MINUTES

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

November 3, 2009
Room 545-N—Statehouse

Members Present

Dick Bond, Chairperson
Darrell Conrade
Senator Laura Kelly
Senator Vicki Schmidt
Representative Jim Morrison
Representative Eber Phelps
Penny Schwab
Dr. Arthur D. Snow

Members Absent

Dr. Paul Kindling
Dr. Terry "Lee" Mills
Dr. James Rider

Staff Present

Melissa Calderwood, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Bruce Kinzie, Office of the Revisor of Statutes

Others Present

Berend Koops, Hein Law Firm
Bob Williams, Kansas Association of Osteopathic Medicine
Rob Mealy, Kearney and Associates
Chip Wheelen, Health Care Stabilization Fund
Russ Sutter, Towers Perrin
Rita Noll, Health Care Stabilization Fund
Marci Nielsen, University of Kansas Medical Center
Jerry Slaughter, Kansas Medical Society

Chairperson Dick Bond called the meeting to order at 9:05 a.m. The Chairperson noted that three members of the Committee would be absent and then asked for introductions by the members and staff present. It was noted that Senators Laura Kelly and Vicki Schmidt had been named to the Committee, replacing former Committee members Senator Goodwin and Senator Barnett.

The Chairperson recognized Melissa Calderwood, Kansas Legislative Research Department, for an overview of relevant legislation and materials provided to the Committee for its review. Ms. Calderwood reviewed the *Committee Report to the 2009 Legislature* and its conclusions and recommendations specific to closed claims reporting, individual claims information and the Kansas Open Records Act, financing for an information management system, and recommendations specific to expenditures from the Fund and the graduate education residency programs (Attachment 1). Ms. Calderwood also provided a draft of the *2010 Legislator Briefing Book* article on the Fund and Kansas medical malpractice laws (Attachment 2). Another topic Ms. Calderwood highlighted was the recent Attorney General's opinion 2009-16, which addresses the allotment authority delegated to the Secretary of Administration in KSA 75-3722 and the suspension of the statutory obligation of the State of Kansas to reimburse the Health Care Stabilization Fund pursuant to relevant sections of the Health Care Provider Insurance Availability Act (Attachment 3). Ms. Calderwood noted that Mr. Wheelen would further comment on this matter. Additionally, it was noted that the FY 2009 and FY 2010 Subcommittee reports (Attachment 4) were included. The Committee could review the recommendations of the budget and subcommittee process. Finally, Ms. Calderwood noted monitoring of activities in other states, particularly with Joint Underwriting Association (JUA) funds and health care provider surcharges or funds. One state that was highlighted was the State of New Hampshire, specifically, the use of JUA funds as a solution to the state budget crisis and the pending litigation in the matter (Attachment 5).

Chairperson Bond next called on Chip Wheelen, Executive Director, Health Care Stabilization Fund, to begin an overview of the 2008-2009 activities of the Health Care Stabilization Fund Board of Governors, as well an update of the 2009 Legislative Session (Attachment 6). Mr. Wheelen began his report, noting the history of the Fund and the features of the Act, namely, the requirement for health care providers to purchase professional liability insurance from either commercial companies or the Availability Plan. It was noted by Mr. Wheelen that there are some health care providers (estimated at over 500) who cannot purchase professional liability insurance from a commercial company, and instead participate in the Availability Plan. It was not yet known if the Plan, for this year, will have a favorable experience (surplus income compared to losses and expenses). Mr. Wheelen then highlighted the Board's statutory report (as required by KSA 40-3403(b)) for FY 2009. Among the highlights, surcharge revenue collections amounted to $24,513,975, with the lowest surcharge rate of $50 (chiropractor, first year of Kansas practice, who selected the lowest coverage option) and the highest surcharge rate of $15,469 (neurosurgeon, five or more years of Fund liability exposure, who selected the highest coverage option). There were 27 medical malpractice cases involving 43 Kansas health care providers decided as a result of a jury trial. Seventy-two cases involving 81 claims were settled resulting in HCSF obligations amounting to $23,867,284 (average compensation per claim was $294,658). These amounts are in addition to the compensation agreed to by primary insurers, the report noted. Due to past and future periodic payment of compensation, the amounts previously reported were not necessarily paid during FY 2009; instead, the report indicated, the total claims paid during the fiscal year amounted to $26,411,640. Of this reported amount, a payment of $1,175,000 was paid to claimants on behalf of insurance companies that reimbursed the Fund for these payments. The actual net claims paid during FY 2009, therefore, totaled $25,236,640. Mr. Wheelen concluded the statutory report stating that the preliminary financial report as of June 30, 2009 indicated assets amounting to $219,265,889, and liabilities amounting to $226,173,489.

