

Approved: Feb. 28, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on February 21, 1994 in Room 123-S of the Capitol.

All members were present except: Senator Vancrum, who was excused

Committee staff present: Diane Duffy, Legislative Research Department
Norm Furse, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Bob Gottschalk, General Manager of Kansas State Fair
Kerry Boydston and Alec Laverack, Cadmus 4-H and Prairie View FFA
Jennifer Kassebaum, Senior Associate University Attorney, KSU
Glenn Potter, Vice Chancellor for Hospital Administration, KUMC
Bob Wunsch, Legislative Liaison, KUMC
Bill Kimble, Director, Wichita Branch of University of Kansas Medical Center
Rita Noll, Kansas Insurance Department
Marlin Rein, Associate University Director, KUMC

HB 2575 -- STATE FAIR, AGREEMENT WITH HUTCHINSON COMMUNITY FOUNDATION, ADMINISTRATION AND INVESTMENT OF DONATIONS

Mr. Bob Gottschalk appeared before the Committee and testified in support of HB 2575. He explained that the bill would allow the State Fair to enter into a contract with the Hutchinson Community Foundation [501 (c) (3) corporation] which would be responsible for the receipt and administration of any donations. This arrangement would allow the State Fair to fund various programs that would benefit the State Fair, such as capital improvements and educational programs. In answer to Senator Bogina, Mr. Gottschalk stated that the main thrust of the bill was for improvements of the 4-H encampment building, though it could have additional uses.

Kerry Boydston testified in support of HB 2575 and reviewed Attachment 1. She introduced Alec Laverack who accompanied her. She told members that there are approximately 108 4-H clubs and 105 FFA chapters in the state.

It was moved by Senator Kerr and seconded by Senator Morris that HB 2575 be recommended favorable for passage. The motion carried on a roll call vote.

SB 642 -- AUTHORIZING STATE BOARD OF REGENTS TO SELL CERTAIN REAL ESTATE LOCATED IN RILEY COUNTY ON BEHALF OF KANSAS STATE UNIVERSITY

Jennifer Kassebaum, KSU, testified as a proponent for SB 642 and reviewed Attachment 2. She stated that the existing structure is in need of repair and there is sufficient property on campus for housing. She noted that 20 graduate students are currently residents of the Evans Apartments. Senator Kerr moved, Senator Morris seconded that SB 642 be recommended favorable for passage. The motion carried on a roll call vote.

SB 737 -- UNIVERSITY OF KANSAS MEDICAL CENTER, CONTRACTS IN RELATION TO OTHER HEALTH CARE PROVIDERS AND MEDICAL NETWORK PARTICIPANTS

Glenn Potter, Vice Chancellor for Hospital Administration at the University of Kansas Medical Center, appeared before the Committee in support of SB 737 and reviewed Attachment 3. In answer to the Chairman, he stated that the issuance of surplus notes in the amount of \$1,574,845 was a requirement of the acquisition and would be used to take care of potential future unfunded liabilities. Vice Chancellor Potter said that the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 21, 1994.

contractual relationship with the PPO has meant greater access to patients and additional revenues (approximately \$500,000 in the last quarter).

Senator Salisbury asked how SB 737 and SB 626 (which had recently passed out of the Senate Public Health and Welfare Committee could be reconciled. It was stated that SB 626 terminates the medicaid managed care program authorized in Wyandotte County by the 1993 legislature for FY 94, while SB 737 doesn't relate specifically to medicaid managed care but is much broader and gives the medical center general authority to contract with other entities for "purposes of providing medical services...and participation in medical networks."

