Approved: 2-2-93
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on January 27, 1993 in Room 526-S of the Capitol.

All members were present except: Senator Hardenburger, Excused
Senator Ramirez, Excused

Committee staff present: Norman Furse, Revisor of Statutes
Jo Ann Bunten, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee:

Gigi Felix, Executive Director, Kansas Chapter of the National Association of Social Workers
Representative Carol H. Sader
Jerry Slaughter, Executive Director, Kansas Medical Society
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Chip Wheelen, Director of Public Affairs, Kansas Medical Society

The Chair asked for Committee bill requests.

Gigi Felix, K-NASW, requested introduction of legislation amending the social work practice act (KSA 65-6302), which is intended to clear up a technical problem giving social workers the legal right to diagnose as part of their psychotherapeutic work. Senator Langworthy made a motion the Committee introduce the bill, seconded by Senator Walker. No discussion followed. The motion carried.

The Chair opened the hearing on **SB 19** - Provider referral unprofessional conduct without prior notification.

Representative Carol Sader appeared before the Committee and submitted written testimony in support of **SB 19**. The bill is the recommendation of the Joint Committee on Health Care Decisions for the 90's, which follows recommendations made by the AMA's Council on Ethical and Judicial Affairs. The bill does not ban self referral, it merely requires the physician to inform the patient of his or her significant investment interest and that such services are available elsewhere. Significant ownership interest is defined in the bill as at least 10% of the value of the health care entity to which the referral is made. **SB 19** is not intended to prevent physicians from investing in health care facilities, but simply discourages abuses and encourages cost containment in the delivery of health care services. (Attachment 1)

Representative Sader stated banning self-referrals was discussed extensively at the NCSL meetings she attended this summer. Florida is the only state that has a bill dealing with this issue, however, no information was available whether it was working. It was pointed out by a member of the Committee that the medical care insurance people should have input in this issue and cap the cost, and that entrepreneurship may be curbed to some degree in certain areas.

Jerry Slaughter, KMS, submitted written testimony and stated KMS opposes an outright ban on physician ownership of medical facilities, but that **SB 19** is the best approach at this time. Mr. Slaughter stated there will be another effort this year in Congress to place an outright ban on all self-referrals by a Representative from California. (Attachment 2) Discussion was held on the AMA position on self-referrals which is tighter than **SB 19**, problems in rural areas where medical facilities are few and far between, if an amendment should be added to the bill that would require the physician to inform the patient of a facility in which he or she does not have a financial interest, and disclosure by a physician of financial interest in medical/testing equipment.

Harold Riehm, KAOM, submitted written testimony and stated the Osteopathic profession at the national level has

always considered the practice of self-referral as one falling under the general code of practice ethics for D.O.'s and expressed support for **SB 19**. (Attachment 3) A member requested data be provided the Committee on physician investment of medical facilities in rural Kansas. In answer to a question, Mr. Riehm stated if there was no private ownership of a medical facility, for example in a rural area, this bill would not apply. **SB 19** would specifically apply to urban areas where there are many facilities and the physician has the obligation to tell the patient of his or her 10% or more interest in those facilities.

Final action and discussion on **SB 14** - Definition of charitable health care provider expanded.

Chip Wheelen, KMS, distributed copies of a balloon of **SB 14** and briefed the Committee on the proposed amendments which were submitted to the Governor as a compromise version of the bill that would address her concerns. (Attachment 4) After Committee discussion and input from staff, it was suggested that the recommended language be changed in the new sentence on page 7, line 19, to read as follows: "Notwithstanding the expiration of the provisions of this subsection as constructed prior to July 1, 1995, such provisions shall apply to any cause of action arising out of the rendering of or failure to render professional services by a health care provider pursuant to such provisions if the act giving rise to cause of action occurred prior to July 1, 1995."

Senator Salisbury made a motion to adopt the amendments as recommended in the balloon of the bill, seconded by Senator Langworthy. Discussion followed clarifying the proposed amendments and the sunset review of the bill. The motion carried.

Staff provided technical information on page 7, line 7, after the word "satisfy," to insert "from the fund." Senator Jones made a motion to insert the language "from the fund," seconded by Senator Langworthy. No discussion followed. The motion carried.

Senator Salisbury made a motion **SB 14 as amended** be recommended favorably for passage, seconded by Senator Langworthy. No discussion followed. The motion carried.

The Chair announced the agenda for the following day.

