

MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 p.m. on March 8, 2011 in Room 784 of the Docking State Office Building.

All members were present except:

Representative Bob Bethell – excused  
Representative Terry Calloway - excused  
Representative Bill Otto – excused  
Representative Ann Mah - excused

Committee staff present:

Norm Furse, Office of the Revisor of Statutes  
Martha Dorsey, Kansas Legislative Research Department  
Dorothy Noblit, Kansas Legislative Research Department  
Jay Hall, Kansas Legislative Research Department  
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:

Representative Lance Kinzer ([Attachment 1](#))  
Jerry Slaughter, Executive Director, Kansas Medical Society ([Attachment 2](#))  
Jeff Ellis, Chair of Legal Workshop Group of eHAC ([Attachments 3 - 10](#))  
Tom Bell, President, Kansas Hospital Association ([Attachment 11](#))

Others attending:

See attached list.

**HR 6011 – Supporting attorney general's legal challenge of Obamacare.**

Chairperson Landwehr opened the hearing on **HR 6011**.

Representative Lance Kinzer presented testimony in support of the bill. ([Attachment 1](#)) The Patient Protection and Affordable Care Act, known as “ObamaCare” was passed by Congress without a single Republican vote and then signed into law by President Obama in March 2010. Laced with kickbacks, massive new taxes and entitlements, and a plethora of increased government bureaucracy, Obamacare is one of the most destructive pieces of legislation ever enacted by the United States Congress.

The fiscal implications of ObamaCare are alarming. Current estimates predict that it will cost the American taxpayers over \$2.6 trillion by the time it is fully implemented. In the first 10 years alone, ObamaCare will add over \$700 billion to our ballooning national debt and impose \$500 billion in new taxes on the already overburdened American taxpayers.

The economic implications of ObamaCare are even more frightening. It will eliminate jobs, reduce hours and wages, and limit future job creation. A study by the National Federation of Independent Businesses, the nation’s largest association of small business owners, found that ObamaCare’s employer mandate could eliminate 1.6 million jobs by 2014 alone. As the unemployment rate rises, large and small businesses alike have already begun to feel the painful effects of this disaster.

The most egregious provision of ObamaCare is a federal mandate that requires all private individuals to buy federally approved health insurance or pay a hefty fine. For the first time in American history, the federal government is forcing all private citizens to become market participants. The individual mandate is the cornerstone of ObamaCare’s job-killing government takeover of health care in America—and it *cannot* be allowed to stand.

The Framers of our Constitution created a system of dual sovereignty. James Madison explained in Federalist 45 that the powers delegated to the federal government are “few and defined” while the powers reserved for state governments are “numerous and indefinite.” The Constitution’s commerce clause

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allows Congress to regulate economic *activity* between the states, but ObamaCare's individual mandate is an unprecedented attempt to regulate economic *inactivity*. Not only is the individual mandate terrible public policy with horrendous consequences, but if allowed to stand, it will also result in limitless regulatory power for the federal government.

Former Kansas Attorney General Steve Six ignored the clear voice of a large majority of Kansans by refusing to join other states in challenging the Constitutionality of ObamaCare. In November 2010, voters in Kansas and across the country held their elected officials accountable, and demanded that they fight to repeal ObamaCare. Immediately after taking office in January 2011, new Kansas Attorney General Derek Schmidt joined 25 other states in challenging ObamaCare's constitutionality.

On January 31<sup>st</sup>, 2011 Federal Judge Roger Vinson ruled in favor of Kansas and struck down ObamaCare as an unconstitutional exercise of federal power. Judge Vinson made it clear that "if Congress can penalize an individual for failing to engage in commerce, then the enumeration of powers in the Constitution would have been in vain, for it would have been difficult to perceive any limitation on federal power."

While Judge Vinson's ruling is not the end of the litigation over ObamaCare, it is a major victory for those who believe in the fundamental concepts of federalism, limited government, and individual liberty. Attorney General Schmidt should be commended for including Kansas in this momentous and crucial case.

There were no other proponents, opponents or neutral testimony presented. The Chair closed the hearing on **SB 6011**.

### **SB 133 – Health information; technology and exchange of health information.**

Chairperson Landwehr opened the hearing on **SB 133**.

Jerry Slaughter, Executive Director, Kansas Medical Society, provided testimony in support of the bill. (Attachment 2) This legislation represents several years of work and study by a group of Kansas health care law experts about the legal barriers in state law to the successful implementation of health information exchange in our state. Over the years the intersection of differing state and federal standards on issues such as health care privacy, access, security, uses and disclosures, and the transmission of protected health information has created a confusing environment for both health care providers and patients alike. This legislation eliminates that confusion, and establishes the federal HIPPA Privacy Rule as the standard for our state going forward.