Senator Petty expressed concern that contracts for equity ownership could financially obligate the state without legislative oversight. The Chairman concurred, but added that the Hospital Revenue Fund is subject to appropriation. In answer to Senator Karr, it was stated that the last sentence of Sec.1 (a) was included because of concern expressed by the Director of Purchases. The Chairman requested that the revisors' office ascertain whether the language in the bill would allow the hospital to contract for equity ownership without excluding the acquisition of assets that might be tied to it. Norm Furse, Revisor of Statutes, stated that he would check into spelling out the differences between the purchase of goods and commodities versus general ownership. He responded to questions, stating that the standard provision used in most state contracts would contain language that an agreement is subject to moneys being available for that purpose, and that should be sufficient unless KUMC does not use that standard form in their contracts. He noted that a proviso regarding the Hospital Revenue Fund could be tailored to limit expenditures as the Committee desired. The Chairman told members that SB 737 would be held until the revisor had time to review it.

SB 735 -- HEALTH CARE STABILIZATION FUND, PERSONS IN POSTGRADUATE RESIDENCY TRAINING, CLAIMS FROM PRIOR MEDICAL SERVICES

Bob Wunsch, Legislative Liaison for KUMC, testified in support of SB 735 and reviewed Attachment 4.

Bill Kimble, Director for the University of Kansas Medical Center School of Medicine - Wichita, testified as a proponent for SB 735 and reviewed Attachment 5. In answer to a question, it was stated that there is no pending case regarding prior acts coverage. Mr. Kimble told members it is the assumption of the university that if a resident leaves a training program and enters a Kansas residency program, he was notified by his previous training program that he should purchase prior act coverage himself. The University will complete a survey to identify those resident students in approximately another week.

Rita Noll, Senior Attorney for the Health Care Stabilization Fund, appeared before the Committee and reviewed the Insurance Department's concerns regarding SB 735 (Attachment 6). In briefing members on the state's current policy regarding prior acts coverage, Ms. Noll stated that the health care provider who is engaged in a Kansas qualified residency program must have been in compliance with the Health Care Stabilization Fund at the time the incident giving rise to the claim occurred. Ms. Noll explained the suit for prior claims coverage which she believed was misunderstood (Attachment 7). She stated that while it may be hard to estimate what kinds of cases may arise from prior act coverage, only one bad baby case would be costly and a great liability to the Health Care Stabilization Fund.

The Chairman told members that the Committee would wait on the survey before taking action on SB 735.

SB 736 -- REPEALING K.S.A. 76-827, UNIVERSITY OF KANSAS HOSPITAL FUND

Marlin Rein, Associate University Director, KUMC, testified before the Committee in support of SB 736 and reviewed Attachment 8. Senator Salisbury moved, Senator Morris seconded that SB 736 be reported favorable for passage. The motion carried on a roll call vote.

The Chairman announced that Arthur Anderson presentation on the Medical Center at the University of Kansas would be held at 9:00 A.M. in room 123-S on February 22, 1994.

INTRODUCTION OF BILLS

It was moved by Senator Moran and seconded by Senator Petty that bill draft 3 RS 2514 as requested by the Friends of Cedar Crest be introduced. The motion carried on a voice vote.

The Chairman adjourned the meeting at 12:15 P.M.

The next meeting is scheduled for February 22, 1994.

GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: Feb. 21, 1994

[illegible]

CADMUS 4H

PRAIRIE VIEW FFA

Chairman Bognia and members of the Committee. My name is Kerry Boydston and this is Alec Laverack. We represent the Prairie View FFA and Cadmus 4-H Club.

We are appearing before you in support of H.B. 2575. Mr. Gottschalk has explained the purpose of the bill.

Our interest in the bill is based on our desire to see the Encampment Building on the State Fair Grounds renovated. The Encampment Building is very necessary if 4-H and FFA members continue to exhibit at the Fair. Most of our members could not afford to attend the fair if they had to pay for hotel rooms.

We also believe that we should contribute to the project. We are sponsoring a state wide campaign to raise \$200,000 from 4-H Clubs and FFA Chapters to apply towards the costs of renovation. We believe that we should be a partner in this project.

H.B. 2575 will allow contributions to be tax deductible through a 501(C)(3) Corporation. We believe this bill will help us reach our goal.