The next meeting is scheduled for January 28, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE DATE: 1-27-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Chip Wheelen	Topeka	Ks Medical Soc.
Rep. Carol Sader	Prairie ~~Village~~	House of Rep.s
Harold Riehm	Topeka	KAOM
Kelly Schlapper	Topeka	KMS
ALLISON PETERSON	TOPEKA	KMS
Cameron Brewer	Topeka	KTLA
Danielle Noe	Wichita	Wichita Hosp Assoc.
Harold Pitts	Topeka	AARP-CCTF
David Hanzlick	Topeka	KDA
Cammie Tiede	Topeka	Bd of Healing Arts
Frances Kastner	Topeka	KS Physical therapy ASSN
Dave Frankel	Lawrence	KTLA
DON LINDSEY	OSAWATOMIE	UTU
Calvin Smith	Wichita	WIBA
SHERRY CLAYTON	Topeka	K-NASW
TK Shively	Topeka	KS LEGAL SERVICES

STATE OF KANSAS

CAROL H. SADER
REPRESENTATIVE, TWENTY-SECOND DISTRICT
JOHNSON COUNTY
HOME ADDRESS: 8612 LINDEN DR.
SHAWNEE MISSION, KANSAS 66207
(913) 341-9440

OFFICE: ROOM 284-W STATEHOUSE
TOPEKA, KS 66612-1504
(913) 296-7688

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
POLICY CHAIR OF DEMOCRATIC CAUCUS
RANKING MINORITY MEMBER: PUBLIC HEALTH AND WELFARE
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON HEALTH CARE DECISIONS FOR THE 90'S

TESTIMONY BY REP. CAROL SADER ON SB 19

SENATE HEALTH AND WELFARE COMMITTEE

JANUARY 27, 1993

Chairperson Praeger and Members of the Committee:

Senate Bill 19 is before you on the recommendation of the Joint Com mittee on Health Çare Decisions for the 90's, which I had the privilege of Chairing in 1992. It is the result of data and analysis presented to the Committee on the effects of physician self-referrals on the utilization and excalating costs of health care.

SB 19 follows recommendations made by the AMA's own Council on Ethical and Judicial Affairs which concluded that when physicians refer patients to facilities in which the physician has an ownership interest, a potential conflict of interest exists. Therefore, in general, physicians should not refer patients to a health care facility outside their principle office practice, at which they do not directly provide care or services, when they have an investment interest in the facility. This bill does not ban self referral, it merely requires the physician to inform the patient of his or her significant investment interest and of the fact that such services are also available elsewhere. "Significant ownership interest" is defined in the bill as at least 10% of the value of the health care entity to which the referral is made.

This bill is in no way intended to prevent physicians from investing in health care facilities as entrepreneurs for many such investments advance new medical technologies and, on balance, can be very positive for patients and our health care system.

Senate PW&W
attachment 1
1-27-93

The bill requiring patient notification is self-referral situations, is intended only to thuart the potential for excessive profit and over-utilization which recent studies strongly suggest exist within the practice of self-referral. For example, it was pointed out to the Committee from recent studies that self-referring physicians referred patients for clinical laboratory testing at a 45% higher rate than non-investing physicians; that physicians' utilization of physical therapy/ rehabilation was significantly higher where physicians are owners, and that physicians with a financial interest in diagnostic imaging centers referred patients at a rate of 4 to 4.5 times that of non-investing physicians.

Although these studies were not done in Kansas and we were not shown actual proof of excessive profits and over-utilitization here, the Joint Committee concluded that in view of the widespread anecdotes and the public perception that abuses are occurring and that doctors are referring patients for unneeded tests to make an extra buck, to the extent possible, state policy should discourage physicians from being in the business of profiting purely from their ability to refer patients to outside facilities which they own. Whether or not there is evidence of abuse, this practice is presumptively inconsistent with a physician's fiduciary duty to a patient when adequate alternative facilities exist. As stated by the AMA'S Council on Ethical and Judicial Affairs, "physicians are not simply business people with high standards--they are engaged in the special calling of healing, and in that calling, they are fiduciaries of their patients and have different and higher duties then even the most ethical businessperson."

Given all of the above, I repeat, SB 19 does not prohibit physician self-referrals. It merely would require a doctor to inform a patient of his or her investment interest in the health care entity to which a referral is made. This bill harms no one, it does not mean doctors cannot have outside investments and activities or that they should not invest in health care facilities. It simply discourages abuses and encourages cost con tainment in the delivery of health care services in our state and for these reasons, the Joint Committee recommends SB 19 for your favorable consideration.

