MINUTES

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

November 30, 2016
Room 548-S—Statehouse

Members Present

Gary Hayzlett, Chairperson
Senator Vicki Schmidt
Representative Jerry Henry
Representative Richard Proehl
Darrell Conrade
Dr. Jimmie Gleason
Dr. Paul Kindling
Members Absent
Senator Laura Kelly
Dennis George
Dr. James Rider

Staff Present

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

Conferees

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

Others Attending

See Attached List.

Wednesday, November 30
Room 548-S—Statehouse

Welcome and Introductions

Chairperson Gary Hayzlett called the meeting to order at 1:04 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).

Ms. Renick presented an overview of resource materials provided to the Committee. Ms. Renick stated among the items provided were the Committee Report to the 2016 Legislature, and she noted the recommendations and conclusions. Ms. Renick indicated the resources folder also included a document from KLRD with an article from the Kansas Legislator Briefing Book regarding the Health Care Stabilization Fund (HCSF) and Kansas medical malpractice law (Attachment 1). She stated this information is being moved to the KLRD website and will be available under both Health and Social Services and Financial Institutions and Insurance policy pages. Ms. Renick indicated these kinds of documents will be provided at the beginning of the session to committees as a resource providing introductory and background information. She stated the document also reports on this Committee's activities, and it will be updated to reflect this meeting.

HCSF Board of Governors' Staff and Actuary Reports, 2015-2016

Chairperson Hayzlett next recognized Rita Noll, Deputy Director and Chief Counsel, HCSF Board of Governors, to address the fiscal year (FY) 2016 medical professional liability experience (based on all claims resolved in FY 2016 including judgments and settlements) (Attachment 2). Ms. Noll began her presentation by noting jury verdicts. Of the 14 cases involving 17 Kansas health care providers tried to juries during FY 2016, 13 were tried to juries in Kansas courts and 1 case involving a Kansas health care provider was tried in Arkansas. The trials were held in the following jurisdictions: Sedgwick County (4); Johnson County (4); U.S. District Court (1); Crawford County (1); Grant County (1); Labette County (1); Saline County (1); and Arkansas (1). Of those 14 cases tried, 12 resulted in defense verdicts, 1 resulted in a plaintiff verdict, and 1 case ended in mistrial.

Ms. Noll stated, with this being the 40th anniversary of the HCSF law, she checked, and 14 trials is the fewest annual number of trials since the early inception of the HCSF. Ms. Noll indicated this may be due to the number of claims being down and the happenstance of the calendar of what cases were ready for trial or settlement this past year. Ms. Noll stated 10 cases have gone to trial to date in this fiscal year. Ms. Noll noted one case went to trial in Arkansas with a defense verdict. Ms. Noll also noted, during FY 2016, no cases went to trial in Missouri for the first time in a long time. Ms. Noll indicated, again, this may be due to happenstance of the calendar. This fiscal year, two cases have gone to trial in Jackson County, Missouri; both were defense verdicts. Ms. Noll pointed out that a few years ago, the Missouri Supreme Court declared the cap on noneconomic damages to be unconstitutional (the *Watts* decision). The Missouri Legislature enacted a new cap, effective after August 2015 (for a time after this decision, there was no cap on noneconomic damages). Ms. Noll indicated the Board of Governors anticipates cases in which there is a cap in place soon.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2016, 76 claims in 66 cases were settled involving HCSF moneys. Settlement amounts incurred by the HCSF for the fiscal year totaled $23,539,687.07 (these figures do not include settlement contributions by primary or excess insurance carriers). Ms. Noll stated this fiscal year data represents 16 more cases than the previous year; however, the amount of money the HCSF incurred in settlements decreased by about $800,000. Ms. Noll stated there were 16 more cases, but fewer cases were in the higher settlement category. Ms. Noll indicated this is not a trend; it just happened that the settlements this past year were non-severe cases. Of the 76 claims in which the HCSF is involved, 20 involved inactive health care providers for which the HCSF has first-dollar coverage; 13 of these claims were against the same health care provider. Ms. Noll indicated the health care provider is no longer practicing medicine, and the statute of limitations has expired for any more potential claims. Of the 76 claims involving HCSF moneys, the HCSF incurred $23,539,687.07; the primary insurance carriers contributed $11,000,000 to these claims. In addition, excess insurance carriers provided coverage for 3 of these claims for a total of $3,400,000. So, for these 76 claims involving the HCSF, the total settlement amount was $37,939,687.07. Further testimony also indicated, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 98 claims in 93 cases. The total amount of these reported settlements was $8,968,479. Ms. Noll's report included figures from FY 2000 to FY 2016 for comparison. Ms. Noll's testimony also included a report of HCSF total settlements and verdicts, FY 1977 to FY 2016. Ms. Noll stated for FY 2016, there was one plaintiff verdict, but the amount of the verdict was less than $200,000. Ms. Noll concluded her comments about settlements noting for the first time in many years, there were no jury verdicts this past fiscal year involving HCSF money.