Committee members commented on the Missouri modification factor, citing Mr. Wheelen's example of the Kansas resident neurosurgeon (25 percent modification, total premium surcharge of $19,336). A Committee member also questioned when the modification factor would apply and whether the factor was tied to both the license (Kansas or Missouri) and practice status (active or inactive).

Mr. Wheelen then commented on self-insured health care providers, noting that KSA 40-3414 allows certain health care providers to self insure, as well as requiring certain state facilities for veterans and the faculty and residents of the University of Kansas Medical Center and its affiliates to be self insured. Mr. Wheelen noted the successful relationship with the University of Kansas Medical Center (KUMC) over the past 20 years and indicated that, normally, the Board of Governors serves as a third party administrator and is periodically reimbursed by the state for claims paid on behalf of KUMC (both Kansas City and Wichita). Average annual expenditures, Mr. Wheelen reported, have been $2,645,978 ($1,456,465-faculty/$1,189,530-residents). Mr. Wheelen then noted that in February 2009 and again, in July 2009, the Secretary of Administration instituted State General Fund allotments, which discontinued reimbursements to the Health Care Stabilization Fund for the liability claims and related expenses paid on behalf of KUMC residents and faculty. Mr. Wheelen noted the Attorney General's opinion, indicating that the opinion endorses authority for the allotments. Mr. Wheelen then spoke to the ethical obligation and statutory duty for the state to pay those claims. In FY 2009, he continued, $2,919,600 was "lost" (Stabilization Fund-paid claims and expenses not reimbursed by the State General Fund). Mr. Wheelen stated that this loss was significant to the Fund's current budget and it is not known whether the $2.9 million will be carried forward during FY 2010 (as an asset) or written off (as an uncollectible account).

A Committee member then inquired if Mr. Wheelen could translate this loss in terms of the annual surcharge rates for each provider. Mr. Wheelen replied that the effect is huge for a large medical center, while there is not much of an impact on a family provider. He stated the current projection for FY 2011 surcharge is a 12 percent increase.

Rita Noll, Chief Attorney and Deputy Director, was then recognized to address the FY 2009 medical professional liability experience based on all claims resolved in FY 2009, including judgments and settlements. Ms. Noll began her presentation by noting jury verdicts. Of the 27 medical malpractice cases that were tried before juries during FY 2009, 21 cases were tried before juries in Kansas courts and six cases involving Kansas health care providers were tried before juries in Missouri. The largest number of cases, seven, was tried in Sedgwick County, while six were tried in Jackson County, Missouri.

A Committee member asked about what happens in Missouri cases. Ms. Noll stated that Kansas resident health care providers practicing in Missouri are paying the modification factor (25 percent). If a doctor is a Missouri licensed practitioner, private insurance is covering the claim/expense. The Chairperson noted when Missouri law would be applicable for practitioners.

A Committee member also inquired about a scenario where a health care provider lives in Kansas (is not licensed to practice in Kansas) and practices only in Missouri; Ms. Noll responded that the practitioner would be covered under private insurance only.

