Approved: April 3, 2007
Date

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 1:30 P.M. on February 19, 2007 in Room 231-N of the Capitol.

Committee members absent:

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Mrs. Terri Weber, Kansas Legislative Research Department
Mr. Jim Wilson, Revisor of Statutes Office
Ms. Nobuko Folmsbee, Revisor of Statutes Office
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Ms. Marta Fisher-Linenbergr, general counsel, Kansas Health Policy Authority
Dr.. Ira Stamm, Clinical Physician
Mr. Chip Wheelen, Director of Public Affairs, Kansas Association of Osteopathic Medicine
Mr. Ken Daniel, Publisher, KSSmail Biz.com
Mr. Bob Vancrum, Kansas Government Affairs specialist, Greater Kansas City chamber

Others in attendance: Please see attached Guest List

Hearing on SB323 - An act related to the Kansas Health Policy Authority

Upon calling the meeting to order, the Chair announced there would be a hearing on the above bill and called upon Ms. Emalene Correll, Kansas Legislative Research Department, to explain the bill. Ms. Correll stated that, with the Chair's indulgence she plans to give a little background because **SB323** proposes a very major change in state policy. She went on to say that the State basically has 3 types of entities that are either connected to or are parts of state government:

1) Two authorities, that members of this Committee are familiar with are the Kansas Turnpike Authority (KTA) and the Kansas Hospital Authority (KHA) but are not state agencies (not under civil service laws, hire & fire their own employees, not state funded but by funded fees they collect.) Some state tax monies goes to the KS Hospital Authority but only because this authority plays a role in educating medical students and the state reimburses the authority for this role. The other agencies of the state are headed by Boards or Commissions, (Ex. Board of Pharmacy) and are policy making entities all having some type of Executive Administrator who carries out the policies (rules & regs) that are adopted by the Board.

2) The third type is a Cabinet level agency headed by a Secretary and in this instance, the policy making entity. (Ex. Secretary of Agriculture adopts all rules and regs.) The one exception is in the Department of Agriculture. The Chief Engineer of the Division of Water Resources, adopts rules and regs since the Chief Engineer administers water rights in this state.

She stated that this bill proposes to transfer the authority to adopt rules and regs from the authority with the assumption that the Executive Director would be the one who administers and carries out the rules and regs.

Ms. Correll then gave a summary of each section of the bill as follows:

- In new Section 1 of the bill would on July 1, 2007 transfer the powers, duties, and functions of the authority relating to the adoption of rules and regulations, to the Executive Director of the Kansas Health Policy Authority;

- Section 2 amends an existing statute. Ms. Correll explained a small problem with regard to deleting adoption of rules and regulations. Agencies can have policies that are not enforceable, rules and

regulations are, so the authority would be authorized to establish policies, but by deleting the adoption of rules and regulations, would have no way to implement those policies. They would not be enforceable.

- New Section 3 sets out the general powers and duties. There are specific authorizations that usually state agencies don't have, but which are necessary because of the types of programs the authority is responsible for;

- Section 4 amends an existing law found on lines 22 and 23 on page 4;

- Section 5 just adds to agency head's definition (the inclusion of the Executive Director of the Kansas Health PolicyAuthority and amends a section of the guardianship act, found on page 5 and is added because it now has the Medicaid Program;

- Section 6 also amends an existing statute and refers to the Commissioner of Insurance. This has to do with the collection of premiums and usage dated from insurance companies which used to be a contractual arrangement between the Commissioner of Insurance and the Kansas Department of Health and Environment;

- Section 7 is new and is the most significant issue in this bill and is necessary to comply with the new federal legislation. The Deficit Reduction Act of 2005 has a specific section that sets out some requirements that states have to meet by the end of the first regulatory session following January 1, 2006, dealing with health insurers and all third-party payers, but instead of placing the burden on them this piece of legislation requires the state to enact laws that place that burden on third party payers;

- Section 8 amending into existing law;

- Again, in Sections 9 and 10 the change is to reflect the Executive Director adopting rules and regs rather than the Kansas Health Policy Authority;

- Section 11 is also an amendment of an existing statute which sets out the powers and duties of the authority and on page 10 it would give the Executive Director the authority to adopt rules and regs rather than their being adopted in the name of the Authority (the same is true in Section 12, 13, 14 and 15);

- Section 16 transferred some of the responsibilities of SRS and its Secretary under the Business Health Partnership to the Authority and the amendment here transfers the rules and regs authority (and Section 17 has the same existing law and same type of change.)

