Approved: 2/24/93
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:09 a.m. on February 23, 1993 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Robert Epps, SRS
Charles Walker, SRS
Richard Brock, Insurance Department
William Sneed, Health Insurance Assn. of America
Jerry Slaughter, Kansas Medical Society
Tom Bell, Kansas Hospital Association
Steve Dickson, Kansas Chiropractic Association
Larry Buening, Board of Healing Arts

Others attending: See attached list

Senator Lawrence moved to approve the minutes of the meeting of February 22, 1993 as submitted. The motion was seconded by Senator Praeger. The motion carried.

The hearing on **SB 321** was opened. Robert Epps, SRS, appeared before the committee to testify as a proponent of this legislation. (Attachment #1.) Mr. Epps explained that this legislation is intended to prevent the loss of matching federal funds and provide equality of access to insurance for those persons who temporarily find themselves dependent on state assistance. The bill would make Medicaid the payer of last resort. Mr. Epps, assisted by Mr. Brock, explained and clarified the intent of each of the amendments .

Bill Sneed, HIAA, appeared before the committee to request that the bill be amended to remove the language in section 8, (7) (d). (Attachment #2.) In response to Senator Bond's question regarding whether this language conflicts with federal law, Mr. Sneed advised that the federal government does not allow having a Medicaid card as grounds for being negatively underwritten. Mr. Walker of the SRS advised that the reason for this particular amendment was experience SRS has had with complaints from clients who have not been able to find medical insurance because of having a Medicaid card. Senator Bond observed that under the provisions of **HB 2511** passed last session, these exclusions would not apply. There being no further questions and no other conferees, the hearing on **SB 321** was closed.

The hearing on **SCR 1605** was opened. Senator Bond explained that this resolution arose from the Republican Health Care Task Force, the issue being concerns with the lack of uniformity, standards, and accountability with utilization review for health insurance carriers. The resolution requests the Insurance Commissioner to study methods of establishing standardization and accountability of utilization review of health care services and make recommendations to the legislature. Dick Brock, Insurance Department, appeared as a proponent of this resolution. (Attachment #3.) However, Mr. Brock requested that the language on line 38 be amended from "...would establish..." to "...*may* establish..." to give the Commissioner more flexibility.

Jerry Slaughter, Kansas Medical Society, appeared as a proponent of this legislation and testified about problems experienced with unaccountable utilization review of health care services. (Attachment #4.)

Tom Bell, Kansas Hospital Association, also appeared as a proponent of this resolution. (Attachment #5.)

Steve Dickson, Kansas Chiropractic Association, offered brief testimony in favor of this resolution, stating that chiropractors also are faced with the same problems experienced by other health care providers, and requested that the legislature not restrict activities of others dealing with this problem while the study is undertaken. In response to Senator Steffes' question about how utilization reviewers would be forced to conform, Senator Bond stated that the Insurance Commissioner's office has the enforcement power.

William Sneed, HIAA, also appeared to testify as a proponent of the resolution, stating that his association represents multiple insurers, all of whom are in favor of this resolution. (Attachment #6.)

Larry Buening, Board of Healing Arts, briefly expressed their concern that the actions of utilization reviewers can affect the level of care.

There being no further questions and no other conferees, the hearing on **SCR 1605** was closed. The chairman requested the committee's input on whether to broaden the resolution to include casualty or restrict it to health care and whether to amend the language to give the Insurance Commissioner flexibility by changing "would" to "may" on line 38. Senator Petty stated, and the committee agreed, that she did not feel casualty should be included in this resolution. Senator Corbin made a motion to amend line 38 as requested by Mr. Brock. Senator Steffes seconded the motion. The motion carried.

Senator Praeger made a motion to move the **SCR 1605** favorably as amended. The motion was seconded by Senator Steffes. The motion carried.

Senator Steffes made a motion to amend **SB 321** by striking section 8. The motion was seconded by Senator Lawrence. The motion carried. Senator Petty was recorded as casting a no vote.

Senator Steffes made a motion to move **SB 321** favorably as amended. The motion was seconded by Senator Lawrence. The motion carried.

The committee adjourned at 9:52 a.m.