Ms. Noll reported there were 248 new cases during FY 2016. She noted there was a 5-year decrease in the number of new claims from FY 2009 through FY 2013, with a modest increase in FY 2014 and a decrease in FY 2015. For FY 2016, there was an increase of 13 cases, which was not unexpected. The 2014 Legislature added 5 new categories of health care providers under the HCSF coverage provisions in the Health Care Provider Insurance Availability Act (HCPIAA): nursing homes, assisted living, residential health care facilities, nurse midwives, and physician assistants. The HCSF has excess coverage for these health care providers for care provided on and after January 1, 2015. Ms. Noll reported, for FY 2016, there were 12 claims involving these new health care providers. Ms. Noll stated if those claims were taken out of the mix, there was no increase in the number of new claims this past year—the increase was due to the new health care providers joining the HCSF. Ms. Noll stated for FY 2017 to date, 8 claims have arisen from these new health care providers.

Ms. Noll next addressed the self-insurance programs and reimbursement for the University of Kansas (KU) Foundations and Faculty and residents. Ms. Noll stated the FY 2016 KU Foundations and Faculty program incurred $1,028,751.91 in attorney fees, expenses, and settlements; $500,000 came from the Private Practice Reserve Fund and $528,751.91 came from the State General Fund (SGF). Ms. Noll stated this was down $888,438.50 from the previous fiscal year, noting there were both fewer settlements and the attorney fees and expenses also were down. Ms. Noll stated four settlements involved KU full-time faculty members in FY 2016, compared to seven settlements the previous year and nine settlements in FY 2014. Ms. Noll indicated, so far in FY 2017, there have been five settlements involving KU full-time faculty for which the HCSF has been reimbursed $850,000, as well as a case currently in trial in Douglas County; therefore, attorney's fees and expenses also will increase for next year.

In regard to the self-insurance programs for the KU and Wichita Center for Graduate Medical Education (WCGME) resident programs, Ms. Noll indicated the total amount incurred for FY 2016 appears to be almost the same as for FY 2015. Ms. Noll stated there were no FY 2016 settlements or judgments involving any of the residents. Ms. Noll noted the HCSF incurred $664,698.71 for attorney fees and expenses for the WCGME residents, and only $28,625.85 for attorney fees and expenses for the KU residents. She explained the difference is primarily because the two residency programs are quite different from a training perspective. In Kansas City, the Chief Counsel explained, the attending physicians are full-time faculty and, most of the time, take full responsibly for the residents. In Wichita, most of the attending physicians are private practice physicians who have private insurance, so more residents are named individually as defendants. Therefore, there are fewer claims and cost with the residency program in Kansas City as compared to the Wichita program. Ms. Noll stated there also was a case that went to trial in Wichita involving a resident this past year that resulted in a defense verdict, but was then appealed. The Court of Appeals overturned the defense verdict, so it is now being appealed to the Supreme Court and has become quite expensive, which contributed to more expenses this past year.

