

Approved: January 19, 1994

Date

## MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:08 a.m. on January 18, 1994 in Room 529-S of the Capitol.

Members present: Senators Corbin, Hensley, Lawrence, Lee, Petty, Praeger, and Steffes.

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

Conferees appearing before the committee: Richard Brock, Insurance Department  
Chip Wheelen, Kansas Medical Society  
Tom Bell, Kansas Hospital Association  
Brad Smoot, Blue Cross/Blue Shield

Others attending: See attached list

Senator Corbin made a motion, seconded by Senator Steffes, to approve the minutes of the meeting of January 13 as submitted. The motion carried.

Senator Bond presented a request from Senator Wisdom for introduction of a bill to amend the UCCC. The bill would reduce from 21% to 18% the amount of interest to be charged on an unpaid balance of \$1,000 or less, and would reduce to 12% the amount of interest that can be charged on open end credit over \$1,000. Senator Hensley moved to introduce the legislation. Senator Praeger seconded the motion. The motion carried. (Attachment #1.)

The chairman opened the hearing on **SB 487**--regulation of utilization review organizations. Dick Brock of the Insurance Department appeared before the committee to testify in favor of this bill and to explain its history and what the bill will accomplish. (Attachment #2.) Senator Bond asked who controls utilization reviewers and for whom they work. Mr. Brock stated that at this time there are basically no standards or requirements for oversight by the Insurance Commissioner's office. Senator Lee questioned how this bill would affect litigation and Mr. Brock stated that retrospective reviews were not included in the bill and that this language will be developed later.

Senator Petty asked whether an insurance company can own a utilization review agency and, if so, does this not present the possibility of conflict of interest? Mr. Brock pointed out that there is a provision in the bill to prohibit compensation arrangements which would give a utilization review organization, its employees or agents any monetary incentive to deny certification or approval of medical care recommended by the health care provider.

In response to Senator Bond's question, Mr. Brock stated that enactment of this legislation would create the need for two additional employees by 1995, a policy examiner and an additional clerical worker.

Dr. Wolff pointed out the inconsistency of referring to the advisory group as "advising" in one section and "approving" in another. Senator Hensley suggested that "advising" is more appropriate and should be used consistently throughout the bill.

Mr. Brock stated that the national Utilization Review Accreditation Commission standards will be considered carefully when adopting Kansas standards.

Chip Wheelen, Kansas Medical Society, appeared as a proponent of this bill. (Attachment #3.) Mr. Wheelen urged passage of this bill and pointed out printer's errors on page 2, line 21, where "property" should be changed to "properly." and on page 6, line 2, "of" should be "or."

Tom Bell, Kansas Hospital Association, also testified in favor of this bill, stating that it would set standards for utilization review which do not currently exist. (Attachment #4.)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 529-S Statehouse, at 9:08 a.m. on January 18, 1994.

There being no further conferees, the hearing on **SB 487** was closed. Senator Hensley moved to delete, on page 1, line 32, the language, "and approval." The motion was seconded by Senator Petty. The motion carried.

Senator Hensley made a motion, seconded by Senator Lee, to amend the bill to correct the printer's errors mentioned above. The motion carried.

Senator Praeger moved to recommend **SB 487** favorably as amended. The motion was seconded by Senator Hensley. The motion carried. This bill will be carried by Senator Praeger.

The hearing was opened on **SB 486**. Mr. Brock of the Insurance Commissioner's Office, also appeared as a proponent of this bill, which would permit domestic insurers to invest in HMO's. (Attachment #5.)

Brad Smoot, Blue Cross/Blue Shield of Kansas, testified in favor of passage of this bill, stating that Kansas companies would be able to do what out of state companies are currently doing, namely to invest in HMO's.

There being no further conferees, the hearing on **SB 486** was closed.

The next meeting is scheduled for Wednesday, January 19., 1994.

## GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 1-18-94

[illegible]

SENATE BILL NO. \_\_\_\_\_

*Sen FIOTI*

By ~~Senator~~ Wisdom

AN ACT amending the uniform consumer credit code; concerning finance charges for consumer credit sales; amending K.S.A. 16a-2-202 and K.S.A. 1993 Supp. 16a-2-201 and repealing the existing sections.