The next meeting is scheduled for February 24, 1993.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 2/23/93

NAME	ADDRESS	ORGANIZATION
Dick Brock	Topeka	Ins Dept
FRANK THACHER	TOPEKA	AARP-CCTT
Sue Bond	Overland Park	
BILL SNEED	TOPEKA	KEAA
Robert Epps	Topeka	SRS
Charles Walker	Topeka	SRS-DMS
Jennifer Hamlon	Emporia	Sprint
David A Heaney	Topeka	E.D.S.
Joe Tanzini	Topeka	KCA
Alan Winkler	"	KCA

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

Senate Financial Institutions and Insurance Committee
Testimony on Senate Bill 321

February 23, 1993

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SRS Mission Statement
"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

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Mr. Chairman, Members of the Committee, thank you for this opportunity to address you in support of Senate Bill 321. The amendments contained in this bill are needed to protect the taxpayers of Kansas from the loss of federal matching funds for the operation of the Kansas Medicaid Program. This bill also offers equality of access to insurance to those individuals and families who find themselves temporarily dependent on their fellow Kansans for assistance.

The Medicaid (Medical Assistance) Program was created in 1965 by enactment of Title XIX of the Social Security Act (the Act). From it's inception, Congressional intent is clear that Medicaid is to pay for the cost of care for which Medicaid eligibles would have to pay themselves if Medicaid were not available. To further clarify the intent of Congress, the Social Security Act was amended in 1967 (90-248) to provide that Medicaid only pay after the liability of third parties to pay for medical care has been exhausted.

In more recent years, Congress found that not all states were responsive in assuring the last payer status of the Medicaid Program. To further emphasize the intent of Congress, the Medicare and Medicaid Antifraud and Abuse Amendments were passed in 1977. Contained in those amendments was a provision that denies Federal Financial Participation for expenses which could have been paid for under private insurance contracts except for a provision in the contract limiting or excluding payment due to eligibility for or receipt of Medicaid benefits. It was felt that the provision would provide incentive to States to modify their insurance laws.

In the administration of the Medicaid Program, SRS staff have encountered and continue to encounter private insurance contracts which contain provisions that limit the insurance companies' liability to the amount not covered by Medicaid. These provisions are allowed by current State insurance laws. The current laws also allow the denial of coverage based solely on the insured's eligibility for a Medicaid card. A recent example of this was a divorced father ordered by the court to assume the costs of his small son's medical care. The father, working through an independent insurance agency, was unable to find a company willing to provide health insurance unless the boy's mother waived her rights to Medical Assistance for the child. This bill would prevent this discriminatory practice.

The need for this legislation is real as it benefits not only SRS clients but all Kansans. The Department of Social and Rehabilitation Services encourages the passage of Senate Bill 321.

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Attachment #1

MEMORANDUM

TO: The Honorable Dick Bond
Chairman, Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed
Legislative Counsel
Health Insurance Association of America

DATE: February 23, 1993

RE: Senate Bill 321

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the Health Insurance Association of America ("HIAA"). The HIAA is a health insurance trade association consisting of over 300 insurance companies that write over 80% of the health insurance in the United States today. Please accept this memorandum as our testimony in regard to S.B. 321.

Initially, my client wishes to state that we have no problem with the concept of Medicaid coverage being designated as coverage to be considered the payor of last resort. It is our position that under federal law Medicaid has that status today. Thus, the amendments found within S.B. 321 specifically enumerating that position seem to coincide with current federal law.

However, the amendment found on page 28, lines 14-18, does appear broad in nature and may conflict with current federal law. The amendment found on page 28 is an amendment to K.S.A. 40-2404, which is commonly referred to as the Unfair Trade Practices Act. Inasmuch as we are uncertain as to what intent the authors have for this amendment, it is difficult for us to try to ascertain why such an amendment is needed.

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attachment #2

However, it would appear to mandate insurance companies to offer insurance to Medicaid individuals notwithstanding the fact that an insurance company may or may not write the type of insurance which the original intent of the bill is attempting to encompass.

Thus, it would be our recommendation that the amendment found on page 28 be stricken, thus allowing the payor of last resort intent to be maintained throughout the various other amendments found in the bill.

I appreciate the opportunity to present these comments, and if you have any additional questions or comments, please feel free to contact me.