Russ Sutter, Actuary to the Fund, Towers Perrin, was recognized and spoke to the history of the modification, noting that the Missouri surcharge was 20 percent in 2001 and raised to 25 percent in 2008. This level, he continued, has been fairly adequate to the claims and expenses.

Ms. Noll's comments also indicated that of the 27 cases tried, 20 resulted in complete defense verdicts; plaintiffs won verdicts in five cases, one case resulted in a "split" verdict, and one case ended in mistrial. Ms. Noll's testimony included a nine-year history of total cases, defense verdicts, plaintiff verdicts, split verdicts, and mistrials.

Ms. Noll then highlighted the claims settled by the Fund, indicating that during FY 2009, 81 claims in 72 cases were solved involving HCSF monies. Settlement amounts for the fiscal year totaled $24,867,284. The FY 2008 total was $17,352,500 to settle 65 claims in 57 cases. Ms. Noll then commented that the number of claims is up, but within the range of what was experienced earlier this decade. One concern, she noted, was the number of claims (individual settlements) for amounts greater than $500,000, 20 in FY 2009 and 13 in FY 2008. The Fund is anticipating a rise in the number of claims over the next few years, given the current economic situation. The figures presented do not include settlement contributions by primary or excess insurance carriers. Ms. Noll then noted that HCSF individual claim settlement contributions during FY 2009 ranged from a low of $3,000 to a high of $800,000. Of the 81 claims involving Fund moneys, the Fund provided primary coverage for inactive health care providers in 20 claims. The Fund received tenders of primary insurance carriers' policy limits in 58 claims (in addition to the $23.87 million incurred by the Fund – primary insurance carriers contributed $11.47 million to the settlement of those claims). Ms. Noll's report also included FY 1995 to FY 2009 settlement contributions by primary carriers, the HCSF, and excess carriers; claims settled by primary carriers (FY 2000-FY 2009); a report of HCSF total settlements and verdict amounts, as well as the new cases opened, for FY 1977 to FY 2009; and new cases by fiscal year (FY 1977-FY 2009). The Fund was notified of 310 new cases during FY 2009.

The Chief Attorney next addressed the self-insurance programs and reimbursements for the University of Kansas Foundations and Faculty and residents. Ms. Noll first highlighted the FY 2009 KU Foundations and Faculty and University of Kansas Medical Center (KUMC) and Wichita Center for Graduate Medical Education (WCGME) program costs that were not reimbursed from the State General Fund – $2,190,724.52 (KU Foundations and Faculty) and $728,875.79 (KUMC and WCGME residents) – a total of $2,919,600.31 was not reimbursed to the Fund in FY 2009. Ms. Noll noted that there had been, prior to January 2009, a reimbursement from the SGF for $83,616.87 for the KUMC and WCGME residents program costs. Ms. Noll noted the expenditures by fiscal year for the Foundations and Faculty and KU and WCGME residents (FY 1990-FY 2009 reported). She addressed the FY 2008 program costs and Fund expenditures, noting that there was an experience of lower claims in FY 2008 and it was anticipated that there would be an increase in FY 2009 (number of residents and faculty named in lawsuits and large number of claims to resolution). Ms. Noll indicated there was one settlement for KUMC residents, and no settlements for WCGME residents (FY 2009). Monies for excess coverage (paid by the Fund for excess coverage claims) totaled $4,062,500 – nine settlements [$800,000 for KUMC residents; $3,262,500 for Faculty, Foundations].

The Chairperson then inquired about the cost to cover only residents for medical malpractice per year ($1 million) and whether the Fund representatives had approached the Governor on this portion of the larger issue of reimbursement. The Fund representatives indicated they had not. The Committee then discussed the allotment and appealing for all or certain portions of the reimbursement moneys (residents, faculty, or both).

A Committee member inquired about faculty members making contributions for medical malpractice coverage. It was noted that there is a Private Practice Reserve Fund ($500,000 placed in the Fund to cover the "pool").