The Chair thanked Ms. Correll and asked for questions of the Committee which came from Senators Schmidt, Palmer, and Wagle regarding:

- Is the bill mainly a policy change?

- Re: Sec.8 - prior authorization, clarification of the DUE Board (still in the bill);

- Re: to lines 36, 37, & 38, why does it say that the KHPA may not implement it when it is the Executive Director above it?

- Could Section 7 be a stand-alone bill by itself?

- Did this bill come to us through the Authority?

- Does the Authority, as an independent agency, not report to the Governor or the Legislature but rather to the KHPA Board?

As there were no further questions of Ms. Correll, the chair then called on Mr. Andy Allison, Deputy

Director, Kansas Health Policy Authority, who requested to stand in place of Dr. Marta Fisher-Linenberger, General Counsel for KHPA. Mr. Allison asked if he might review the motivation behind the Board's request that clarification in this responsibility is brought to the Legislature this term.

He stated that for the last eight months, the Board has been asked to review specific regulations largely consisting of changes in which drugs are on or off the protective list for purposes of special rebate collection and negotiating better prices with pharmaceutical manufacturers, that is, which drugs have a generic substitute and therefore, which can they place on prior authorization and therefore, which can they take out for bid and negotiate better prices. Most of the regulations that have come before the Board since the Authority took responsibility for the Medicaid program have entailed those decisions and the response they invariably get from Board members is this has already been through the DUR Board process, has already been fully vetted with opportunity for public comments, already published in the register and KHPA gets it at the very last and have no specific background in the content of the regulations.

Mr. Allison went on to say that they have been very frustrated that the Board has needed to take the time to invest in learning about the specific drugs. He asked that the Board have the opportunity to delegate at their choice, the responsibility for those decisions to the Executive Director. He stated, he did not believe it was the Board's intent that they never see those decisions and that certainly is their right as the Executive Director reports directly to the Board as an employee of the Authority, appointed by the Board and Senate confirmation. (That reporting relationship issues that the Board has the prerogative to always review the decisions made by the Executive Director.) The way it was viewed by the Board is that this bill would request that policy opinion to the Board. They would be able to focus on issues of insurance coverage and larger policy discussions and not always go through a vote call votes on which drugs would require authorize and which would not, which regulation would pass and which would not.

Mr. Allison did not provide written testimony, but offered a coy of Ms. Marta Fisher-Linenbergr's testimony (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Chairperson Wagle thanked Mr. Allison and asked for questions which came from Senators Schmidt and Wagle consisting of:

- How does becoming exempt from the rules and regs process affect this rule with the drug utilization review and how do the two correlate?

- Is this the correct interpretation: Mr. Nielsen Lee previously would have been the person to come before rules and regs for the Health Policy Authority and haven't you brought many other issues before the rules and regs process that were not DUR related and request that this be delineated out?

- Would Mr. Gillan provide a list of the times that they have come for drugs to be put on the preferred list and in addition, a list of other things that they have brought before the Legislature?

The Chair made the statement that there would be tremendous reluctance on behalf of the Legislature to exempt KHPA from the rules and regs process.

A discussion ensued among Senators Schmidt and Wagle, Ms. Correll and Mr. Wilson regarding the differences of the interpretation of the exempted change by KHPA, the Revisors, and the Legislature.

The Chair recognized Senator Schmidt who stated that there may be a misconception with the Health Policy Authority as to what has to occur and maybe we don't need this Legislation and if this is the case she suggests the Committee take Section 7 make a stand alone bill and go from there.

It was suggested that KHPA and the Revisor to re-review the specific language of the bill. As there was no further discussion, the Chair closed the hearing on the bill.

Hearing on SB309 - An act enacting the Kansas Health Care Connector Act

The next order of business was a hearing on the above bill with Chairperson Wagle mentioning that when the Committee was reviewing the above bill last week, there were some questions about ERISA and referred them to (Attachment 2) the attached hereto and incorporated into the Minutes as referenced.