Ms. Noll stated the report she provided lists the historical expenditures by fiscal year for the KU Foundations and Faculty and the KU and WCGME residents since inception. Ms. Noll indicated, for the past ten years, the faculty self-insurance program has incurred about $1.6 million on the average and, for the residency program, that 10-year average is about $863,000. Ms. Noll noted that FY 2016 was a below average year as far as the amount of moneys incurred for both the faculty and residency programs. Ms. Noll next addressed the reimbursement of expenses for administrative services provided by the Board of Governors noting in 2010, the Legislature reached a compromise that for four fiscal years (FY 2010, FY 2011, FY 2012, and FY 2013), the HCSF would not be reimbursed. Beginning with FY 2014, two things would occur: quarterly reimbursements were to begin and, for five fiscal years (FY 2014 through FY 2018), the HCSF was to be reimbursed 20 percent of the accrued receivable for those four years that the HCSF was not reimbursed. At the end of June 30, 2013, the amount of accrued receivables was $7,720,422.23 for which the HCSF had not been reimbursed. Ms. Noll stated this past July 1, for the fourth year in a row, the HCSF was reimbursed. The HCSF has received reimbursements of $6,176,337.78, which is 80 percent of the total amount. One remaining installment payment of $1,544,084.45 is due July 1, 2017. Ms. Noll provided information about moneys paid by the HCSF as an excess carrier, stating for those claims involving the KU faculty members, the HCSF paid $625,000 out of its excess coverage.

In response to a question from the Committee, Ms. Noll stated out of the new groups of health care providers in the HCSF, nursing homes have seen the most claims. Ms. Noll indicated there have been about 16 or 17 claims so far: 2 for certified nurse midwives, 1 for a physician assistant, 2 for assisted living facilities, and the remaining have been nursing homes.

Chairperson Hayzlett next recognized Russ Sutter, Willis Towers Watson, to provide an actuarial report. The presentation was based on the review of HCSF data as of December 31, 2015, and is an addendum to the report to the Board of Governors dated April 19, 2016 (Attachment 3).

Mr. Sutter addressed forecasts of the HCSF's position at June 30, 2016, and June 30, 2017, based on the company's annual review. As of June 30, 2016, the HCSF held assets of $278.22 million and liabilities of $230.02 million, with $48.20 million in reserve. The projection for June 30, 2017, is as follows: assets of $282.98 million and liabilities of $234.40 million, with $48.58 million in reserve. Mr. Sutter indicated due to growth in both the assets and the liabilities, the unassigned reserves are expected to be slightly higher at June 30, 2017. Mr. Sutter indicated this increase in both categories is going to happen for a while given the changes in the 2014 law. He stated with more providers in the system, it is a bigger pool than in 2013. He said until the new groups of providers have been in the program for a few years, it would be expected there would be a little more than an inflationary-type growth in both the assets and the liabilities of the HCSF. Mr. Sutter stated, from the actuary perspective, the HCSF remains in a very strong financial position. Mr. Sutter indicated, based on the analysis provided to the Board of Governors, the HCSF could reduce its calendar year (CY) 2017 surcharge rates by 3.2 percent and still maintain its unassigned reserves at approximately $48 million. Mr. Sutter stated the forecasts of unassigned reserves assume an estimate of surcharge revenue in FY 2017 of $27.8 million, a 2.0 percent interest rate for estimating the tail liabilities on a present-value basis, a 3.25 percent yield on HCSF assets for estimating investment income, continued full reimbursement for KU/WCGME claims, and no change in current Kansas tort law or HCSF law. Mr. Sutter stated, based on the company's full review, the actuary suggested the Board of Governors consider a modest reduction in rates for CY 2017 and consider lessening the difference in rates by years of compliance (YOC) and making adjustments by specialty. The actuary also highlighted both the positive and negative developments in the HCSF's experience since the most recent review.

Mr. Sutter next reviewed the HCSF's liabilities at June 30, 2016. The liabilities highlighted included claims made against active providers as $79.4 million; associated defense costs as $13.9 million; claims against inactive providers reported by the end of FY 2016 as $9.1 million; tail liability of inactive providers as $113.4 million; future payments as $11.2 million; claims handling – $7.5 million; and other, which is mainly plaintiff verdicts on appeals, as $2.5 million. Total gross liabilities were $237.0 million; the HCSF is reimbursed $8.7 million for the KU and WCGME programs, for a final net liability of $228.3 million. Mr. Sutter further discussed the tail liability of inactive providers. He noted the 2014 change in the law removed the requirement for providers who have been in the HCSF for less than five years to pay the additional premium to have those claims made after that provider becomes inactive. Mr. Sutter explained it is a very long tail liability, and that is why the number is so big and it is discounted for present value.