Are there any questions?

SWAM
February 21, 1994
Attachment 1

Continue a tradition...

How many of you have spent at least one weekend in September in the Encampment Building at the Kansas State Fair? If you are one of the many 4-Her's, FFA members, parents or leaders from across the state of Kansas who has stayed in the Encampment Building lately, you have most likely noticed the need for renovation.

The Encampment Building, built in 1934, has served as a "home away from home" during the Kansas State Fair for 4-H and FFA members, leaders, and parents for the past 45 years. The two story building houses a dining room, auditorium, recreation and exhibit room, and kitchen. The building can sleep over 600 people in two sleeping wings.

While the building has been put to good use over the years, renovations are needed now. Although the building is structurally sound, it does not meet the modern electrical and fire codes nor the Americans with Disabilities Act.

The renovation of the Encampment Building is a major project, but one that has to be accomplished in order to secure the future of the building for the upcoming years. It is understood that the fiscal state of Kansas is guarded and the legislature may not approve full funding for renovating the Encampment Building. Therefore, if the youth of

Kansas show their support for this project, through monetary donations, the Kansas Legislature may be more willing to financially support the project.

As members of the Cadmus 4-H Club of Linn County and the Prairie View FFA Chapter, we would like to challenge each 4-H Club and FFA Chapter and other special interest groups in the state of Kansas to show their support of the renovation of the Encampment Building on the Kansas State Fairgrounds by pledging funds. The Cadmus 4-H Club and Prairie View FFA are each pledging \$400 over a two-year period.

PROPOSAL

The Cadmus 4-H Club and Prairie View FFA Chapter challenge every club and chapter across the state to make a pledge of at least \$200 over the course of the next two years.

Kansas 4-H Clubs and Kansas FFA Chapters will raise funds toward renovation. **The goal is to raise 10% of the total renovation budget or \$200,000.**

Each club and chapter pledging funds towards renovation will have Special Recognition permanently placed in the Encampment Building.

PROPOSED IMPROVEMENTS

COMPLETED:

FY 1993 Emergency Lighting
FY 1994 Smoke/Fire Detection

UNCOMPLETED:

FY 1995 Phase I Construction:

Remodel Kitchen
Fire Code Compliance
Heating, Ventilation and Window Replacement
Reroof and Remodel Auditorium

State Funds	\$1,000,000
4-H & FFA	\$ 100,000
Kansas State Fair	\$ 34,000
Phase I Total	\$1,134,000

FY 1996 Phase II Construction:

Complete Kitchen and Window Replacement
Exterior Remodeling
ADA Compliance

State Funds	\$500,000
4-H & FFA	\$100,000
Kansas State Fair	\$300,000
Phase II Total	\$900,000

All educational programs and materials available without discrimination on the basis of race, color, national origin, sex, age or disability.

PLEDGE FORM
ENCAMPMENT RENOVATION PROJECT

Name of 4-H Club or FFA Chapter

Contact Person Phone #

County

Address

City State Zip Code

\$ _____
(Pledge Amount)

The fate of the Encampment Building is in our hands. Let's work together to provide for the future of 4-H/FFA programs.

Pledge due by February 1, 1994.
1st payment due July 1, 1994
2nd payment due July 1, 1995

Please make your check payable to Kansas State Fair/Encampment Building Project. Donations are tax deductible.

Send pledge form and pledges to:

Kansas State Fair
Attn: Encampment Building Project
2000 North Poplar
Hutchinson, KS 67502

For more information, contact your local Extension office or.....

