

## MINUTES

### HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

December 3, 2001  
Room 531-N—Statehouse

#### Members Present

Dick Bond, Chairman  
Senator Greta Goodwin  
Representative Eber Phelps  
Representative Jim Morrison  
Dr. Paul Kindling  
Dr. James Rider  
Richard Brock  
Keith Hall (designee of Dr. Mark Praeger)

#### Members Absent

Senator Sandy Praeger  
Dr. Debra Doubek-Phillips  
James Boyle

#### Others Present

Chip Wheelen, Kansas Association of Osteopathic Medicine  
Jerry Slaughter, Kansas Medical Society  
Kurt Scott, KAMMCo  
John Reimer, Health Care Stabilization Fund  
Rita Noll, Health Care Stabilization Fund  
Robert Hayes, Health Care Stabilization Fund  
Russel Sutter, Tillinghast-Towers Perrin  
Barb Conant, Kansas Trial Lawyers Association

The Chairman, Dick Bond, called the meeting of the Health Care Stabilization Fund Oversight Committee to order at 10:00 a.m. He called on Robert Hayes to provide an overview of the activities of the Health Care Stabilization Fund Board of Governors for the

year 2000-2001 (Attachments 1 and 1a). Among other things, Mr. Hayes pointed out the following issues with the Fund.

- Effective July 1, 2001, the Board of Governors added 10 percent to the surcharge rates for the \$800,000/\$2,400,000 Fund coverage limits and 5 percent to the \$300,000/\$900,000 Fund coverage limits. No surcharge change was made to the lowest level of Fund coverage \$100,000-/\$300,000.
- Changes in the basic coverage professional liability insurance market give some concern for coverage availability. PHICO Insurance Company is in rehabilitation; The St. Paul Companies have announced their decision to no longer be a market for obstetricians and gynecologists, general surgeons, emergency room physicians, and large hospitals; and CNA Companies are apparently withdrawing from the medical professional liability markets.
- While the Fund earned a reasonable return on its investments in the last year, decreases in interest income may necessitate increases in the surcharge rates charged to providers.

Following the overview, the Chairman asked Russel Sutter, Actuary for the Fund, to give a status report on the Fund (Attachment 2). (A copy of the Final Report on the Health Care Stabilization Fund, prepared by Tillinghast-Towers Perrin, is on file in the Legislative Research Department.) Mr. Sutter reported that the Fund was in very sound financial condition; that surcharges levied over each of the last three years have not been extreme; and that the level of interest income gives some pause for concern should interest rates paid on Fund reserves decline and necessitate further surcharge increases. He commented that medical malpractice insurers nationally have witnessed a significant deterioration in their profitability in 1999 and 2000. Further deterioration could cause concerns for premium rates in Kansas. In response to a question, Mr. Sutter said an unassigned reserve of \$30 to \$40 million was appropriate for the size of the Kansas Fund.

Rita Noll, Chief Attorney for the Fund, reviewed the claims experience of the University of Kansas Foundations and Faculty and the claims experience of residents at the University of Kansas in Kansas City and those associated with the Wichita program (Attachment 3). She reported that the reimbursements to the Fund for the foundations and faculty were higher than in 2000, but comparable to that in 1999. The reimbursement for claims against residents also was up from both 2000 and 1999, but not as high as some previous year experiences.

The Chairman asked Bob Hayes to explain the five proposals the Board of Governors has for amending the Health Care Provider Insurance Availability Act and the Health Care Provider Insurance Availability Plan.

Proposal No. 1 would establish a specific date on which the required basic coverage documentation and the Fund surcharge payment are due and would allow the Fund to charge an interest penalty for delinquent filings (Attachment 4). ***After discussion, the Committee, by motion properly made and seconded, recommends that KSA 40-3402 and KSA 40-3404 be amended to require documentation and the Fund surcharge payment be submitted within 60 days of the effective date of the basic coverage. Premium surcharge payments submitted after the 60-day period would accrue interest beginning with the effective date of the basic coverage and interest will accrue calculated based on double the interest rate provided for in subsection (e)(1) of KSA 40-204. The motion carried.***