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

Section 1. K.S.A. 1993 Supp. 16a-2-201 is hereby amended to read as follows: 16a-2-201. (1) With respect to a consumer credit sale, other than a sale pursuant to open end credit, a seller may contract for and receive a finance charge not exceeding that permitted by this section.

(2) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the following:

The total of:

(a) ~~Twenty-one~~ Eighteen percent per year on that part of the unpaid balance of the amount financed which is \$1,000 or less;

(b) ~~fourteen-and-forty-five-hundredths~~ twelve percent per year on that part of the unpaid balance of the amount financed which is more than \$1,000.

(3) This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and

*Senate 7/4/94 1/18/94  
Attachment #1*

that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum finance charge of not more than \$5 when the amount financed does not exceed \$75, or not more than \$7.50 when the amount financed exceeds \$75.

(7) As an alternative to the rates set forth in subsection (2), the seller may contract for and receive a finance charge not exceeding ~~±8%~~ 15% per year on the unpaid balances of the amount financed.

Sec. 2. K.S.A. 16a-2-202 is hereby amended to read as follows: 16a-2-202. (1) With respect to a consumer credit sale made pursuant to open end credit, the parties to the sale may contract for the payment by the buyer of a finance charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(a) The average daily balance of the account, which is the sum of the actual amounts outstanding each day during the billing cycle divided by the number of days in the cycle;

(b) the unpaid balance of the account on the last day of the billing cycle; or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the last day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller,

F141 1/18/94

subject to classifications and differentiations the seller may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8% of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed ~~1.75%~~ 1.5% of that part of the amount pursuant to subsection (2) which is \$1,000 or less and ~~1.2%~~ 1% on that part of this amount which is more than \$1,000. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than four days from month to month is "the last day of the billing cycle."

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding \$.50 if the billing cycle is monthly or longer, or the pro rata part of \$.50 which bears the same relation to \$.50 as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly.

(5) As an alternative to the rates set forth in subsection (3), the parties to the sale may contract for and the seller may receive a finance charge not exceeding ~~18%~~ 15% per year on the amount determined pursuant to subsection (2).

Sec. 3. K.S.A. 16a-2-202 and K.S.A. 1993 Supp. 16a-2-201 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

FILE 1/18/94  
1-3

Testimony on  
Senate Bill No. 487

by

Dick Brock

Kansas Insurance Department

Senate Bill No. 487 is the product developed as the result of a study conducted pursuant to the provisions of 1993 Senate Concurrent Resolution No. 1605. This resolution required the Insurance Department to conduct a study of utilization review activities and organizations and report our findings to the 1994 legislature. The study was conducted by a task force created for that purpose but significant input was also provided by a number of interested parties. A summary of the task force meetings, background documents, attendance rosters and so forth is available upon request. However, Senate Bill No. 487 is the core element of the task force findings. Specifically, this legislation would establish a statutory regulatory structure that would serve to identify and guide the conduct of persons and firms performing utilization review services affecting Kansas citizens.

In previous efforts to measure the need for some sort of legislation relating to utilization review, attention has focused on the voluntary program established by the national Utilization Review Accreditation Commission (URAC) and have found it to be acceptable. The task force reached the same conclusion and relied heavily upon their work. Therefore, we too believed that the Commission's program is a responsible, credible effort that serves the public interest. However, in 1992, the General Accounting Office identified 294 organizations that were or seemed to be conducting some sort of utilization review -- another source puts this number at 350. Of course, not all of these operate in Kansas -- probably only a small fraction. Nevertheless, the sheer number of unknown, unregulated entities performing these services is a concern. In comparison to this number of identified UROs -- and bear in mind that since there is no registration or regulation in most states there are probably more than the GAO or other researchers have discovered. But even using the 300-350 number

Senate 7/24 1/18/94  
Attachment #2

-- URAC, as of July of 1993, has accredited 89 organizations representing 162 sites where utilization review activities are conducted. In addition to URAC, a voluntary effort coordinated by the Kansas City Area Hospital Association and called the Kansas City Private Review Group has developed a licensing arrangement with URAC under which they have developed their own standards for utilization review but which use the URAC standards as a foundation. So in the Kansas City area, there are additional entities conducting utilization review in accordance with credible guidelines. As laudable as these efforts are, they still reach only a fraction of the UROs that may be providing review services that affect Kansans. Equally important, experience tells us that those who are either accredited by URAC or participate in the Kansas City Private Review Group probably don't include the UROs that are most in need of oversight.