Mr. Sutter next reviewed the HCSF's rate level indications for CY 2017, noting the indications assume a break-even target. Mr. Sutter highlighted payments, with settlements and defense costs of $28,934,000; change in liabilities of $5,717,000; administrative expenses of $1,770,000; 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" for another year is $36,621,000. Mr. Sutter indicated, if the HCSF did not change its surcharge rates next year, it is believed the HCSF balance would be about $28,569,000. Mr. Sutter indicated it is his firm's opinion the HCSF could reduce its surcharge rates for CY 2017 and still maintain its unassigned reserves in the $48 million area.

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 indicated providers who have been in the program less than four years no longer had to pay the HCSF additional money to have their subsequent claims covered after they became inactive. Mr. Sutter noted without that requirement, the HCSF's traditional rating by YOC was no longer appropriate because everyone was adding the same exposure to the HCSF each year they were involved. Mr. Sutter indicated the advice to the Board of Governors is to continue to migrate this group of providers who have been in the HCSF less than five years to the rates being charged to those providers who are in the five-years-plus group.

Mr. Sutter provided an overview regarding indications by provider class. Mr. Sutter stated this is something the Board of Governors looks at every year. He noted Classes 21 to 24 were added as a result of legislation reform; these classes were not part of the HCSF prior to 2015. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. Mr. Sutter reviewed the recommendations to the Board of Governors regarding suggestions for improving the equity between classes. Mr. Sutter then provided a history of surcharge rate changes since 2004. Mr. Sutter next provided an overview of the three options for CY 2017 surcharge rates that were provided to the Board of Governors. Mr. Sutter highlighted the Board of Governors' decision on the surcharge rate changes. Mr. Sutter indicated the estimated overall impact of these changes to be about a 2.7 percent decrease in surcharge revenue.

Mr. Sutter concluded by stating the company's overall conclusions are that the HCSF remains in a very strong financial position and indicated the changes being adopted for CY 2017 are improving the rating equity within the program. Mr. Sutter noted it will be important to watch in the next year or two to see whether the new providers are paying too little or too much and to monitor the interest rate issue. Mr. Sutter indicated interest income again exceeding $10 million will keep the pressure off the rate increases for a bit longer.

In answer to a question from the Committee, Mr. Sutter explained Class 15 is made up of providers not insured voluntarily by the primary market as they have been turned down for coverage. He stated one could view them as being less desirable a risk to the primary insurance market; therefore, they cannot get the primary insurance coverage. The HCPIAA provides a coverage option for them at a slightly higher rate (the "Availability Plan"). Mr. Sutter stated that looking at it from the perspective of the HCSF and cost of the providers' claims, Class 15 providers have been paying less than they should in terms of losses to the HCSF.

Mr. Sutter also addressed a question from the Committee regarding the "credit" for future liability relative to the $113 million tail liabilities. Mr. Sutter explained that some of these claims are not going to be resolved until 2050 so, in that regard, he considered it somewhat analogous to a pension plan liability where these payments are not going to be made for decades. Defined benefit pension plans, the actuary noted, use a valuation interest rate to discount those liabilities to current value (this discounted amount reflects the present value of all benefits expected to be paid from the pension plan to its current members). Therefore, he believed it was appropriate to use a present value calculation for those tail liabilities as well, but less than what his firm and the Board are assuming the HCSF will earn. Mr. Sutter said it would be questionable to some extent to use a 6 or 7 percent interest rate to discount those liabilities, which would bring their value down considerably. Mr. Sutter stated they did feel some discounting for present value was in order for that liability given how far into the future those claims will be occurring or being paid.

