

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 1, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Buntten, Committee Secretary

Conferees appearing before the committee:

Tom Bell, Vice President/Legal Counsel, Kansas Hospital Association
Randy Peterson, President/CEO, Salina Regional Health Center
Jerry Slaughter, Executive Director, Kansas Medical Society
Kathy Greenlee, General Counsel, Kansas Insurance Department

Others attending: See attached list.

Post Audit Report

The Chair called the Committee's attention to a Legislative Post Audit Report entitled, *Employee Credits Against Premium Taxes: Reviewing Issues Related to Those Credits*, which will be presented to members of the Committee at a later meeting.

Hearing on HB 2115 - Kansas life and health insurance guaranty association, claim reimbursement

Tom Bell, Vice President/Legal Counsel, Kansas Hospital Association, testified before the Committee in support of **HB 2115** which clarifies the application of the Kansas Life and Health Insurance Guaranty Act. The bill directs the Kansas Life and Health Insurance Guaranty Association to pay any and all persons who, as a provider, may have claims as a result of a member insurer being found insolvent between March 1, 1999 and June 1, 1999. This issue arose in conjunction with the liquidation of Heartland Health, Inc., which was declared insolvent by the Insurance Commissioner. Since Heartland was a member in good standing of the Guaranty Association, a request was made to pay these claims, but the claims of network providers were denied. Mr. Bell pointed out that the bill is necessary to clarify legislative intent and correct a situation that has harmed many Kansas health care providers. (Attachment 1)

Randy Peterson, President/CEO, Salina Regional Health Center, testified in support of the bill, and gave a background history of his hospital's association with Heartland. Mr. Peterson requested that the Committee clarify the intent of the Guaranty Association Act, and pointed out that the Guaranty Association is treating the non-network providers and network providers differently. The Guaranty Association has paid claims to providers who did not contract with Heartland Health. (Attachment 2) During Committee discussion Mr. Peterson noted that small rural hospitals who had contracted with Heartland Health are especially hurt by non-payment from the Guaranty Association, and Salina Regional Health Center is a substantial creditor at over \$400,000.

Jerry Slaughter, Executive Director, Kansas Medical Society, expressed his support for **HB 2115** and noted that the purpose of the bill is two-fold: (1) to clarify that the legislature intended that the act cover the claims of all health care providers who provided covered services to an insurance company's policyholders; and (2) to reverse a decision by the Guaranty Association to not pay the valid claims of contracted providers in the 1999 liquidation of Heartland Health, Inc., a matter which remains open and unresolved. Mr. Slaughter pointed out that the Guaranty Association's refusal to cover the in-network provider claims is unprecedented, and apparently was based on a provision in the contract between in-network providers and the insurance company. That provision is called a "hold harmless" clause, and they are found in virtually every contract between the insurance company and the contracting health care providers. They are designed to make sure that providers look to the insurance company for payment

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for services rendered to policyholders, and to protect the policyholder from being billed for services which the insurance company is obligated to cover on their behalf. Mr. Slaughter noted that hold harmless clauses are not intended to invalidate or waive any rights the provider may have under the Guaranty Act to have their claims paid. In this instance, however, the Guaranty Association made just such an interpretation. (Attachment 3)

Kathy Greenlee, General Counsel, Kansas Insurance Department, expressed her support for **HB 2115** and noted that the Heartland insolvency presents a unique situation that was not contemplated by the legislature when it adopted the Guaranty Association Act. Ms. Greenlee explained to the Committee the actions taken by the District Court that affirmed the Guaranty Association's decision to deny network provider claims as it relates to the presence of a hold harmless provision in the Heartland provider contracts. By signing these contracts, health insurers agree not to bill consumers if the health insurer becomes insolvent. Ms. Greenlee felt that Heartland providers did not intend to give up their right to receive payment from the guaranty association in the event Heartland became insolvent. She pointed out that the bill would clarify that all providers are to be treated the same regardless of whether or not they signed a hold harmless agreement, and that the bill does clarify legislative intent. (Attachment 4)

There were no opponents to the bill.

During Committee discussion the Chair noted that the bill passed the House of Representatives by a vote of 121-0. The Chair further noted that it was clear that due to the action of the Guaranty Association, this bill was the best means available to the legislature to clarify its intent that the current Guaranty Association Act does in fact require the payment of claims of all health care providers, even those where hold harmless clauses were in effect, including the Heartland Health insolvency, which is still ongoing. Several members of the Committee expressed concern that the action of the Guaranty Association in the Heartland case was contrary to the intent of the law and unfair to health care providers who provided services to policyholders.

Senator Feleciano made a motion that the Committee recommend **HB 2115** favorable for passage, seconded by Senator Barnett. The motion carried.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for March 6, 2001.