Dr. Marcia Nielsen, Vice-Chancellor of Public Affairs, KUMC, was recognized by the Chairperson. Dr. Nielsen provided the Committee with a statistical report on contributions (KUMC): primary coverage ($500,000) and separately, $856,895 (faculty/ physician foundations) and

$362,000 (university residents), for a total of $1.2 million. [These are the amounts paid for the $800,000 excess coverage via the Health Care Stabilization Fund.]

Jerry Slaughter, Executive Director, Kansas Medical Society (KMS), was recognized by the Chairperson. He noted that the faculty members pay the surcharge that is applicable to their specialty.

The Chairperson next invited Mr. Sutter to provide an actuarial report. Mr. Sutter began his presentation noting that as the Fund considered the FY 2010 surcharge, it was necessary to consider two scenarios (A and B). It was necessary, he continued, to include external factors affecting the Fund, namely, the economy and the February 2009 Governor's allotment. Scenario A for the fiscal years ending June 30, 2009 and June 30, 2010 assumes full reimbursement for KU/WCGME; whereas Scenario B assumes only limited reimbursement. Mr. Sutter also noted that, for those discounted estimates, a lower yield was being assumed – the previous year had used 3.5 percent; now the estimates rely on a 2.0 percent interest rate (present value).

- **Scenario A** (full reimbursement forecast) indicated that as of June 30, 2009, the Fund held assets of $220.1 million and liabilities (discounted) of $187.0 million, with $33.1 million in unassigned reserves. Projections for June 2010 include $221.9 million in assets and liabilities (discounted) of $191.6 million, with $30.3 million in reserve.

- **Scenario B** (partial reimbursement forecast, assuming 80 percent reduction) indicated that as of June 30, 2009, the Fund held assets of $219.1 million and liabilities (discounted) of $195.1 million, with $24.0 million in unassigned reserves. The projection for June 2010 would be $218.7 million in assets and $200.0 million (discounted) in liabilities, with $18.7 million in reserve.

Mr. Sutter noted that the Board of Governors was encouraged to consider an increase in FY 2010 surcharge rates (5 to 10 percent), given the likelihood of a drop in the return on investments, the potential for a drop in reimbursements (State General Fund), and Towers Perrin's understanding of the Board's goals. The Board of Governors elected to raise rates for FY 2010 as follows: Classes 1, 6, 12, 13, 14: no change; Classes 2, 5: +3.0 percent; Classes 3, 4, 7, 8, 9: +5.0 percent; Classes 10, 11: +7.0 percent; and Classes 15-21: +3 points. The overall impact of these changes was an estimated +5.3 percent. Mr. Sutter then commented on how a projected overall 12 percent surcharge [for FY 2011] increase would affect the classes – increased annual payment of $120 (Class 1) to $1,800 (neurosurgeon).

Mr. Sutter then reviewed the Fund's liabilities, as of June 30, 2009, beginning with tail (coverage) liabilities for inactive providers. Mr. Sutter noted undiscounted ($80.2 million) and discounted (assuming 2.0 percent, present value – $60.4 million) liabilities projected. A tail coverage claim, he noted, may not be paid out until 2040. "Free tail coverage," the actuary continued, is a very real benefit of the Fund.

A Committee member then inquired about how a provider with less than five years (Fund participation) pays. Mr. Sutter answered that the provider pays by a percentage in his or her annual surcharge. There was a brief discussion on payments for tail coverage for providers who move from one state to another (covering their previous practice/claims experience).

Mr. Slaughter indicated that the assessment of “free” as it applies to tail coverage required clarification – physicians and hospitals pay for this coverage on an accrual basis, regardless of when the liabilities arise.

Mr. Sutter responded, indicating that “prepaid” could define the coverage more accurately.