Chairperson Hayzlett recognized Chip Wheelen, Executive Director, HCSF Board of Governors, to provide the Board's statutory annual report (as required by KSA 40-3403(b)(1)(C)) (Attachment 4). The Board's report for FY 2016 indicated net premium surcharge revenue collections amounted to $28,114,941. The report indicated the lowest surcharge rate for a health care professional was $100 (for a first-year provider, opting for lowest coverage option) and the highest surcharge rate was $16,510 for a neurosurgeon with 5 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 $21,463 for this health care practitioner. The report detailed the medical professional liability cases. The average compensation per settlement (66 cases involving 76 claims were settled) was $309,733. These amounts are in addition to compensation paid by primary insurers (typically $200,000 per claim). The report states amounts reported for verdicts and settlements were not necessarily paid during FY 2016 and total claims paid during the fiscal year amounted to $27,278,643. The report also provided the balance sheet, as of June 30, 2016, indicating total assets of $278,583,425 and total liabilities of $229,267,579. Mr. Wheelen stated this amount is a comfortable margin of net assets.

Mr. Wheelen noted this is the 40th anniversary of the HCPIAA. Mr. Wheelen indicated three essential components in the original HCPIAA have remained intact:

- All health care providers, as defined in the HCPIAA, must maintain professional liability insurance and must participate in the HCSF coverage as a condition of active licensure;

- 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

- Creation of the Health Care Stabilization Fund to provide supplemental coverage above the primary coverage purchased by health care providers and to serve as reinsurer of the Availability Plan.

Mr. Wheelen highlighted the October 2012 *Miller v. Johnson* decision. Mr. Wheelen indicated it was an extremely important decision and demonstrates the importance of keeping those three essential ingredients that were in the original HCPIAA back in 1976.

Mr. Wheelen also provided an update on the medical professional liability insurance marketplace. His testimony stated the HCPIAA creates a favorable environment for responsible professional liability insurance companies. Mr. Wheelen indicated it has been suggested because there has been a sustained "soft market" for professional liability insurance that the HCPIAA has outlived its usefulness. Members of the Board of Governors disagree with that assessment and think it is important to maintain the three essential features under the HCPIAA to assure long-term stability. Mr. Wheelen's testimony also indicated the Legislature may wish to consider adjusting the coverage levels (*e.g.* insurers may want higher risks) and then make corresponding adjustments in the level of HCSF coverage, as well.

The Executive Director addressed some preliminary draft legislation for the 2017 Session concerning a requirement that may result in duplication of coverage under either the Kansas Tort Claims Act or the Federal Tort Claims Act. He highlighted the circumstances of the duplication of coverage in these situations. Mr. Wheelen indicated the Board has drafted a technical amendment that would amend the HCPIAA to allow exclusion of insurance and HCSF coverage when the health care provider is covered under the Kansas or Federal Tort Claims Act. Mr. Wheelen indicated it was the opinion of the Board of Governors that if a health care provider already has coverage under the tort claims act, there is no reason the HCSF should have any liability for that provider's coverage obligation, nor should the primary insurance company. He noted the Board of Governors has solicited input from the Kansas Insurance Department as well as from organizations that represent health care providers. Mr. Wheelen stated, if those organizations indicate support, the Board will request introduction of a bill when the Legislature convenes in January 2017. Mr. Wheelen reviewed another issue, the lack of an inactive license category for advanced practice nurse anesthetists and nurse midwives. Mr. Wheelen noted when the law was amended to include nurse midwives in 2014, there was no inactive license category for advance practice nurses. His testimony indicated draft amendments to the Nurse Practice Act have been sent to the Board of Nursing as well as to the associations that represent the professions.

Mr. Wheelen continued by noting the HCPIAA is a successful public-private partnership that has accomplished legislative intent; it has provided the stability the Legislature originally intended, and actuarial integrity has been maintained. From a public policy perspective, it assures that in the event of an unfortunate medical outcome, the patient will always have a reliable remedy available. Mr. Wheelen indicated the Legislature has maintained the fiscal discipline to make this program work successfully. Mr. Wheelen stated the Board appreciates that this Committee has supported the fundamental principle that the HCSF should be used exclusively for its statutory purposes, and the Board of Governors respectfully requested the Committee include similar language in its report to the Legislature for 2017. The report also stated, other than a few technical adjustments, the Board of Governors is unaware of any reason to substantially amend the HCPIAA. After four decades of success, the HCPIAA has achieved its Legislative intent.

