted all known current forms of therapy against their particular type of cancer. In essence, they are terminally ill patients. Phase One is when we are trying to find a new agent that will have a potential beneficial effect for that particular type of cancer. A phase one trial is designed to figure out what dosage in formulation we should give that new agent. It is very difficult to have a potential therapeutic benefit in a Phase One trial, but it is possible. So, we are trying to establish the dose that you can safely give and then move on to a Phase Two trial where you are actually beginning to look at efficacy of that drug. In the modern era, Phase One studies frequently show efficacy, because we are really designing the drug to go after the specific molecular abnormality that is just present in the tumor and is not present in normal cells.

The Chair asked Dr. Jensen to explain to the committee why in Missouri they didn't include Phase One, but he and his colleagues want to.

Dr. Jensen answered that Phase One Trials is what we want to become known for. With all of the drug discovery and drug delivery expertise that we have as a result of the KU School of Pharmacy, that is what is going to be our concept in that we want to be the best place in the world to take an idea from a laboratory and bring it all the way up to pre-clinical drug development and get it into the clinic as a Phase One Clinical Trial.

Senator Brownlee said in her opinion someone from the Insurance Department needs to come to the committee and explain the Commissioner's letter. She said the Commissioner's letter disagrees with itself.

Dr. Jensen said he talked with the Commissioner about the need for a bulletin versus the bill. A bulletin issued from her office is her opinion on current law and how it is interpreted by the Commissioner's office. He said after their conversation, we both realized that if this is the way you want things to go, the best way to do it is pass the bill so it is not dependent upon an insurance commissioner's interpretation of the current law, it is absolutely 100% clear. He said this bill sets a level playing field and rewards the people who have been doing this all along, which is the vast majority of health plans and make sure everybody else is on the same page.

The Chair asked Ken Wilke to explain the amendment.

Mr. Wilke said the amendment sets up an advisory committee to look at the economic impact of the coverage required. It would be attached to the Insurance Department. Subsection b sets forth the membership and makeup of the committee. The terms are three years and it sunsets in January of 2011. This amendment was brought to me by Senator Allen.

The Chair asked Senator Allen why the advisory committee.

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Senator Allen said the thought was, it would be helpful to get some information back to the Insurance Department on costs and benefits, if there are costs or benefits.

The Chair asked if the Insurance Department can do this without this amendment?

Dr. Jensen said the bottom line on this amendment is that they are sensitive to the cost issues that have been raised by Mr. Sneed and others and we are absolutely up front about what we want in this bill and what we are going for. We are willing to give the Insurance Commissioner and the legislature a good look at this to make sure it doesn't open up some Pandora's box. We are not trying to shove anything down anyone's throat, we just want to be up front.

The Chair said she was going to work the bill and asked for a motion to approve the amendment.

Senator Brownlee said the Insurance Commissioner is able to solicit this information on her own, therefore it is not necessary to create an advisory committee for this. It would make more sense to have the Insurance Commissioner's Office come back with the costs. It would make more sense to have Dr. Jensen and his colleges negotiate with insurance companies. Is there another way other than the way we are going without a mandate?

Senator Wysong said apparently the Insurance Commissioner's answer to this bill is this letter. John Meetz is in here every day and they are not here, so I am assuming the letter suffices for the bill. If they were against the bill, they would be here, Senator Wysong said.

Senator Steineger said our health care industry has priced itself out of the market. Everyone is complaining about the cost of health care. Exactly the wrong way to go is dump more money into the system. It is the wrong thing to do. "It is politicians who keep making health insurance more expensive and I think it is also politicians who aren't making it less expensive."

Senator Wysong moved approval of the proposed amendment. Senator Barnett seconded. Motion passed.

Senator Brownlee voted in opposition.

Senator Barnett moved to advance the bill favorably as amended to the full Senate. Senator Schmidt seconded. Motion passed.

Senators Brownlee and Steineger voted in opposition.

The Chair said the committee will be looking at mandates and she said according to what Senator Barnett said, the policy of this committee is still to address mandates the way they have always been considered, and that is through the interim process.

The meeting adjourned at 10:30 a.m.