Consequently, it didn't take the task force very much time to determine that we need to get a handle on utilization review activities. We did this in two parts and really in reverse of what the actual process will entail. First, we developed the standards we believe should be followed in the conduct of prospective and concurrent utilization review for admissions to hospitals, outpatient surgical centers or other health care facilities such as skilled nursing or rehabilitation centers. I won't go into detail with regard to these standards because if Senate Bill No. 487 is enacted, they will be incorporated in an administrative regulation and therefore be open to public review and comment during the process of adoption. Nevertheless, the standards developed can be summarized by telling you that we used the URAC standards as a base, modified them with what we believe are some enhancements taken from the Kansas City Private Review Group's efforts and sprinkled throughout are some task force initiatives that we believe materially strengthen the existing criteria particularly in the area of physician involvement and oversight. I should also add that URAC is in the process of revising its standards. Therefore, if enabling legislation is enacted, the standards derived through the task force efforts will need to be revisited prior to or during the course of development of the implementing regulation.

File 1/18/94  
2-2



Senate Bill No. 487 itself is, of course, basically enabling legislation. However, it does contain the all-important ingredient of establishing the basic requirement that utilization review organizations must hold a certificate issued by the Commissioner if they perform utilization review services in Kansas or which affect Kansas citizens. The other fundamental provision is the enabling part -- a requirement that the Commissioner prepare and adopt regulations establishing standards to govern the conduct of utilization review activities. Beyond that, most of the details are fairly standard in terms of requirements, documentation and so forth. For example, those seeking a certificate would be required to submit an application, a certified copy of its charter or articles of incorporation and bylaws, location of the offices where utilization review activities affecting Kansas citizens are located and a summary of the experience and qualifications of the persons actually performing utilization review activities.

In addition to these requirements, Senate Bill No. 487 provides for the creation of an advisory committee consisting of the Commissioner, a public member, 4 representatives of utilization review organizations and 5 representatives of health care providers including 1 hospital representative and 2 persons licensed to practice medicine and surgery. This advisory committee would assist the Commissioner with respect to development of the implementing regulations and would also advise the Commissioner with regard to the suspension or revocation of a utilization review organization's certificate.

We have also tried to accommodate the problems that may arise in areas such as Kansas City where if, this legislation is enacted, two states -- Missouri and Kansas -- will have similar but not the same requirements. We propose to do this by taking advantage of the voluntary programs established by URAC and the Kansas City Private Review Group. Specifically, the task force proposal would require all utilization review organizations to have a Kansas certificate but the proposal would then exempt UROs accredited by URAC or actively participating in the Kansas City Private Review Group from adherence to the Kansas specific standards as well as the filing of documentation and information otherwise required for a certificate. Under

this arrangement, utilization review organizations have a choice. They can adhere to what we believe are somewhat stronger standards and submit numerous documents in support of their certificate but pay an initial fee of only \$100 and an annual continuation fee of \$50 or they may be accredited by URAC at a much, much higher cost but which will allow them to conduct utilization review in a number of states or they may agree to participate in the Kansas City program. We believe adherence to any of the three programs will result in utilization review being conducted by and under the supervision of competent personnel in a responsible and constructive manner.

The proposed enabling legislation addresses two other situations which we believe are important, perhaps even essential, ingredients in any system of utilization review regulation. The first appears in Section 7, subsection (a), paragraph (2) of the bill. This paragraph would prohibit compensation arrangements which would give a utilization review organization, its employees or agents any monetary incentive to deny certification or approval of medical care recommended by the attending physician. The second provision appears in Sections 9 and 10 of the bill where the ever-present issue of confidentiality of medical records is addressed.

Again summaries of the task force meetings including a copy of the utilization review standards envisioned by the task force and various other information underlying this proposal is available to the committee if desired.



## KANSAS MEDICAL SOCIETY

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January 18, 1994

TO: Senate Financial Institutions and Insurance Committee

FROM: Chip Wheelen, KMS Director of Public Affairs

A handwritten signature in cursive script, appearing to read 'C. Wheelen'.