A cohesive, rational approach to governing the access to, and the use of, protected health information is also absolutely essential to the development of the system through which health care providers will begin to share clinical information in a secure electronic network. That electronic network, or health information exchange (HIE), is just beginning to emerge, and this legislation is critical to the successful development of these efforts statewide.

This bill is comprehensive in its scope, and will position our state to move forward in this important endeavor by "harmonizing", or making Kansas law more consistent with the HIPPA Privacy Rule, with one notable exception. The bill provides added protection beyond HIPPA regarding the use and disclosure of an individual's protected health information. It does this by requiring health care providers to furnish written notice to patients before transmitting or disclosing protected health information through an approved health information exchange. The bill specifies the content of such notices, including that

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the individual (or his or her personal representative) has the right to request in writing that the health care provider not disclose any, or specified parts of, the individual's protected health information. In this way, the bill preserves the right of patients to “opt-out” of the disclosure requirements for any or all of their information, and it requires health care providers to honor such reasonable requests.

In addition to the “opt-out” provisions, the bill also establishes standards for approving health information organizations, and adopts uniform rules relating to designated personal representatives for health-related decisions. The legislation also protects health care providers from liability or adverse administrative actions based on the improper use or disclosure of protected health information so long as the provider complies with the use and disclosure standards that will be required of approved health information exchanges.

The bill is a critical component of our state's effort to establish a secure and highly functional health information exchange, which will benefit patients through less duplication of services, fewer adverse drug events and medical errors, improved quality and care coordination, faster access at the point of care to necessary patient clinical information, improved efficiency in care transitions, and reduced administrative burdens.

Jeff Ellis, Chair, Legal Work Group (“LGW”), eHealth Advisory Council (“eHAC”), presented testimony in support of the bill. The Legal Work Group was comprised of 28 lawyers from around the state who are primarily engaged in representing health care providers or who serve on the legal staff of the state agencies that regulate the health care industry in some respect. Amazing consensus was achieved within that group that has ultimately resulted in the proposal that comes before you as **SB 133**. (Attachment 3)

The consensus did not come easily. It was developed over several years of intense study beginning in 2006 when Kansas received grant funding during the Bush Administration to study the barriers to the electronic exchange of health information through the multi-state Health Information Security and Privacy Collaboration (“HISPC”). Over a two and one-half year study, the initial LWG identified more than 200 Kansas statutes and regulations which potentially impact health information exchange. Those laws, which appear throughout the State's statutory structure, had evolved over many years and were characterized by their inconsistency and lack of coordination. When providers sought to comply with those laws, and to additionally meet federal privacy and security standards mandated by HIPAA, they were confounded and overwhelmed; a circumstance which caused an enormous barrier to the exchange of health information, thereby inhibiting attempts to improve the efficiency and quality of health care delivery. ( It also created a log of work for health care lawyers.)

The results of the study commissioned by HISPC were reported to the Legislature two years ago, and the LWG proposed a legislative resolution to commit the State to an overhaul of the mosaic of Kansas laws to bring them into harmony. On March 19, 2009, the Kansas Senate approved **Senate Resolution 1851**, which articulates the following policy: “That the laws of this State should be reviewed, modified as necessary, and construed to protect the interests of individuals in the confidentiality, security, integrity and availability of their health information; to promote the use of modern technology in the collection, use, maintenance, and exchange of health information; to promote uniformity in policy; and to codify all standards in a cohesive and comprehensive statutory structure.”

When the State received the opportunity for stimulus funding to actualize the implementation of electronic health information exchange, the eHAC reconvened the LWG, with membership expanded to include representatives from state agencies, to perform the task presented by the Senate Resolution and to comply with the requirements of the stimulus funding grant.

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Specifically, the LWG was charged with developing “proposed statutory revisions to remove barriers to the creation of an HIE and promote its implementation statewide and in collaboration with neighboring states, including the following: propose legislation authorizing the development of a statewide HIE; propose legislation which would provide the legal framework to operationalize a statewide HIE; assure the privacy and security of personal health information; and provide legal protection for providers and patients who participate in HIE.”

The bill is the response to that charge. Its substance has been vetted by lawyers dealing with health care law and regulations on behalf of their provider clients and their patients; by attorneys and staff of state agencies charged with regulating the Kansas health care environment; and by representatives of the full range of health care providers who participate in the Kansas health care system.