Respectively submitted,

Rep. Carol Sader

KANSAS MEDICAL SOCIETY
623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

January 26, 1993

TO: Senate Public Health and Welfare Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 19; Concerning "Self-Referral" by Licensees of the Healing Arts Board

The Kansas Medical Society appreciates the opportunity to comment on SB 19 which was introduced by the Joint Committee on Health Care Decisions for the 1990s. This bill would make it "unprofessional conduct" for a licensee of the Healing Arts Board (doctors of medicine, osteopathy and chiropractors) to "self-refer" without first disclosing an ownership interest in the facility to which the patient is being referred.

This issue has gained quite a bit of attention nationally in recent months. Some states, and Congress to a limited extent, have acted to restrict a physician's ability to refer patients to facilities in which he or she has an ownership interest. There have been studies in other states which have raised questions about the appropriateness of health care providers referring patients to laboratories or other diagnostic facilities they have an ownership in, because such referrals ultimately can benefit the referring health care provider. While there is nothing illegal about such referrals, to many the potential for such a conflict of interest has the appearance of impropriety.

Senate Bill 19 can be described as a "patient right to know" law that requires the treating physician or chiropractor to inform the patient that: 1) the physician or chiropractor owns all or part of the health care entity to which the patient is being referred; and 2) that the patient may obtain the same services elsewhere. If a patient is not so notified, he or she may file a complaint with the Board of Healing Arts, which in turn would trigger an investigation of the appropriateness of tests or services which were ordered by the physician or chiropractor. In this context, it is important to note that current law already includes a definition of unprofessional conduct (Item 21) that allows the Board to discipline a licensee for "performing unnecessary tests, examinations or services which have no legitimate medical purpose." The Board has the power to limit, suspend or revoke a license to practice, which from a physician or chiropractor's perspective is a substantial inducement to comply with the letter of the law.

There may be those who suggest that this change in law does not go far enough. For example, last year the Legislature considered a bill which would have placed criminal penalties on physicians if they failed to inform a patient of an ownership interest in a health care facility to which the patient was being referred. That concept was rejected by the Legislature as being too harsh and overreaching. Additionally, in many instances, especially in rural areas, if it were not for physicians, either themselves or in the form of joint ventures with hospitals or other health care facilities, many needed diagnostic services and equipment may not be as readily available. That is why we would oppose an outright ban on physician ownership of such

Senate PH&WC
attachment # 2
1-27-93

facilities. The mere fact that a physician has invested in a health care facility so that such services will be available to his or her patients does not automatically imply that the physician will order unnecessary tests or procedures.

Finally, we believe the approach in SB 19 is proper at this time, because action at the federal level may well pre-empt state activity in the future. There is at least one bill introduced in Congress which would prohibit referrals by health care providers to facilities in which they have an ownership interest. In light of that, we believe it is prudent to take the action specified in SB 19, as it would still be relevant even if Congress subsequently acts on this issue. In the meantime, as we await developments at the federal level, we believe SB 19 is the proper course to take. Thank you for considering our remarks.

JS:ns

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563
(913) 234-5564 Fax

January 27, 1993

To: Chairperson Praeger and Members, Senate Public Health Committee

From: Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine

Subject: Testimony on S. B. 19

Thank you for this opportunity to express our view on S.B. 19. While we think the extent of the abuse this Bill is designed to regulate is less than some suggest in Kansas, we also view S.B. 19 as a means of indicating willingness to eliminate any disservice to patients or lack of propriety within the health care system.

The Osteopathic profession at the national level has always considered this practice of self-referral as one falling under the general code of practice ethics for D.O.s In turn, KAOM has always recommended to our members that they adopt some procedures by which they inform patients whom they refer to "entities" in which they have a financial interest, of the fact of that interest. To the extent, S.B. 19 places that as a requirement of law, we think it is consistent with the practices to which most D.O.s now adhere in the course of their practice.

I will be pleased to respond to questions regarding this testimony.

Senate P. H. & W.
Attachment 3
1-27-93

Session of 1993

SENATE BILL No. 14

By Joint Committee on Health Care Decisions for the 1990's

1-11

AN ACT concerning health care providers; relating to charitable health care providers; amending K.S.A. 65-2809 and K.S.A. 1992 Supp. 75-6102, 75-6115, 75-6117 and 75-6120 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-2809 is hereby amended to read as follows: 65-2809. (a) The license shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each case in which a license is renewed for a period of time of less than one year, the board may prorate the amount of the fee established under K.S.A. 65-2852 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the prescribed fee, which shall be paid not later than the expiration date of the license.