SUBJECT: Senate Bill 487; Accountability of Utilization Review

The Kansas Medical Society enthusiastically supports the provisions of SB 487 which require professional standards and establish accountability of organizations that engage in utilization review of health care services. For several years now the KMS has been concerned about the unregulated and sometimes unaccountable utilization review practices of some insurance companies or contractors. 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 medical care can be adversely affected.

We asked the Legislature to address this problem in 1990 but at that time, the Utilization Review Accreditation Commission had just initiated a voluntary program for UR organizations which were interested in developing and implementing professional standards in their industry. The Legislature chose not to take action at that time but instead to monitor voluntary accreditation. In the meantime, many responsible UR organizations have become accredited and other good UR entities have established similar standards of professionalism in their operations.

Unfortunately, there remain some UR organizations which fail to be accountable to the insured patients or the treating physicians. We again approached the Legislature about this problem during the 1992 interim and SCR 1605 resulted, which created the study process that developed SB 487. We are grateful to this Committee and Chairman Bond in particular for initiating this effort.

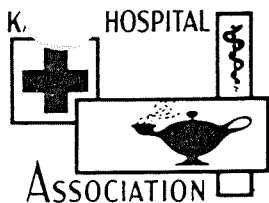
We also want to publicly extend our appreciation to Commissioner Todd and Mr. Brock for the resources which the Insurance Department devoted to the study of utilization review practices in Kansas. As Chairman of the Utilization Review Task Force, Mr. Brock managed to achieve consensus among the major interest groups as to the fair and appropriate way of establishing much needed standards of professionalism throughout the UR industry. In order to implement that plan, the Insurance Commissioner needs additional statutory authority and that is why SB 487 is before you today.

We respectfully urge you to recommend passage of SB 487. Thank you for considering this important matter.

Senate F141

1/18/94

Attachment #3



Donald A. Wilson  
President

January 18, 1994

TO: Senate Public Health and Welfare Committee

FROM: Kansas Hospital Association

RE: **SENATE BILL 487**

The Kansas Hospital Association appreciates the opportunity to comment in support of Senate Bill 487. This bill directs the Commissioner of Insurance to adopt rules and regulations establishing standards for utilization review.

Many issues led to the unanimous adoption by both the House and the Senate of 1993 Senate Concurrent Resolution No. 1605, which required the Commissioner of Insurance to conduct "... a study of utilization review practices affecting consumers and providers of health care services in this state and report to the 1994 legislature...." For instance, a 1992 study by the General Accounting Office identified 294 utilization review organizations, but Kansas has no way of determining how many of those organizations' decisions impact Kansas health care consumers. There is currently no standardization among utilization review procedures, and review may be performed by anyone, regardless of qualifications or experience. The lack of standardized procedures often raises questions about patient privacy and creates administrative burdens for entities asked to supply data. In addition, utilization review organizations have not been required to disclose the criteria they use in making decisions about the appropriateness and necessity of the procedures performed.

Under the directive of SCR 1605, the Commissioner of Insurance created a task force to study and attempt to remedy the concerns surrounding utilization review. The group was comprised of highly qualified individuals with diverse backgrounds and interests. Collectively, they were able to propose legislation in Senate Bill 487 that will provide effective standards for utilization review and will alleviate some of the problems that prompted the 1993 Legislature to call for a study.

Senate Bill 487 will help protect patients and reduce unnecessary administrative costs as it promotes the delivery of quality health care. Thank you for your consideration of our comments.

*Senate File 1/18/94  
Attachment #4*

Testimony on  
Senate Bill No. 486  
by  
Dick Brock  
Kansas Insurance Department

Senate Bill No. 486 amends the body of Kansas law which relates to the types of securities and other property in which a Kansas domestic insurance company may invest its funds. These statutes already permit such companies to invest in the stock of another insurance company but contain no reference to the stock of health maintenance organizations (HMOs).

Health maintenance organizations are not "insurance companies" yet, for investment purposes, it is somewhat inconsistent and confusing to permit domestic insurers to invest in insurance companies but not HMOs. This proposal will address these matters by specifically permitting such investments.

Senate 7141  
1/18/94  
Attachment #5