Proposal No. 2 would allow the Board of Governors to invest and reinvest moneys in the Fund in corporate bonds that do not exceed three years to maturity and which are rated in one of the two highest credit rating categories by a nationally recognized investment rating firm (Attachment 4a). ***After discussion and upon a motion properly made and seconded, the Committee recommends that KSA 40-3406 be amended to allow Fund moneys to be invested and reinvested in corporate bonds. The motion carried.***

Proposal No. 3 would allow the Board of Governors to issue loss information reports to the public in an aggregate manner (Attachment 4b). ***After discussion and upon a motion properly made and seconded, the Committee recommends that KSA 40-3409 be amended to allow loss information reports to be made to the public in an aggregate manner. The motion carried.***

Proposal No. 4 would allow Board members to serve three consecutive terms of office (Attachment 4c). ***After discussion and upon a motion properly made and seconded, the Committee recommends that KSA 40-3403 be amended to allow members of the Board of Governors to serve three consecutive terms. The motion carried.***

Proposal No. 5 would add to the membership of the Board of Governors of the Health Care Stabilization Fund, the chairperson or the chairperson's designee of the Health Care Providers Insurance Availability Plan Governing Board, and would add to the membership of the Health Care Providers Insurance Availability Plan Governing Board, the chairperson of the Board of Governors of the Health Care Stabilization Fund (Attachment 4d). ***After discussion and upon a motion properly made and seconded, the Committee recommends that KSA 40-3403 and KSA 40-3413 be amended to add to the membership of the Board of Governors of the Health Care Stabilization Fund, the chairperson or the chairperson's designee of the Health Care Providers Insurance Availability Plan Governing Board, and would add to the membership of the Health Care Providers Insurance Availability Plan Governing Board, the chairperson of the Board of Governors of the Health Care Stabilization Fund. The motion carried.***

The Chairman directed that staff draft the amendments as recommended and that an identical bill incorporating the Committee's recommendations be introduced by the Senate and Representative members of the Committee in each house of the Legislature for consideration in the 2002 Session.

The Chairman called on Jerry Slaughter to present for the Committee's consideration a proposal of the Kansas Medical Society to amend the Health Care Insurance Provider Insurance Availability Act. Mr. Slaughter reviewed the three options of coverage available above the basic coverage limit of \$200,000/\$600,000 purchased from private insurers: option one—\$100,000/\$300,000; option two—\$300,000/\$900,000; and option three—\$800,000/\$2,400,000. He noted that, with some exceptions, the majority of health care providers select options two or three with 85 percent of physicians selecting option three.

Mr. Slaughter proposed that the basic coverage required to be purchased in the private market be changed to \$300,000/\$900,000. The options for coverage from the Fund would be reduced to \$200,000/\$600,000 or \$700,000/\$2,100,000. He also suggested that the concept of further indexing the basic coverage limits be continued as the market conditions dictate. One effect of the change, he noted, would be to increase the amount of liability insurance sold in the private marketplace. Additionally, he proposed amendments to the Act to ensure that the amount of coverage a provider has available upon retirement is the same level of coverage in effect at the time of retirement and that it be pre-funded through the surcharge (Attachment 5).

Dr. Rider, a member of the Board of Governors as well as of the Committee told the members that the Board has not had the opportunity to study the impact of the proposed change on the Fund. Mr. Hayes added that the actuary for the Fund has been asked to provide the Board with an assessment of the proposal for its review. After lengthy discussion on both proposals, Mr. Slaughter said he would defer further consideration of the proposals at this time and take the issues to the Board for further discussion. However, he indicated that the Kansas Medical Society will probably seek introduction of the proposal in the 2002 Session.

The Chairman concurred with referral of both issues to the Board of Governors and to the Actuary for the Fund in anticipation that the questions raised concerning the impact of the changes on the Fund could be determined and information made available to the appropriate standing committees of the 2002 Legislature.

The Committee discussed the need for an independent actuarial report on the condition of the Fund next year and concluded such an evaluation was not necessary at this time. Additionally, in the course of the Committee's discussions on other issues, it became clear from members and conferees alike that the Committee needs to be continued.

There being no other business to come before the Committee, the meeting was adjourned.

Prepared by Bill Wolff

Approved by Committee on:

December 15, 2001