The Chair then called on Senator Barnett, who chaired the Health Care Task Force and asked for his comments on **SB309**.

Senator Barnett began by saying that they had discussed a lot of issued in the President's Task Force's meetings on health care reform, but would not be talking about all four major proposals they had brought forth (Ex. Dealing with newborn screening, prevention efforts to tobacco), but feels the real issue before this Committee is the idea of **SB309**.

He offered some of the data that Mr. Ed Haislmaier brought to a prior meeting from the Kansas Health Foundation that looks at the number of uninsured in Kansas, approximately 300,000, and stated that a lot of people are only uninsured for a small portion of time. (Ex. They change jobs, they loose their coverage. They go to another job and regain that coverage, then out of coverage again.) And so, he said, one of the things that the Task Force wanted to try and address is how can they increase the stability of insurance. This is what part of the connector is about, to change ownership of the insurance policy from the employer to the employee so that when that person changes jobs, they don't become uninsured. This is one of the ways we can address the uninsured in Kansas and it is estimated this could impact probably half of these 300,000 uninsured by allowing them to have portability of their health care insurance. (Portability is available now through COBRA, but it is short term and fairly expensive.)

He went on to say that another area of concern is children, how can they touch families as well. This also is embodied in **SB309** by the use of subsidies, of premium assistance for low income families and would allow us to take premium subsidies and get people insured in the private market place as well (because the Task Force is not interested in expanding the government's role in health care and feels public/private relationships will be part of how some of these problems are solved.

Senator Barnett went on to say:

A.) Pre-tax dollars are key;

B.) Some people can enjoy the use of pre-tax dollars to buy health care coverage and this bill broadens that dramatically so that more Kansans can obtain those same tax benefits when they purchase health care insurance and by doing so the cost of insurance is lowered in that process;

C.) He can safely say the federal government is looking for states who are innovative with health care reforms and this bill provides Kansas with a vehicle to go to Washington and say we want to make changes, look at true Medicaid reform, and we want to insure more children and we have an opportunity here to bring more federal dollars;

D.) It is also a good idea for small businesses, especially those that struggle in our state with providing health insurance in that this is a way to partner with small businesses.

E.) If you are a working couple and you obtain insurance from your job and your husband has it from his job, this is a way to bring both defined contributions towards the purchase of health care insurance.

So, he stated these are some of the basic principles of the health care connector. We are operating in this

state now under federal legislation requiring us to take care of patients but how can we now make it easier to insure more, make it more affordable, and make it better for business as well.

He then called the Committee's attention to the second page of the handout regarding subsidies and with the potential for subsidies being in the percent of federal poverty level (200% and above) and is looking forward to seeing how far they can take this bill during the 2007 Legislature. As no written testimony was offered a copy of Mr. Haislmaier's charts are (Attachment 3) attached and hereto incorporated into the Minutes as referenced.

The Chair thanked Senator Barnett and called upon the first proponent, Mr. Chip wheelen, Director of Public Affairs, for the Kansas Association of Osteopathic Medicine (KAOM) , who stated he feels this is the first time a health bill has been introduced that actually talks about who should be responsible for assuring that they have health care, the one central issue that has never been discussed in the past.

KAOM sees problems with the existing system such as:

A.) Adverse selections;

B.) Portability (Ex. Individuals who have pre-existing conditions, cannot afford to change jobs, cannot afford to change health plans, and they get trapped because of their health plan they cannot take that employment opportunity that might actually promote them.

He stated that KOAM believes this bill would address some of the major problems in this system. (Ex. Providing consumer protection for consumers that have a preexisting condition and need to change insurance for whatever reason, important coverage for newborns and adopted children, portability of health insurance, and the employer controls the cost of participation in the exchange.)

Mr. Wheelen concluded by noting what appears to be a few minor technical flaws and offers and addendum to his testimony for review by the Committee's staff and drafting of appropriate amendments. A copy of his testimony and proposed addendum is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Adjournment

As the Senate was about to go into session, Chairperson Wagle announced the hearing would continue tomorrow. The time was 2:35 p.m.

The next meeting is scheduled for February 20, 2007.