In answer to a question from the Committee regarding moonlighting by residents in training, Mr. Wheelen stated some residents moonlight, usually in their third or fourth year of residency training. He indicated those residents typically buy a special policy from the Availability Plan, because most commercial insurance companies would prefer not to deal with that situation. Mr. Wheelen said this is a good example of a situation where the Availability Plan is needed, not because the residents are bad risks, but because they represent a unique group of health care providers for whom no insurance product is available in the regular marketplace.

In answer to whether the proposed amendment would affect that moonlighting arrangement, Mr. Wheelen stated it could affect residents in training if they were working in a federal facility or perhaps a clinic for medically indigent patients. But as far as moonlighting in a typical hospital, that would continue to be insured as it is now and will continue to be covered by the HCSF. Mr. Wheelen stated a specific provision in the law says the academic part of the residency training is self-insured by the State of Kansas, but the extra-curricular, which means moonlighting, activity must be insured in the commercial insurance market, which in this case is the Availability Plan.

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

Kurt Scott, President and CEO, Kansas Medical Mutual Insurance Company (KaMMCO), was recognized and began with comments regarding the health care providers who are moonlighting and are covered under the Kansas or Federal Tort Claims Act. Mr. Scott indicated 43 residents in Kansas are part of one of those residency training programs and moonlight outside of the programs, primarily to provide emergency room coverage and often in rural areas. Mr. Scott next presented information on the number of physicians and other providers insured by HCPIAA from 1990, when KaMMCO first took over the administration of the Availability Plan, through 2016. Mr. Scott explained the cycles of the market, indicating the market currently is in a low-ebb area, where the medical malpractice insurance market is very robust with many companies competing for business, and there is usually a low-claims environment. Mr. Scott stated that over the course of the past few years because of the low claims environment, the Availability Plan has returned money to the HCSF; this year $250,000 will be returned to the HCSF. Mr. Scott then described the current marketplace as a very healthy, competitive environment, with plenty of capacity and very affordable coverage. Mr.

Scott highlighted factors on the horizon that might signal some future changes – changes to the Affordable Care Act and related changes in the health care delivery and financing mechanism or marketplace. Mr. Scott indicated KaMMCO staff will be watching to see what impact future changes may have on health care delivery in this state and what will need to be done to be able to insure those providers in the changing environment. Mr. Scott concluded his comments by stating KaMMCO has reviewed the proposed changes to the HCPIAA and is very supportive of those changes.

Chairperson Hayzlett next recognized Jerry Slaughter, Executive Director, Kansas Medical Society (KMS). Mr. Slaughter provided some historical information regarding the HCSF and the HCPIAA. Mr. Slaughter indicated the HCSF is in its 40th year, and is a public-private partnership that was purposefully constructed. Mr. Slaughter noted Kansas was the first state to require health care providers to demonstrate financial responsibility to their patients and carry insurance to practice medicine as a condition of licensure. Mr. Slaughter indicated the HCSF created a more stable, less volatile environment. Mr. Slaughter noted at the time the law was created and has since been debated, it was important to not transfer liabilities from one generation of physicians onto the next generation of physicians. He stated that is why it is important that the HCSF operate in an actuarially sound manner. Mr. Slaughter indicated it is essential to have this unassigned reserve or surplus in the HCSF, so when this generation of physicians retires, enough money is set aside in the HCSF to pay those claims when they come due and to not push those liabilities onto the younger health care providers coming into the system. Mr. Slaughter also noted it could be tempting for the Legislature to look at the $275 million in the HCSF, but this money has been paid by the health care provider community and set aside in trust to make sure that patients are covered in the event there is a claim in the future. Mr. Slaughter indicated the Legislature has honored that commitment to not touch those funds and is encouraged to continue to do so. Mr. Slaughter also noted the importance of the Committee in providing a connection to the Legislature, the health care provider community, and the insuring community to have a public forum to talk about changes. Mr. Slaughter noted KMS members believe the Committee serves a useful function and would encourage its continuation. Mr. Slaughter concluded the KMS also supports the request that the Committee report to the Legislature these funds need to stay in trust to preserve the integrity of the HCSF.