Respectfully submitted,

William W. Sneed

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Testimony on
Senate Concurrent Resolution No. 1605
by
Dick Brock
Kansas Insurance Department

The subject of utilization review standards, qualifications, procedures and other aspects of this activity have been considered by the legislature in previous years. Therefore, it is not a new topic. However, the attention has always been primarily focused on the utilization review that is used by health care financing mechanisms to promote more efficient use of health care services and thereby produce more cost effective treatment.

However, the same technique is used by casualty insurance companies in conjunction with policy provisions that involve the payment of medical expenses. The medical payments coverage that is included as a supplement to liability insurance, the medical payments component of the personal injury protection benefits under the Kansas Automobile Injury Reparations Act (No-Fault Law) and the medical benefits portion of workers' compensation are examples and it is becoming increasingly common for insurers providing these types of coverage to utilize independent firms for opinions as to the medical necessity of the treatment for which a claim is made. There is some debate as to whether these determinations also involve findings as to an appropriate level of payment. At this point, however, this is a "yes you do" -- "no we don't" type of argument and I don't really know which side is the closest to being correct. In any event, it is also from this perspective that the Department has an interest in SCR No. 1605.

We are, of course, aware of the fact that a 1990 interim committee looked at the issue of utilization review organizations and opted to allow a private, cooperative, initiative of utilization review organizations themselves proceed with the development of a voluntary standardization

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Attachment #3

program before giving any further consideration to the imposition of statutory requirements or restrictions.

During this past interim, the Joint Committee on Health Care Decisions for the 1990s reviewed the progress of this private initiative and found the progress to be satisfactory. As a result, the Joint Committee recommended that no further action to create a state mandated regulatory system be taken. I want to reiterate, however, that, in my opinion, these past efforts and the Joint Committee's recommendation do not include consideration of utilization review activities in the broader context I have described. In addition, having followed the past legislative efforts on this subject, this broader application of utilization review is informative because it has made us aware of organizations performing these services that were not previously identified. This raises a question as to whether we know about "most" of the utilization review organizations whose decisions affect Kansas claimants and policyholders or whether we only know about those who are the most prominent and those who have participated in the legislative process. Accordingly, it appears any study of the kind envisioned by the resolution should also attempt to determine with some degree of specificity the identity of organizations and individuals insurers are relying on for any kinds of insurance related utilization review functions.

The "resolution" provisions appearing in lines 35 through 41 of SCR No. 1605 appear to be broad enough to encompass this larger scope of study. Therefore, I mention this area of interest simply to inform you that any study undertaken by the Commissioner pursuant to the resolution will not be restricted to accident and sickness insurance unless we are directed to do so.

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KMS

KANSAS MEDICAL SOCIETY

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WATS 800-332-0156 FAX 913-235-5114

February 23, 1993

TO: Senate Committee on Financial Institutions and Insurance

FROM: Jerry Slaughter
Executive Director

SUBJECT: SCR 1605; Relating to Utilization Review of Health Care Services

The Kansas Medical Society appreciates the opportunity to appear in support of SCR 1605, which would ask the Insurance Commissioner to conduct a study and make recommendations which would establish uniform standards, criteria and procedures which would be applicable to utilization review organizations. We believe the establishment of uniform standards for utilization review organization activities is essential, and a task force with broad representation appears to be a workable process for developing legislative recommendations.

For several years the Kansas Medical Society has been concerned about the unregulated and widely unaccountable utilization review of health care services by some insurance companies or their contract review agencies. When utilization review organizations are not accountable for determinations they make as to the medical necessity of recommended services or procedures, the ability of the treating physician to provide the appropriate level of care can be adversely affected.

Additionally, complying with several different sets of utilization review criteria can be extremely frustrating and costly to individual health care provider's offices. It is not uncommon for a medical clinic to have to deal with dozens of health insurance plans, all of which may utilize different standards and criteria for authorizing the providing of care to one of their insureds. This results in clinics having to hire additional clerical and professional staff to deal with a maddening and complex array of utilization review requirements.

While utilization review itself is controversial, and some will argue that it may add total costs to the system instead of reducing them, it appears to be here to stay. In fact, as more and more health plans move towards a managed care concept, we expect the reliance on utilization review practices to increase, not decrease. In that context, the more we can do to promote standardized utilization review practices, involving explicit criteria and review and appeal procedures, the more efficient the systems will become, with less cost and hassle to health care providers and patients alike.

