MINUTES

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

December 11, 2002
Room 531-N—Statehouse

Members Present

Dick Bond, Chairman
Senator Greta Goodwin
Senator Sandy Praeger
Representative Eber Phelps
Dick Brock
Dr. Debra Doubek-Phillips
Dr. Paul Kindling
Dr. Mark Praeger

Members Absent

Representative Jim Morrison
James Boyle
Dr. James Rider

Staff Present

Emalene Correll, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Bill Wolff, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office

Wednesday, December 11, 2002

The Chairman called the meeting to order at 9:00 a.m. He called on Bob Hayes, Executive Director of the Board of Governors of the Health Care Stabilization Fund, to present an overview of the Board's activities since the Committee last met in 2001 (Attachments 1 and 2). He noted that the Fund is actuarially sound, but is confronted with increased claims, higher loss payment projections, lower investment income, and higher transfers to the Health Care Provider Insurance Availability Plan (Plan). Additionally, about 80 percent of the physicians and surgeons group are opting for higher coverage limits.

Following his presentation, Mr. Hayes responded to questions about the malpractice market by noting that St. Paul, a company that once covered a number of Kansas insureds, has totally withdrawn from the professional liability market. Most of the remaining companies have severely restricted the acceptance of new insureds, and about 3,000 providers have had to find or are in the process of finding replacement coverage. Premiums are up reflecting a tight market, making affordability an issue for some Kansas providers. Market changes have required the Plan to pick up 200 to 250 providers.

In discussion, a question was raised as to whether providers receiving coverage from the Plan should be expected to pay more simply because the market is disfunctional, recognizing there are added costs. Jerry Slaughter indicated this issue is being discussed within KaMMCO. It was noted that, if the insurance Plan were to charge enough to support the costs, they would have to double premiums. Curt Scott, representing KaMMCO as the administrator of the Plan, indicated additional withdrawals from the private market are anticipated; however, Medical Protection Company has indicated it will stay and KaMMCO has a large share of the market. Consequently, the Plan administrator does not see a big change in its activities for the coming year.

There were several other issues raised in the report presented by Mr. Hayes, including the fact that the additional surcharge authorized for Kansas residents who practice in Missouri had generated about $4 million in additional income last year and, as providers increase their coverage, they have to pick up tail coverage for the previous lower coverage.

Chairman Bond introduced Russell Sutter, Tillinghast-Towers Perrin, actuaries for the Fund, to present a status report on the Fund (Attachment 3).

In response to questions, Mr. Sutter noted: in the change in discounting (page 2 of Attachment 3), over half represented transfers to the Plan, *i.e.*, half of derivation from discounted reserves; the expectation had been a 5 percent increase in claims from active providers, but there was an actual 5 percent decrease—the same scenario applied to inactive providers (page 4, Attachment 3); the growth was greater than anticipated, based on Fund rates, and is attributed to a drift toward higher limits, more revenue from those practicing in Missouri, and substantial increases in the primary market causing the Fund's revenues to increase (page 5, Attachment 3; investment income reflects market forces, including decreased interest rates that hurt the Fund—a drop to 4-4.25 percent interest is anticipated when the next projection is done (page7, Attachment 3); and, regarding the information on page 8, Attachment 3, the conferee indicated there is concern over the increased number of cases filed and reserves made for claims. In 2002 the level is up enough to be watched carefully. If payment lag does not improve, there will be pressure on the surcharge.

Finally, Mr. Sutter explained that, from 1995 through 1998, the operating ratio in medical liability insurance generally was much better than other lines of insurance with a significant change in the ratio over the last six years; but Kansas has had a much better ratio. An example would be that St. Pauls' operating ratio in Kansas was actually profitable, but they decided to get out of the market anyway.

Rita Noll, chief attorney for the Board of Governors, presented a report covering claims against the Fund involving full-time faculty of the University of Kansas School of Medicine and claims against residents (Attachment 4). Ms. Noll was asked if an increase had been considered in the $500,000 amount paid for coverage by the practice groups, and she responded that it had not.

Ron Pope, Kansas Trial Lawyers Association, presented proposed amendments to KSA 40-3409(a)(1) relating to plaintiff notification to the Fund (Attachment 5). In discussion of the proposed amendments, Mr. Pope stated that one of the first proposed changes would accomplish the results the trial lawyers would like to see. It was also noted that increases in electronic filings would create real problems with the notification period now written into the law.

Asked to comment on the proposed amendments, Mr. Hayes indicated that he does not believe there is a problem now because the Fund's attorneys will consider the circumstances of late filing and not require the action to be refiled. Jerry Slaughter indicated the Kansas Medical Society opposes the proposed amendments.

Bob Hayes responded to questions and noted many of the market issues had been covered in earlier presentations and responses to questions. He added that in the 2002 Session of the Legislature, there was discussion about using some Fund moneys for State General Fund obligations. While that discussion did not lead to action, the Board is concerned that similar attempts could be made in the 2003 Session. Jerry Slaughter told the members that the Fund was working as it was supposed to in a contracting market. Chip Wheelen, Kansas Association of Osteopathic Medicine, presented a written statement noting the anxiety among his members over the insurance market conditions (Attachment 6). Finally, Curt Scott explained the graph presented on the Plan (Attachment 7). He indicated that providers receiving coverage from the Plan are paying more for coverage and affordability may become an issue for them.

Chairman Bond asked the Committee its pleasure on the question of whether an independent actuarial review of the Fund should be made in 2003. *Dr. Kindling moved, seconded by Dr. Praeger, that an independent actuarial report not be requested. The motion carried.*

The question of whether the Committee should be continued for another year was raised. There was discussion of the role the Committee plays, and, by consensus, it was agreed that no action be taken to discontinue the Committee.

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

Minutes prepared by Emalene Correll
and Bill Wolff

Approved by Committee on:

January 15, 2003
(date)

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