Mr. Sutter then offered observations about changes to the forecast for the Fund. He noted three influential factors: loss reserves and number of open claims increased during FY 2008; reported losses on active provider claims for FY 1997-FY 2006 dropped during the year (used to predict future claims); and the average lag between incident date and report date has decreased [cited as a favorable development, leads to reduction in tail liabilities]. Mr. Sutter also noted another observation, Class 15 (Availability Plan) has decreased (FY 2006-FY 2008) as companies, including Kansas Medical Mutual Insurance Company (KaMMCO), are more willing to write policies, and also, interest income has been holding up better than anticipated ($9.7 million in FY 2008 and $5.0 million in the first half of FY 2009). Finally, Mr. Sutter highlighted the findings by provider class and potential impacts on the Fund, including court cases that could affect the cap on non-economic damages in Kansas (a “significant increase”).

Chairperson Bond again recognized Mr. Wheelen for further remarks, including an update on issues from the 2009 Session and any requests or recommendations. Mr. Wheelen introduced two members of his staff and then provided an update on the Fund’s technology improvement plans. He noted his testimony before the Committee at its last meeting regarding the technology plans and indicated that $251,834, as predicted, was “taken” to the SGF, with a total funding loss of $285,000. Mr. Wheelen also noted the difficulty in obtaining cost estimate from vendors selling information systems and software designed for professional liability systems. The Fund then sought estimates from two companies that offer management information systems specifically designed for patient compensation insurance (workers’ comp and medical professional liability). One of those companies has already installed its enterprise management information system at two commercial insurance companies that sell coverage to about half of the practicing health care providers in Kansas, it was noted. That company estimated an installation cost of $600,000 to $750,000 for the Board of Governors’ system; the installation would accommodate the electronic transfer of information between the HCSF and the two major insurers. Another company is in the process of installing a management information system for medical malpractice insurers and has provided an estimate that the first year costs for the Fund to install a similar system would be $751,548. This company’s solution would likely involve the installation of a web portal for electronic communication of information, Mr. Wheelen indicated. He then stated that given these estimates and continuing need for technology improvements, the Board of Governors included $800,000 in its FY 2011 budget request. Of that amount, approximately $50,000 is for the routine replacement of computers and other hardware, as well as the cost of seminars, workshops, and other training opportunities for staff. Mr. Wheelen stated that the entire requested amount may not be spent and an RFP would be submitted.

Mr. Wheelen then addressed the relationship of the State of Kansas and the self-insurance arrangement between the Fund and the State. He noted that during the 2009 Session, the Legislature, on two separate occasions, transferred moneys from the Health Care Stabilization Fund to the State General Fund, despite the recommendations of the Oversight Committee and regardless of objections of the Board of Governors. As a result, Mr. Wheelen’s testimony continued, the Stabilization Fund is no longer used exclusively for those purposes expressed in the Health Care Provider Insurance Availability Act. This change in the fiduciary relationship has generated a great deal of discussion among members of the Board with concern for the actuarial soundness of the Fund and future budget discussions, Mr. Wheelen indicated, further noting the statutory requirement for the Board of Governors to “make such recommendations to the legislature as may be appropriate to ensure the viability of the fund." In response to the Board concerns about the fiduciary relationship, Mr. Wheelen asked the Committee to consider the following request:

> The Legislature should immediately enact legislation that would prevent any future allotment orders that could discontinue or otherwise interfere with reimbursements to the HCSF for claims and expenses paid on behalf of residents and faculty at KU Medical Center. In addition, when the State of Kansas recovers from the current budget crisis, the Legislature should reimburse the Stabilization Fund for FY 2009 and FY 2010 claims and expenses paid on behalf of residents and faculty at KU Medical Center, and should also reimburse $285,074 to the Stabilization Fund for the two transfers taken from the Fund in FY 2009.