Cadmus 4-H Club:

Alec Laverack, Chairman, 913-757-4468
Leigh Teagarden, Secretary, 913-757-2138
Danny & Kim Goodsell, Club Leaders,
913-898-2738
Diane L. Burnett, Linn Co. Ext. Agent,
913-795-2829 or 795-2879

Prairie View FFA Chapter:

Kerry Boydston, President, 913-898-6241
Joe Atwood, Advisor, 913-757-2215
Jaclyn Dumcum

**Cadmus 4-H Encampment Building
Committee Members:**

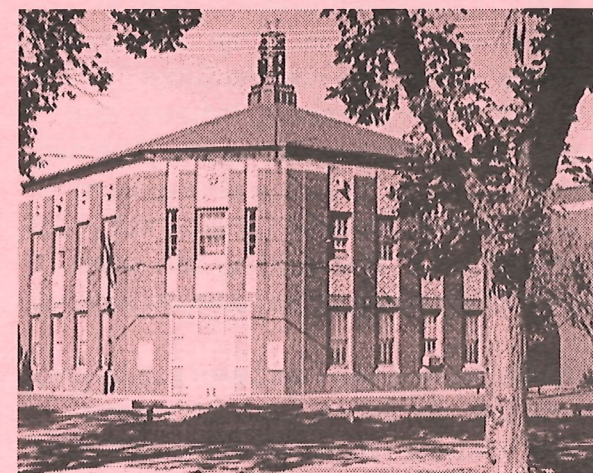
4-H'ers:

Becky Creager
Penny Baird
Kris Burnett
Amey Goodsell
Mindy Pooler
Brendan Burke
Peter Baird
Misty Pooler
Allison Burke

Leaders:

Candy Teagarden
Jeff Stroup
Cathy Stroup
Jim Burke
Rosemary Laverack
Bob Burnett
Barbara Baird
Clayton Baird
Steve Stainbrook
Cathy Stainbrook
Myron Stroup
Peggy Stroup
George Teagarden

Meet the challenge!



ENCAMPMENT BUILDING
KANSAS STATE FAIRGROUNDS
HUTCHINSON



Statement
by
Jennifer Kassebaum
Senior Assistant University Attorney
Kansas State University
SB642
Presented to:
Senator August Bogina, Chair
Senate Ways and Means Committee
February 21, 1994

SWAM
February 21, 1994
Attachment 2

Kansas State University, Department of Housing is requesting legislative authorization to sell property, known as the Evans Apartments located at 1429 Laramie in Manhattan.

The property was deeded to the University in 1955. The University Endowment Association transferred the property to the Department of Housing in 1967. The Evans Apartments consist of five two-bedroom and fifteen one-bedroom apartments.

The Department of Housing is requesting the authorization to sell the property for two reasons:

- 1) The Department feels the expense to bring the property up to Americans with Disabilities (ADA) standards is not cost effective, and
- 2) The capacity of the property is beyond the needs of the Department.

Property appraisals are not yet available so we can not quote an actual selling price for the property at this time. The proceeds from the sale of the Evans Apartments will be used by the Department of Housing to upgrade other properties and particularly to upgrade and make ADA modifications.

TESTIMONY ON SENATE BILL 737
SENATE WAYS AND MEANS COMMITTEE
FEBRUARY 21, 1994

Glenn Potter, Vice Chancellor for Hospital Administration
University of Kansas Medical Center

Senate Bill 737 is an act which would write into the statutes provisions which were enacted by the 1993 Legislature by proviso to the omnibus appropriations bill. Under the broad contractual authority granted to the agency, the University assumed that it could be a party to a contract with the Physician Hospital Organization which links together the hospital and the physicians in order to bid for managed care contracts. A voucher submitted by the Hospital was rejected by the Department of Administration on the basis that we had no specific legislative authority to enter into such a contractual relationship. This occurred in the spring of 1993 in the closing weeks of the session. Rather than seeking a separate piece of legislation, we sought to accomplish this through a proviso in the omnibus appropriations bill.

The specific authority granted to the institution in the proviso was that upon recommendation by the Chancellor and approval by the Regents, the University Hospital would be able to enter into contracts for purposes of affiliations, partnerships and other equity ownerships with other healthcare providers and third parties and could spend monies credited to the hospital revenue fund for such contracts. Senate Bill 737 is simply an attempt to write into the statute book the authority that was granted in the omnibus bill proviso that was granted a year ago.