(b) Except as otherwise provided in this section, the board shall require every licensee in the active practice of the healing arts within the state to submit evidence of satisfactory completion of a program of continuing education required by the board. The requirements for continuing education for licensees of each branch of the healing arts shall be established by the members of such branch on the board. The board shall adopt rules and regulations prescribing the requirements established by the members of each branch of the healing arts for each program of continuing education as soon as possible after the effective date of this act. In establishing such requirements the members of the branch shall consider any programs of continuing education currently being offered to such licensees. If, immediately prior to the effective date of this act, any branch of the healing arts is requiring continuing education or annual post-graduate education as a condition to renewal of a license, the requirement as a condition for the renewal of the license shall continue notwithstanding any other provision of this section.

(c) The board, prior to renewal of a license, shall require the licensee, if in the active practice of the healing arts within the state, to submit to the board evidence satisfactory to the board that the

KMS
KANSAS MEDICAL SOCIETY
623 SW 10th Ave. • Topeka, Kansas 66612
(913) 235-2383 FAX # (913) 235-5114

Chip Wheelen
Director of Public Affairs

Senate H&W
Attachment 4
1-27-93

licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.

(d) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last place of residence as noted upon the office records. If the licensee fails to pay the annual fee by the date of the expiration of the license, the licensee shall be given a second notice that the licensee's license has expired, that the board will suspend action for 30 days following the date of expiration, that upon receipt of the annual fee and an additional fee not to exceed $500 within the thirty-day period the license shall not be canceled and that, if both fees are not received within the thirty-day period, the license shall be cancelled.

(e) Any licensee who allows the licensee's license to be canceled by failing to renew may be reinstated upon recommendation of the board and upon payment of the renewal fees then due and upon proof of compliance with the continuing educational requirements established by the board.

(f) There is hereby created a designation of exempt license. The board is authorized to issue an exempt license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an exempt license established pursuant to K.S.A. 65-2852 and amendments thereto. The board may issue an exempt license only to a person who has previously been issued a license to practice the healing arts in Kansas, who is no longer regularly engaged in such practice and who does not hold oneself out to the public as being professionally engaged in such practice. An exempt license shall entitle the holder to all privileges attendant to the branch of the healing arts for which such license is issued. Each exempt license may be renewed annually subject to the provisions of this section. Each exempt licensee shall be subject to all provisions of the healing arts act, except as otherwise provided in this subsection (f). The holder of an exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing education required by ~~K.S.A. 65-2809 and amendments thereto~~ *this section*. Each exempt licensee may apply for a license to regularly engage in the practice of the appropriate branch of the healing arts upon filing a written application with the board and submitting evidence of satisfactory completion of applicable continuing education requirements established by the board. The request shall be on a form provided by the board and shall be

accompanied by the license fee established pursuant to K.S.A. 65-2852 and amendments thereto. The board shall adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees to become licensed to regularly practice the healing arts within Kansas. Nothing in this subsection (f) shall be construed to prohibit a person holding an exempt license from serving as a coroner *or ~~prior to July 1, 1995,~~ as a paid employee of (1) a local health department as defined by K.S.A. 65-241 and amendments thereto, or (2) an indigent health care clinic as defined by K.S.A. 75-6115 and amendments thereto.*

Sec. 2. K.S.A. 1992 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. ~~1990 Supp.~~ 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity but does include a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor. *~~Prior to July 1, 1995,~~ "employee" also includes an employee of an indigent health care clinic.* "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. ~~1990~~ *1992* Supp. 75-6120, and amendments thereto, who, pursuant to such agreement, *gratuitously* renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section ~~and who renders such professional services gratuitously~~ *or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services,* and who is considered an employee of the state of Kansas under K.S.A. ~~1990~~ *1992* Supp. 75-6120, and amendments thereto; or

(2) a local health department ~~that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto~~ *or indigent health care clinic* ~~who, pursuant to such agreement~~, *which* renders professional ~~service~~ *services* to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department *or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 1992 Supp. 75-6120 and amendments thereto. Professional services rendered shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic.*

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. ~~1990~~ *1992* Supp. 75-6120, and amendments thereto.