The bill evolved from a conclusion by the LWG that HIPAA is an adequate, appropriate, and consistent standard to achieve privacy and security of personal health information. It adopts HIPAA as the standard for assuring the privacy of health information and harmonizes state law with HIPAA. It clarifies our State's confusing array of laws regarding who may make health care decisions for those who cannot make such decisions for themselves. It assure providers they will not be held liable under Kansas law if they share health information with other providers in compliance with the law. Lastly, it assures patients that their personal health information will not be shared if they so direct, and that, if shared, the confidentiality of that information will be maintained.

In addition to his testimony, Mr. Ellis provided the following documents for the committee to review:

- A memorandum entitled “Procedural History” and a detailed explanation of the Kansas Health Information Technology and Exchange Act (“K-HITE”) ([Attachment 4](#))
- Exhibit A (a copy of **SR 1851**) ([Attachment 5](#))
- Exhibit B (e-HAC Legal Work Group members) ([Attachment 6](#))
- Exhibit C (eHealth Advisory Council 2009-2010 Legal and Policy Workgroup Charter) ([Attachment 7](#))
- Exhibit D (slide show presentation on K-HITE) ([Attachment 8](#))
- Exhibit E (**06.30.2010-Executive Order 10-06 Kansas Health Information Exchange, Inc.**) ([Attachment 9](#))
- Exhibit F (flow chart on K-HITE) ([Attachment 10](#))

Tom Bell, President, Kansas Hospital Association, presented testimony in support of the bill. ([Attachment 11](#)) The Kansas Hospital Association’s 127 community hospital members believe that this legislation will provide much needed recognition of new electronic health records and exchange technology, clarify rules around its secure use and articulate a patient’s ability to access and control information.

Hospitals, physicians and other providers have always exchanged confidential patient information in the course of treating patients, conferring with experts and referring or transferring patients to appropriate levels of care. New technology will make this process seamless and more effective, but it brings with it new concerns about privacy and security.

The bill is critically important to the success of electronic health information exchange in Kansas. K-HITE articulates clearly that meeting federally mandated HIPAA privacy and security requirements and standards are the rules by which providers will exchange health information, providing much needed alignment of Kansas laws to the federal standard. This is the standard upon which new federal ARRA HITECH Act requirements are based and will be the national standard going forward. In an environment where electronic records are exchanged nationwide, even worldwide, we must all adhere to a common set of rules. K-HITE also lays out how patient information will be handled and how patients will be

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informed.

This bill also provides guidance that has been lacking concerning individuals who require assistance in making decisions about their health information – minors, incapacitated adults and deceased individuals. Prior to this bill, no clear guidance has been available to providers about how this can be done even in the paper record environment. KHA applauds the authors in providing this clarification.

Finally, KHA supports K-HITE's language that sets the Kansas Health Information Exchange as the authority approving HIE's in Kansas. Without this approval process, providers have no method to assure that an HIE which seeks their participation or information meets the basic standards required by ARRA or has the appropriate security in place to protect their information.

Dr. Robert Moser, Secretary, Kansas Department of Health and Environment, provided written testimony only in support of the bill. (Attachment 12) Since 2004, a group of dedicated stakeholders have worked to develop a policy and technology infrastructure plan for the state that would facilitate the secure exchange of health information among providers and patients. In 2009, the Kansas Department of Health and Environment (KDHE), borrowing heavily from earlier efforts, convened a stakeholder group of 33 members called the e-Health Advisory Council (e-HAC). This council was tasked with assisting the state in the creation of the Kansas Health Information Exchange Strategic and Operational Plan (Plan) in response to a grant opportunity provided by the Office of the National Coordinator designed to accelerate health information exchange (HIE) development at the state level.

Two major themes in the Plan are privacy and security issues related to the exchange, and the removal of barriers to participation for both providers and patients. K-HITE provides a framework for addressing both of these issues by removing legal barriers to HIE and creating a practical framework for the secure exchange of health information. The substance of SB 133 has been debated and amended a number of times in the last few years by stakeholders in the Kansas HIE discussions. Through the work of the e-Health Advisory Council and its Legal Workgroup, we now have a bill that we believe removes a number of barriers to the meaningful adoption of HIE in the state, that was approved through a consensus process by the e-HAC, and has been forwarded to the Legislature with the support of both the Kansas Health Information Exchange Board of Directors and KDHE.

The e-HAC Legal Workgroup identified five areas that needed to be addressed in order for the KHITE Act to be successful in achieving the goals of stakeholders. The K-HITE Act harmonizes Kansas law with the HIPAA Privacy Rule and establishes standards for approving health information organizations (HIOs) in Kansas. Next, it gives patients the right to provide notice and affords them the opportunity to opt out of disclosures to an HIO if they so choose. K-HITE creates uniformity in laws regarding the identification of personal representatives for health-related matters and amends the Uniform Electronic Transactions Act to include health-related transactions.