The Hospital has utilized the authority granted by this proviso on two separate occasions since passage of the omnibus appropriations bill at the conclusion of the 1993 legislative session. First, we entered into a contractual service relationship and an equity position with University Affiliated Health Care, Inc., a physician-hospital organization (PHO) based at KU Medical Center and incorporated as a not-for-profit corporation in the State of Kansas. Approval of the PHO as a 501 (c)3 corporation is currently under review by the Internal Revenue Service, and approval is anticipated in the next few weeks. University Affiliated Health Care, Inc. (UAHC) is designed to position the Medical Center and its medical staff for health care reform and increasing managed care initiatives. The PHO will accomplish this by:

- * Increasing new patient volume to the PHO hospital and physicians;
- * Establishing and centralizing billing, utilization management, scheduling and credentialing for PHO providers and members;
- * Becoming a forum for the hospital and medical staff to communicate on emerging internal and external issues;
- * More effectively managing utilization and medical costs; and,
- * Engaging in risk-sharing provider contracts with managed care companies and payers.

I am pleased to report that our first year of operation has been extremely successful. The PHO has executed managed care agreements with:

- * Blue Advantage (24,000 covered lives);
- * Preferred Health Professionals (130,000 covered lives);
- * America's Health Plan (28,500 covered lives);
- * Medical Network, Inc. (9,500 covered lives);
- * Focus Health Care Management (unknown); and
- * USA Health Network (40,500 covered lives).

SWAM
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Attachment 3

Other managed care agreements are currently being negotiated with John Alden, Preferred Health Care, Health Risk Management, Case Management Associates, and CHAMPUS. Additionally, the PHO has as one of its objectives the conversion of existing Blue Cross and Blue Shield managed care business to the PHO.

The second occasion on which the proviso has been utilized occurred last August when the KU Hospital became an equity partner in HealthSource, a stock corporation which has, as its principal business, the operation of an HMO called Blue Advantage. This HMO is a cooperative venture jointly owned by Blue Cross and Blue Shield of Kansas City, KU Medical Center, Health Midwest, North Kansas City Hospital, Providence Medical Center and Olathe Medical Center. Our equity position as an equal partner with all other hospitals in the venture was secured by an acquisition of stock for \$697,600 and issuance of surplus notes for \$1,574,845. This combined investment of \$2,272,445 was recommended by the Chancellor to the Board of Regents, which unanimously approved the transaction in August of 1993. The HMO is already exceeding its initial pro forma expectations for enrollment, and is expected to have more than 32,000 subscribers by the end of the current calendar year. Enrollments have increased by 41 percent since we joined last summer, a very positive sign that Health Source is well-postured as a competitive integrated delivery system to meet the challenges of health reform in the new paradigm of health care delivery.

In closing, I think it is important to re-state why we feel this legislation is so critical to the KU Medical Center. As has been pointed out by the consultants engaged by the Board of Regents in the latter part of 1993,

"The changes in the health care industry that are underway now are as rapid and comprehensive as any major industry in the United States. We are swiftly moving from an industry consisting of three separate components, namely: hospitals, physician practices and payers (insurance companies and government) to consolidated service delivery systems containing all of the components within the organizational structure of a single economic unit....Time is of the essence in health care reform. In our view, new alliances and patient routing will be nearly complete within the next 18 to 24 months. The University must move quickly to make the significant changes needed to transition the Medical Center...to managed care. The Hospital and its physicians must be able to compete on a level playing field with other competing health care delivery systems...."

It is our firm belief that the authority granted to the Medical Center by the proviso was a significant and forward-thinking step. Equally important is the passage of Senate Bill 737 to statute so that this progress which I have highlighted can be continued.

I appreciate this opportunity to appear before you today. I will be pleased to respond to any questions which you may have concerning this request.