Proposed Amendments to the Health Care Provider Insurance Availability Act, if any

The Chairperson asked for any proposed amendments to the HCPIAA. No additional amendments were brought before the Committee.

Committee Discussion for the Purposes of Reaching Conclusions and Making Recommendations to the 2017 Legislature; Direction to Staff for the Committee Report to the Legislative Coordinating Council

Chairperson Hayzlett invited Committee discussion for the purpose of reaching conclusions and making recommendations to the 2017 Legislature.

A Committee member commented on the issue regarding health care providers who work in federally funded clinics. The member provided a real-world example, stating when a physician wants to do some part-time work and goes to a small hospital, the physician must purchase a full-time policy, costing about $13,000 to $15,000 a year. The member indicated that if that work being done in either a Department of Veterans Affairs hospital or federal clinic could be carved out, the physician could be sold a part-time policy; this policy would be in the neighborhood of about $2,000. The member stated that there would be a significant difference in the premium for being able to change this legislative requirement to allow that federally-funded carve-out.

Another Committee member requested inclusion of the following language, previously stated in prior Committee reports, in this year's report:

- **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. 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 the 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 Health Care Provider Insurance Availability Act, 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 Health Care Stabilization Fund shall be credited to the Health Care Stabilization Fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such Health Care Stabilization Fund shall remain therein and not be credited to or transferred to the State General Fund or to any other fund.

Chairperson Hayzlett recognized Ms. Renick 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 the amendment to the HCPIAA proposed by the Board of Governors to create an exception in HCSF coverage requirements for certain providers whose services are covered by Kansas and federal tort law and also the technical amendment to the Nurse Practice Act;

- Reference the impact of the HCPIAA and some of the historical perspectives provided in testimony and continue report language recognizing the 40th anniversary of the HCPIAA, noting the anniversary occurred in July 2016 and inclusion of those comments relating to the historical intent of the law and the stability afforded to health care providers and the relationship between the health care providers, insurers, the Legislature, and the Board of Governors;

- Comment on the status of the reimbursement schedule for the self-insurance programs pursuant to 2010 SB 414: 80 percent of the reimbursements has been received, the Year 4 payment has been receipted, and the Board is anticipating receipt July 1, 2017, of its final payment from the SGF, and stating the amount still owed to the Board of Governors;

- Comment on continued oversight, as the Committee expects both the Board of Governors and its actuary, and the Committee's role as monitors, to continue to look at some of the changes from the 2014 laws, both those that affected the tail liability of all those providers who now receive that additional coverage regardless of their years of compliance with the HCSF;

- In addition to the language regarding the holding of the Fund in trust, outline the current factors impacting the assets and liabilities of the HCSF as detailed by the actuary and which include:

  - The change in Missouri law in response to the *Watts* decision; it is anticipated there may be more claims coming forward with the new cap in place;

  - The negative indication seen with investment income changes; and

  - The change in the cap on noneconomic damages as required by 2014 SB 311: increased to $300,000 now (from $250,000), and increasing to $325,000 in 2018.

- In recognition of new members to the Legislature, 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.

Following discussion, the motion was made by Senator Schmidt and seconded by Representative Henry to globally incorporate language of the above-mentioned items in the report. With no further discussion, <u>the motion carried</u>.

Representative Henry asked to be recognized and thanked everyone for allowing him to be a member of this Committee. He expressed his appreciation, stating he has had a great 24 years as a legislator.

Dr. Paul Kindling asked to be recognized and announced he is retiring from the Committee. He indicated he has been on this Committee since its inception. Dr. Kindling stated it had been a privilege to serve, and thanked the Committee.

Committee members and members of the audience commented and expressed appreciation for the members' service.

Adjourn

The Chairperson thanked the Committee members, staff, and attendees for their participation in this annual review. There being no further business to come before the Committee, the meeting was adjourned at 3:00 p.m.

Prepared by Randi Walters
Edited by Melissa Renick and Jennifer Ouellette

Approved by the Committee on:

January 3, 2017
(Date)