The secure exchange of health information is a necessity if we hope to achieve meaningful improvements in coordinated patient care, health care quality, patient safety, and enabled patient responsibility. Through the proper use of HIE we hope to see improvements in these areas resulting in healthier people living longer lives while being better informed than ever before about their personal health care.

Carolyn Gaughan, CAE, Executive Director, Kansas Academy of Family Physicians, provided written testimony only in support of the bill. (Attachment 13) She stated this is an important bill to align our Kansas laws related to health information with federal HIPAA Privacy and Security Rules. This is particularly important for physicians and other providers using Electronic Health Records (EHRs). The current laws are a significant barrier to the broad use of EHRs and the bill is needed to eliminate the

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barriers. It supports the technological advancements that will enable secure and appropriate collection, use and exchange of health information. KAFP is supportive of health information exchange (HIE) efforts, particularly those that are targeted to improve quality of care and increase patient safety. HIE can lead to improved patient outcomes.

Gary Robbins, Executive Director, Kansas Optometric Association, presented written testimony only in support of the bill. (Attachment 14) The bill will allow interoperable secure exchange of health information to improve the coordination and quality of health care. By allowing health providers to exchange information electronically and have the latest information, it will potentially save lives through more timely treatment, preventing drug interactions, eliminating delays in test results, providing access to previous patient records and improving care in many other ways. In addition to enhancing the quality of care and patient safety, it has the potential to prevent unnecessary costs and achieve savings for the health care delivery system.

The bill is the cornerstone to allowing health information exchange by removing legal barriers to electronic health information exchange while assuring secure and safe exchange of health information. It requires amending Kansas law to be harmonized with the HIPAA Privacy Rules; establishment of standards for approving health information organizations; provisions for individual notice and the opportunity to opt out of disclosures to a health information organization; adoption of uniform rules regarding the identification of personal representatives for health information; and amending the Uniform Electronic Transactions Act to include health-related transactions.

The bill is essential to allow Kansas health providers the opportunity to meet “meaningful use” standards for health information technology thus qualifying for federal incentives for health information technology.

Maren Turner, AARP Kansas Senior State Director, presented written testimony only in support of the bill. (Attachment 15) AARP Kansas represents over 341,000 members from across the state. K-HITE is comprehensive in its scope – the legislation addresses identified legal barriers to health information exchange and creates a practical framework to facilitate the exchange of health information in a safe and secure manner. The K-HITE Act facilitates the rapid adoption of health information technology (HIT) and health information exchange (HIE) through a five-part strategy:

- (1) harmonize Kansas law with the HIPAA Privacy Rule;
- (2) establish standards for approved health information organizations (HIOs);
- (3) provide individual notice and opportunity to opt out of disclosures to an HIO;
- (4) adopt uniform rules regarding the identification of personal representatives for health-related matters; and
- (5) amend the Uniform Electronic Transactions Act to include health-related transactions.

It is AARP Kansas' belief that the secure exchange of health information will improve health care quality and safety. Additionally, providers' ability to achieve “meaningful use” of health information technology and thus receive Medicare or Medicaid incentive payments depends in large part on their ability to demonstrate participation in health information exchange.

The bill is an imperative step in facilitating the adoption of health information technology and exchange and puts in place the structure for this exchange to occur in a safe, security manner.

Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine, provided written testimony only in support of the bill. (Attachment 16) The Kansas Association of Osteopathic Medicine has been participating in a number of work groups over the past few years dealing with health information

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technology. The exchange of health information via electronic transmission will only increase over the next few years. The exchange of electronic health records and information is a positive step towards improved health care. However, it is not without its risks.

While this bill addresses legal barriers, more importantly it addresses the exchange of health information in a safe and secure manner. The bill will align Kansas law with the HIPAA Privacy Rule; establish standards for approved health information organizations; provide individual notice and opportunity to opt out of disclosures to Health Information Organizations; adopt uniform rules regarding the identification of personal representatives for health related matters; and amend the Uniform Electronic Transactions Act to include health-related transactions.

The health care community is rapidly moving towards electronic health records. The ability of health care providers to demonstrate participation in health information exchanges is vital for Kansas health care providers to move forward and achieve “meaningful use” of health information technology. This bill is a necessary step to put in place the structure necessary for the exchange of electronic health information.

There was no testimony in opposition or neutral to the bill. The Chair provided committee members with the opportunity to ask questions and when all were answered, the Chair closed the hearing on **SB 133**.

The next meeting is scheduled for March 9, 2011.

The meeting was adjourned at 2:17 p.m.