Testimony Before the Senate Committee on Ways and Means

Senate Bill 735

Robert L. Wunsch

University of Kansas Medical Center

February 21, 1994

Senate Bill No. 735 amends the statutes related to the Health Care Stabilization Fund concerning malpractice coverage afforded to persons in residency training programs operated by or affiliated with the University of Kansas Medical Center. Currently, coverage is afforded persons for acts occurring while they are training in those programs. Senate Bill 735 would extend coverage to include any claims arising out of medical services, or failure to provide medical services, that occurred during a period preceding entrance into the residency training program.

A brief history of the insurance provisions for residents at the Medical Center may help clarify this matter. Until 1985, the Medical Center purchased malpractice coverage for those individuals engaged in its residency training programs. In 1985, the legislature decided that it would be much more cost effective to provide coverage to the residents through self insurance. From 1985, residents have been self-insured and since 1991 that coverage has also been applied to individuals in residency training at the University of Kansas School of Medicine - Wichita who are employed by an affiliated organization which operates the residency program there.

It has been the assumption of persons at the Medical Center since the inception of the self-insurance program that coverage was provided for residents for any claims filed against them during the time they were serving in our residency programs. In effect, we believed that the program was one providing claims-made coverage. That assumption was bolstered, for example, by the provisions of K.S.A. 40-3402(d) which state that in lieu of a claims-made policy "otherwise required under this section" a person in residency training who is moonlighting can obtain an occurrence-form policy. In addition, in 1991 a case was filed against an individual who was at that time in one of our residency training programs. This case arose out of the individual's practice in Missouri prior to coming into the residency program. As we understand it, the Health Care Stabilization Fund provided representation for the individual until mid-1993 when an insurance company assumed responsibility for the coverage.

The issue concerning coverage for prior acts arising from practice outside the State of Kansas was brought to our attention last spring when a department at the Medical Center inquired to confirm that an individual who had been recruited as a new faculty member and who would be arriving shortly would have prior acts coverage. At that time, we entered into discussions with persons in the Department of Insurance who deal with the provisions of the Health Care Provider Insurance Act and they informed us that the statute could not be construed to extend coverage in this kind of situation. In other words, physicians coming to Kansas from practice outside the state do not receive coverage for prior acts. We appreciated the assistance of persons in the Department of Insurance in working through these matters. We then had to determine how to address

SWAM
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Attachment 4

this matter, particularly for our residents whom we had assumed were entirely self-insured by the state.

The provisions of Senate Bill 735 would close the gap between what we thought was the coverage provided for our residents and what it appears the coverage under the statute actually is. We have surveyed our residency programs both in Kansas City and in Wichita and of the approximately 675 residents in the programs, we have determined that 137 came from prior medical practice outside the state. By and large, these individuals came from prior residencies or directly from medical school. Only a very few came from private practice. On the Kansas City campus, we know of only ten residents who do not have prior acts coverage. Based on this information, we do not believe the exposure to the state is great. This is also supported by our experience since 1985 in which we are aware of only one claim against a resident for a prior act arising outside of Kansas.

We suggest two amendments to Senate Bill 735. As you can see on page 4 of the bill draft in lines 3 through 7, the coverage which would be provided for prior acts extends only to claims made for such prior acts during the time the individual is engaged in a post-graduate training program. We believe it appropriate to restrict this coverage to prior acts which occurred in earlier residencies or while the individual was in medical school. Thus, we would propose an amendment which would limit the coverage to those two circumstances and would not extend to prior private practice. Second, we believe that this coverage should be clearly specified to be secondary in nature. In other words, should a resident already have prior acts coverage, as we know many of our residents do, then the coverage provided under this statute should not be primary coverage.

There is a third concern which you may wish to consider. This is whether the Health Care Stabilization Fund should assume responsibility for this prior acts coverage or whether the State General Fund should become responsible to reimburse the Health Care Stabilization Fund.