4-4

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

~~*(j) The provision of subsections (f), (h) and (i) shall expire on July 1, 1995.*~~ delete

Sec. 3. K.S.A. 1992 Supp. 75-6115 is hereby amended to read as follows: 75-6115. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than a ~~charitable health care provider or a hospital owned by a municipality and the employees thereof.~~:

(1) ~~*Prior to July 1, 1995,*~~ *a charitable health care provider;* delete

(2) a hospital owned by a municipality and the employees thereof; delete

(3) ~~*prior to July 1, 1995,*~~ *a local health department and the employees thereof; or* delete

(4) ~~*prior to July 1, 1995,*~~ *an indigent health care clinic and the employees thereof.*

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than a ~~charitable health care provider or a hospital owned by a municipality and the employees thereof~~ *those health care providers enumerated in subsection (a)*, arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

~~(b)~~ *(c)* As used in this section:

(1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

~~(1)~~ *(2)* "Charitable health care provider" shall have the meaning ~~provided by~~ *ascribed to such term under* K.S.A. 75-6102, and amendments thereto.

~~(2)~~ *(3)* "Health care provider" shall have the meaning ~~provided by~~ *ascribed to such term under* K.S.A. 40-3401, and amendments thereto.

~~(3)~~ *(4)* "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

(5) "Local health department" shall have the meaning ascribed

to such term under K.S.A. 65-241 and amendments thereto.

~~*(6) The provisions of paragraphs (1), (2) and (3) of this subsection shall expire on July 1, 1995.*~~ delete

Sec. 4. K.S.A. 1992 Supp. 75-6117 is hereby amended to read as follows: 75-6117. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. ~~Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Except for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person or by a charitable health care provider who has contracted with a local health department that is part of the pilot programs established under K.S.A. 1991 Supp. 65-226 and amendments thereto to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the~~

~~judgment or, if no appeal is taken, if the time for appeal has expired.~~ *Payment of a compromise or settlement shall be subject to approval by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired. No payment shall be made to satisfy a compromise, settlement or final judgment when there exists insurance coverage obtained therefor, except that prior to July 1, 1995, payment shall be made from the fund to satisfy a compromise settlement or final judgment for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by (A) a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto, (B) a local health department as defined by K.S.A. 65-241 and amendments thereto or an employee thereof, or (C) an approved indigent health care clinic as defined by K.S.A. 75-6115 and amendments thereto, or an employee thereof, even if there exists insurance coverage obtained therefor.*

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) The legislature shall review annually claims against and expenditures from the tort claims fund arising from the rendering of or failure to render professional services by a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto and shall ascertain annually the number of charitable health care providers and the extent to which the availability of coverage to charitable health care providers under the tort claims fund has increased services provided to the medically indigent and to persons receiving medical assistance from the programs operated by the department of social and rehabilitation services. The provisions of this subsection shall expire on July 1, 1995.

~~(d)~~ *(e)* This section shall be part of and supplemental to the Kansas tort claims act.

Sec. 5. K.S.A. 1992 Supp. 75-6120 is hereby amended to read as follows: 75-6120. (a) The secretary of health and environment may enter into agreements with charitable health care providers in which such charitable health care provider stipulates to the secretary of health and environment that when such charitable health care pro-

4-7

remove the funds

retain this "sunset"

add sentence as follows:

Notwithstanding the expiration of the provisions of this subsection as constructed prior to July 1, 1995, such provisions shall apply to any cause of action arising out of the rendering of or failure to render professional services by a health care provider pursuant to such provisions if such cause of action accrued prior to July 1, 1995.

(accrued) the act giving rise to

vider renders professional services to a medically indigent person such services will be provided gratuitously. The secretary of health and environment shall adopt rules and regulations which specify the conditions for termination of any such agreement, and such rules and regulations are hereby made a part of any such agreement. A charitable health care provider for purposes of any claim for damages arising as a result of rendering professional services to a medically indigent person, which professional services were rendered gratuitously at a time when an agreement entered into by the charitable health care provider with the secretary of health and environment under this section was in effect, shall be considered an employee of the state under the Kansas tort claims act.

(b) The secretary of health and environment shall establish by rules and regulations eligibility criteria for determining whether a person qualifies as a medically indigent person.

(c) Any claim arising from the rendering of or failure to render professional services by a charitable health care provider brought pursuant to the Kansas tort claims act shall not be considered by an insurance company in determining the rate charged for any professional liability insurance policy for health care providers or whether to cancel any such policy.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

~~*(e) The provisions of this section shall expire on July 1, 1995.*~~ delete

Sec. 6. K.S.A. 65-2809 and K.S.A. 1992 Supp. 75-6102, 75-6115, 75-6117 and 75-6120 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.