Mr. Wheelen also noted the use of the term "suspend" in the Attorney General's opinion and asked the Committee to consider whether the term, as it applied to the allotment authority, would mean delayed, stopped, or restored. The Executive Director then noted six specific requests for the Oversight Committee to consider (fiduciary relationship; funds transfers only in purposes expressed in the Health Care Provider Insurance Availability Act; legislation that would exempt reimbursements from the Fund from allotment authority delegated to the Secretary of Administration; reimbursement to the Fund for self-insurance program claims, FY 2009 and FY 2010; reimbursement in the amount fo $285,074 for the two transfers to the SGF in FY 2009; and the request for expenditure authority in FY 2011 for technology improvements and professional development).

The Committee members briefly discussed the allotment process and other funding sources subject to the allotment authority.

A Committee member inquired about the possible reduction in staff (data entry) that could be afforded by the technology systems upgrade.

The Chairperson called for a brief recess.

After, the recess, Chairperson Bond recognized Kurt Scott, Chief Operations Officer for KaMMCO, and Jerry Slaughter to comment on the status of the medical malpractice market in Kansas. Mr. Scott testified that there are more carriers in the market and overall, primary rates are down. He also noted that the number of claims for KaMMCO insureds is dramatically down. The number of claims filed, Mr. Scott continued, is a major cost driver.

The Chairperson then inquired of the market share for KaMMCO. Mr. Scott stated that KaMMCO insures approximately 2,550 physicians – just over 50 percent of actively practicing providers and 75 hospitals, which he characterized as mostly smaller, rural hospitals.

Jerry Slaughter began his comments, noting the two statutory questions before the Committee. Mr. Slaughter expressed support for the continuation of the Oversight Committee, as a vital link to the Legislature's understanding of the role the Fund plays, and for the actuarial report provided by Mr. Sutter. He then talked about the legal environment in Kansas and the potential impact on medical malpractice coverage in Kansas. Mr. Slaughter noted the case, *Miller v. Johnson*, had been argued before the Kansas Supreme Court on October 29. The decision has tremendous implications on the medical malpractice climate in Kansas [a constitutional challenge to the current $250,000 cap on non-economic damages for personal injury cases]. Mr. Slaughter indicated if the cap is not upheld, a legislative remedy would be needed [Constitutional amendment]. Mr. Slaughter also noted the Zayat case before the Court of Appeals [*McGinnes v. Zayat*] that also tests the law governing the cap on non-economic damages. Mr. Slaughter then commented on the issue of the allotments, stating the belief that the Fund was to be held in Trust for specified purposes that were written into law and enumerated in the Fund statutes. Mr. Slaughter noted that the Fund moneys subject to the allotment were not appropriations, but instead, transfers. Mr. Slaughter stated a concern for any future allotments, given the current legal environment. He indicated that the Medical Society, along with the Kansas Hospital Association, intended to ask the Legislature to review KSA 75-3722 and the allotment structure.

A Committee member then inquired about the allotments and moneys transferred from special revenue funds. Mr. Slaughter indicated that some agencies are "swept" and while the net impact is the same (loss of revenue), an allotment order prevents the payment of funds to an agency.

The Chairperson then asked if KMS was supportive of the six requests from the Board of Governors and specifically, the suggested amendment to the allotment statute. Mr. Slaughter stated the Society is generally supportive of the six requests, but indicated that the resolution of the allotment issue is the responsibility of the provider community.

A Committee member commented that the conversation was helpful and protection of the Fund was imperative. Mr. Slaughter indicated that KMS agrees, noting the allotments send a bad message to the provider community that is making responsible payments. Mr. Slaughter concluded his remarks indicating support for the Fund request regarding the training and research for the KU programs.

The Chairperson then welcomed Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine (KAOM) (<u>Attachment 7</u>). Mr. Williams testified that KAOM is supportive of the Board of Governors' position to restore the fiduciary relationship between the State of Kansas and the Health Care Stabilization Fund and to restore the actuarial integrity of the Fund by enacting legislation to prevent any future allotment orders which could interfere with reimbursements to the Fund. Mr. Williams also commented that the issue of allotments and the stability of the Fund also impact patients (costs) and the accessibility to providers.