Bill Kimble, Associate Dean of Graduate Medical Education on our Wichita campus, is here this morning to speak to you about the experience in Wichita which we believe is typical of both campuses. We would be glad to answer any questions you might have.

Thank you.

Bill Kimble
University of Kansas
Medical Center
School of Medicine-Wichita

Testimony on Senate Bill 735
Senate Ways and Means Committee
February 21, 1994

The Wichita Center for Graduate Medical Education (WCGME) became operational July 1, 1989. At that time, the University of Kansas School of Medicine-Wichita became responsible for the sponsorship and academic operation of all residency training programs in Wichita. Prior to that time, most Wichita residencies were sponsored, operated and funded by Wichita's community teaching hospitals.

Prior to July 1, 1990, the Wichita hospitals had been responsible for the provision of professional liability insurance to cover all of a resident's clinical acts. Since July 1, 1990, professional liability insurance for Wichita residents has been provided by the State of Kansas via the same self-insurance program used to provide insurance to the university's residents on the Kansas City campus. When Wichita hospitals were providing a resident's insurance, the policy provided claims-made coverage and included coverage for prior acts performed in previous residency training programs. At the time the state assumed responsibility for a Wichita resident's insurance coverage, it was understood that the insurance provided claims-made coverage and a resident's previous training was covered.

I join Mr. Wunsch in encouraging your support of Senate Bill 735 which would extend coverage to include any claims arising from a resident's clinical acts occurring during the period preceding entrance into one of our residency training programs. I agree with Mr. Wunsch that the coverage should apply only to previous residency training and should not include periods of private practice. I agree also that the coverage clearly should be secondary and should not pre-empt prior acts of coverage already carried on the resident.

There are 235 residents participating in the University of Kansas sponsored residency programs in Wichita. Only about 20% of these residents had previous residency training when they entered one of our programs. Of this number, the vast majority are believed to have coverage of prior acts provided by their previous residency program. We are currently polling the affected residents and will soon be able to provide definitive information regarding the number of residents (presumed to be small) who would gain coverage via Senate Bill 735.

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Attachment 5

While it is obvious that most persons come into our residency programs straight out of medical school, there are specialty training programs (i.e., anesthesiology and radiology) that require their trainees to have had a minimum of one year of "clinical training" prior to entry into their program.

Again, I request your support for Senate Bill 735. I am confident that the increased exposure would not be great. I thank you for your time and would be happy to answer any questions.

Senate Ways and Means Committee

February 21, 1994

Testimony on Senate Bill No. 735

by

Rita L. Noll

Kansas Insurance Department

The Kansas Insurance Department, which administers the Health Care Stabilization Fund appears neither as a supporter nor as an opponent of Senate Bill 735. However, we do have three concerns about the bill which we would like to bring to your attention.

First, the bill amends K.S.A. 40-3403(c)(12) to require the Fund to provide excess coverage for any and all claims made against a person engaged in a qualified residency program. Since the inception of the Fund in 1976, the coverage afforded by the Fund has been on a modified claims-made basis, meaning that the Fund has coverage for a claim made during the policy period so long as the health care provider was in compliance with the Health Care Stabilization Fund (i.e., paid the surcharge) at the time the incident giving rise to the claim occurred. K.S.A. 40-3403(a). The surcharge levied by the Fund is premised on the estimated liability which will arise from claims and suits brought against active and inactive health care providers qualified for coverage during a fiscal year. The basis for this determination is the aggregated compliance records for all defined health care providers. Senate Bill 735 destroys this basis by making the Fund liable for periods that are not recorded in the Fund's compliance records.

The second concern we have is that the bill does not state the amount of excess coverage the Fund would have for these out-of-state, prior-acts claims and law suits. Would the Fund be required to provide coverage in the same amount as the resident had maintained while practicing in the other state? As the bill currently reads, the Fund would thus become liable to provide unknown coverage for unknown liabilities.