We believe the process outlined in SCR 1605 has the potential to develop specific legislative recommendations which can result in a clear, concise structure under which utilization review will be conducted in this state. We hope to participate in the study and look forward to that opportunity. We appreciate the chance to offer these comments, as you consider SCR 1605.

JS:ns

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Attachment #4

KANSAS HOSPITAL ASSOCIATION

Memorandum

Donald A. Wilson
President

February 23, 1993

TO: Senate Financial Institutions and Insurance Committee

FROM: Kansas Hospital Association

REFERENCE: SCR 1605

The Kansas Hospital Association appreciates the opportunity to present comments in support of Senate Concurrent Resolution 1605. This resolution calls upon the Commissioner of Insurance to study methods of establishing standardization and accountability of utilization review of health care services.

Utilization review is the case-by-case evaluation of the necessity, appropriateness and management of the use of health care services, procedures and facilities. Obviously, the essence of this process has been around for some time. More recently, however, utilization review has increased. This is due in large part to the emphasis on cost containment by those who purchase health care. We feel the role of utilization review and management will continue to grow.

There is no question that the increase in utilization review efforts has presented hospitals and other health care providers with a number of problems. These include the following:

Consistency - Hospitals must comply with many different utilization review criteria and definitions of "medically necessary and appropriate care." Often hospitals must work with many different private utilization review organizations, each having different standards.

Reviewer Qualifications - Because reviewers sometimes lack clinical training and expertise, hospitals are placed in the position of using staff to educate the reviewer about particular medical conditions and diagnostic and therapeutic interventions.

Confidentiality - Hospitals must protect patient confidentiality. It is sometimes difficult to obtain assurances that reviewers will do so as well, especially if the reviewer is operating via telephone.

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Attachment #5

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Costs - Obviously, utilization review requires time of the hospital staff, as well as reviewers. An inefficient and burdensome utilization review process can therefore become very costly.

Quality Concerns - Utilization reviewer's emphasis on cost containment must always be balanced with the uppermost goal of providing quality care. If this is not done, utilization review can create obvious problems for patients and additional liability for providers.

It is generally agreed that there are a number of problems that can potentially plague the utilization review process. There is even some basic agreement on what the main problems are. The question that must be answered is this -- what is the best way to deal with these problems?

We think SCR 1605 represents a good first step toward answering this question. The process outlined in the resolution certainly has the potential to make the utilization review in Kansas more efficient.

We recommend that the Commissioner's efforts make use of the same methods employed by the Kansas City Private Review Group, an organization of business, providers, insurers, and managed care plans. This group of potentially different interests actually worked together to develop a set of guidelines for private utilization review. Their expertise and experience could be very useful as the Commissioner carriers out the directions of SCR 1605.

Thank you for your consideration of our comments.

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MEMORANDUM

TO: The Honorable Dick Bond
Chairman, Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed
Legislative Counsel
Health Insurance Association of America

DATE: February 23, 1993

RE: S.C.R. 1605

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the Health Insurance Association of America ("HIAA"). The HIAA is a health insurance trade association consisting of over 300 insurance companies that write over 80% of the health insurance in the United States today. Please accept this memorandum as our testimony in regard to S.C.R. 1605.

We are supportive of the legislative review requested by S.C.R. 1605 in regard to the utilization review entities. The HIAA has promoted a model law that has been utilized in several states and we will attempt to provide that information to the Insurance Department when it convenes its review of this issue. However, we believe it is important to stress one major factor.

It is important to recognize that utilization review implemented on accident and health policies is substantially different that utilization review performed for property and casualty companies. Thus, we believe it is important to stress to the Legislature, and will do so to the Commissioner of Insurance, that any recommendation which would establish uniform standards, criteria and procedures must keep in mind that such criteria,

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standards and/or procedures may not be applicable when comparing the two different industries. Thus, we believe it is equally important to keep this in mind when attempting to develop any type of uniform standards.

On behalf of my client, I appreciate the opportunity to present these comments, and if you have any additional questions or comments, please feel free to contact me.

Respectfully submitted,

William W. Sneed

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