Following the formal presentations, the Presiding Officer asked if anyone had any suggested changes to the Health Care Provider Insurance Availability Act.

The Committee briefly discussed the allotment statute (KSA 75-3722) and whether the HCPIAA should be amended. No amendments were offered.

The Chairperson then invited Committee discussion on recommendations for the Committee report. The discussion began with the two statutory questions posed to the Oversight Committee. The Committee first considered the necessity of contracting for an independent actuarial review. *It was moved by Rep. Morrison and seconded by Mr. Conrade that the Committee not request an independent actuarial review. <u>The motion carried</u>.*

The Committee then considered its role in the legislative oversight of the Health Care Stabilization Fund. *It was moved by Representative Morrison and seconded by Representative Phelps that the Committee oversight be continued.*

The Committee then discussed the necessity for communicating to each caucus the importance of the Fund and its protection from certain expenditures, including the allotments.

The Committee discussed the timing of its report and publication to the Legislature. The Committee and staff reviewed publication timing of the report and appropriate legislative committees that could receive and review the report. *It was moved by Senator Vicki Schmidt and seconded by Ms. Schwab to direct the Committee report to the Insurance, Budget, and Health standing Committees and to the House Speaker, Senate President, Senate Minority Leader, and House Minority Leader.* *The motion carried.* Oversight Committee members indicated additional explanations before the Committee and information about the Fund history are appreciated and helpful.

The Committee reviewed the six recommendations submitted by Mr. Wheelen. Mr. Wheelen clarified that the allotment was not "on the Fund," but rather, on the "reimbursements" (to the Fund from the State General Fund). After discussion about the requests and clarification that the Oversight Committee would not introduce legislation (would be done by the health care provider community) and the language regarding "Funds held in trust" be continued in the report, *the motion was made by Representative Morrison and seconded by Mr. Conrade to continue the language about the Funds held in trust and make the recommendations as stated in items 1-6 in the Board of Governors' staff testimony. The motion carried.*

The six recommendations are as follows with headings added for clarification purposes:

- *Fiduciary Relationship*. The Legislature should protect the taxpayers of Kansas from Health Care Stabilization Fund [HCSF] liabilities by restoring the fiduciary relationship between the state and the HCSF.

- *Transfer of Funds, Expressed Purposes.* The Legislature should never transfer funds from the HCSF for any purpose other than those expressed in the Health Care Provider Insurance Availability Act. [see also, language re: Funds held in trust]

- *Allotment Authority, Reimbursements to the Fund.* The Legislature should immediately enact legislation that exempts reimbursements from the State of Kansas to the Health Care Stabilization Fund from the allotment authority delegated to the Secretary of Administration. *The Committee notes that the health care providers, rather than this Committee or the Fund Board of Governors, is to request such legislation*.

- *Reimbursement for FY 2009, FY 2010 Expenditures.* The Legislature should make arrangements for the eventual reimbursement to the HCSF those funds that should have been reimbursed by the state for claims paid by the HCSF on behalf of residents and faculty at [the] KU Medical Center during fiscal years 2009 and 2010.

- *Fund Transfers to the State General Fund, Reimbursement of.* The Legislature should make arrangements for eventual reimbursement to the HCSF [in] the amount of $285,074 for the two transfers to the State General Fund in FY 2009.

- *Technology Improvements, Professional Development.* The Legislature should grant the HCSF Board of Governors' FY 2011 request for expenditure authority in the amount of $800,000 for technology improvements and professional development.

The language to be continued from the prior year Committee report:

Fund To Be Held In Trust. The Committee recommends the continuing 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.

There being no further business to come before the Committee, the meeting was adjourned at 11:35 a.m.

Prepared by Melissa Calderwood
Edited by Dylan Dear

Approved by Committee on:

February 1, 2010
(Date)