SWAM
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Attachment 6

Our third concern is that providing such coverage would significantly increase defense and loss costs to the state general fund and the Health Care Stabilization Fund. For example, if a health care provider in a qualified residency program had previously practiced obstetrics in New York, this bill would require the Fund to cover any future claim or suit that may be made arising from the resident's previous New York practice. The extent of these additional costs is not easily estimated, except that such costs would be substantial and unpredictable. The excess coverage afforded by the Fund would be paid from the Fund monies. The Fund would be reimbursed from the state general fund for all defense costs and for the amount of basis coverage (\$200,000 per claim, \$600,000 aggregate). K.S.A. 40-3403(j).

Thurber v. Ainsley, et al.

The incident giving rise to the suit occurred April 25, 1990. Suit was filed February 25, 1991. Dr. Ainsley was named a defendant. She entered K.U. residency program July 1, 1990, and thus was a K.U. resident at the time suit was filed.

Before entering the K.U. residency program, Dr. Ainsley had been in private practice and in continuous Fund compliance from October 1, 1981 through June 6, 1990, which includes the date the incident occurred.

When suit was filed, the HCSF through the K.U. residency program appointed an attorney to represent and defend the doctor. It was later learned that the doctor's insurance carrier, CNA, who provided her primary insurance coverage before she entered the residency program, was notified of the claim on May 5, 1990. Since CNA had notice of the claim before the insured entered residency, they agreed that as the primary carrier they had the duty to defend and provide coverage. Thus, they reimbursed the Fund/Residency program for all costs of defense.

If CNA had not received notice of the claim before Dr. Ainsley entered the residency program on July 1, 1990, the residency program would have provided coverage and a defense for the claim. See K.S.A. 40-3403(a), K.S.A. 40-3403(c)(11),(12). The key is that Dr. Ainsley had been in prior Fund compliance (i.e., paying a surcharge) before entering the residency program.

RLN:stle
LE3384

SWAM
February 21, 1994
Attachment 7

Marlin L. Rein
University of Kansas
Medical Center

Testimony on Senate Bill 736
Senate Ways and Means Committee
February 21, 1994

Senate Bill 736 repeals KSA 76-827 related to the University of Kansas Hospital Fund. The request to have this legislation repealed is an effort to simplify the appropriations process through the elimination of an unnecessary fund. Abolishing this fund in no way lessens the prerogatives of the Kansas Legislature in the appropriations process.

The legislative purpose for creating the Kansas Hospital Fund was effectively lost the day it was signed into law. The act was established in Senate Bill 896 (an appropriations bill) in the 1980 session of the Legislature. The act was initiated by the Senate Ways and Means Committee which believed a need existed for the Medical Center to have the ability to set aside funds in a manner similar to other hospitals for depreciation and capital expansion. Monies in the University of Kansas Hospital Fund were subject to appropriation by the Kansas Legislature and were limited to purposes of renovation, reconstruction, and maintenance and for the acquisition and replacement of equipment.

The original subsection (a) provided for the transfer of monies by the University from the Hospital Revenue Fund to the University of Kansas Hospital Fund. The original version of the bill provided that, commencing in Fiscal Year 1982, \$2 million per year from the Hospital Revenue Fund would be transferred to this newly created fund. Commencing in Fiscal Year 1987 and thereafter, the transfer would be \$600,000 per year. Those statutory automatic transfers were vetoed by the Governor who allowed the rest of the bill to stand.

Over the years, the fund has been used for the purposes outlined in its original enactment, but transfers into the fund were subject to appropriation. In other words, if the Legislature wanted to appropriate monies from the University of Kansas Hospital Fund, they first had to authorize the transfer from the Hospital Revenue Fund. There is no reason to impede making those appropriations directly from the Hospital Revenue Fund. There has been no new appropriation from the University of Kansas Hospital Fund since Fiscal Year 1992.

In closure, I would like to reiterate that elimination of the fund is a technical issue and will simplify the appropriations process. I would be pleased to answer any questions.

SWAM
February 21, 1994
Attachment 8