MINUTES

SPECIAL COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

November 7-8, 2007
Room 519-S—Statehouse

Members Present

Senator Ruth Teichman, Chairperson (November 7)
Representative Clark Shultz, Vice-Chairperson
Senator Roger Pine
Representative Nile Dillmore (November 7)
Representative Rocky Fund
Representative Peggy Mast (November 7)
Representative Ronnie Metsker
Representative Cindy Neighbor

Member Absent

Senator Chris Steineger

Staff

Melissa Calderwood, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Mike Heim, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Bev Beam, Committee Secretary

Conferees

Dr. Marcia Nielsen, Kansas Health Policy Authority
Kathleen Smith, Kansas Department of Revenue
Cindy Hermes, Kansas Insurance Department
Tim Witsman, Wichita Independent Business Association
Marlee Carpenter, Kansas Chamber
Ken Daniel, Midway Wholesale
Gary Blackburn, Kansas Department of Health and Environment
Representative Doug Gatewood
Dale Oglesby, Mayor of Galena, Kansas

Pete Tavares, Policy Examiner, Kansas Insurance Department
Kerri Spielman, Kansas Association of Insurance Agents

Wednesday, November 7
Morning Session

Chairperson Senator Ruth Teichman called the meeting to order at 10:00 a.m. and welcomed everyone to the meeting.

Chairperson Teichman started the meeting by stating that the charge of the Interim Committee being reviewed during this meeting is twofold; to study:

- Health Care Tax Credits and Benefits; and
- Mine Subsidence.

Senator Teichman said under Health Care Tax Credits and Benefits, the Committee is to study and review options for tax credits and benefits for the purchase of long-term health care insurance, health earned income tax credits, and health insurance health savings accounts pursuant to the 2007 SB 11 law.

Dr. Marcia Nielsen, Executive Director, Kansas Health Policy Authority, gave a review of health reform options and the agency's response to 2007 SB 11. She said the goal is to improve the health of Kansans. Dr. Nielsen said we need to think about how it is that Kansans have a healthy life within their families, and within their communities, their schools, and workplaces. Dr. Nielsen continued, saying the goals of the health reform recommendations are twofold:

- To begin the transformation of our underlying health system in order to address the staggering rise in health care costs and chronic disease, as well as the underinvestment in the coordination of health care; and

- To provide Kansans in need with affordable access to health insurance.

Summarizing, Dr. Nielsen said the Kansas Health Policy Authority Board offers the following 21 recommendations:

- Improve health behaviors;

- Informed use of health services;

- Shared financial responsibility;

- Promoting medical homes;

- Implement statewide community health record;

- Promote insurance card standardization;

- Increase tobacco user fee;

- Statewide ban on smoking in public places;
- Partner with community organizations;
- Include Commissioner of Education on KHPA Board (*ex officio)*;
- Collect information on health/fitness of Kansas school children;
- Promote healthy food choices in schools;
- Increase physical education;
- Wellness grant program for small business;
- Healthier food options for state employees;
- Provide dental care for pregnant women;
- Improve tobacco cessation within Medicaid;
- Expand cancer screenings;
- Access to care for Kansas children and young adults;
- Expand insurance for low-income Kansans; and
- Affordable coverage for small businesses.

Committee members inquired about tobacco cessation payments by Kansas Medicaid and information provided about uninsured working adults in the Authority's presentation. For additional information from Dr. Nielsen's presentation, please see the attachment (Attachment 1).

Kathleen Smith, Tax Specialist, Policy and Research, Kansas Department of Revenue, gave an overview regarding current Kansas health care-related tax incentives. She said KSA 2006 Supp. 79-32,1171(xvi) provides to taxpayers purchasing qualified long-term care insurance contracts subtraction modification from federal adjusted gross income for purposes of determining Kansas adjusted gross income (Attachment 2).

She continued that KSA 2006 Supp. 79-32,213(a) provides a tax credit for an employer of a member of the Kansas National Guard for amounts paid for health insurance for such person during any period of state active duty in excess of 30 days if the employer was not otherwise required to pay such insurance. She noted KSA 2006 Supp. 40-2246 provides a tax credit to small employers that have established health benefit plans or health savings accounts for employees.

Ms. Smith said she also was asked to provide an overview of all of the tax credits available. She presented a handout showing each credit, a description of each, the statutory reference, whether it is a non-refundable or refundable credit, whether there is a fiscal year limitation, the sunset date, and any information regarding tax year 2005 (Attachment 3). Committee members commented on the implications of increasing (providing greater incentive) the tax credits on the State General Fund. Chairperson Teichman asked Ms. Smith to estimate the fiscal impact if all qualified individuals were to take advantage of the long-term care tax credit and if 50 percent were to take advantage. Ms. Smith said she would look into those figures and report back to the Committee.

Cindy Hermes, Director, Government and Public Affairs, Kansas Insurance Department, reported on the Kansas health insurance environment and the role of health care tax credits and benefits. Ms. Hermes said the Kansas Insurance Department is continually addressing issues of regulating a $15 billion industry in Kansas, educating consumers on the issues of insurance that are important to them and advocating on their behalf any concerns or complaints about the insurance industry they may have. She said in addition, the Department's role is to assist in the coordination of efforts between state agencies to provide government efficiencies wherever possible. Ms. Hermes presented Committee members with a copy of the Department's "Long Term Care Shopper's Guide;" a brochure regarding the Small Business Tax Credits; and a copy of the Department's latest news release. She said the Department is happy to develop any insurance-related program or document the Committee would like to use for educational or informational purposes. Chairperson Teichman asked Ms. Hermes how many businesses offer a long-term care insurance policy. Ms. Hermes said she would get that figure for the Committee (<u>Attachment 4</u>).

Dr. Marcia Nielsen, Kansas Health Policy Authority, again testified regarding long-term care insurance and the Partnership Program. She noted Kansas is one of the first states to take advantage of the program to buy long-term care insurance and protect assets in the event they use up that benefit and ultimately need to go on to Medicaid. Individuals are still required to meet income and functional eligibility requirements, so there are still protections for the Medicaid program. The number one impediment for people to buy long-term care insurance is there is no tax advantage like there is for health insurance. Dr. Nielsen noted this is something the long-term care industry has been working on in Washington, D.C. She noted over half of all nursing care in this state is paid for by Medicaid. She continued, saying people who need to buy long-term care insurance are a fairly narrow group of individuals. They are not people who are really wealthy, because those individuals can pay out of pocket; they are folks who want to leave something to their children so they have some assets to protect, but they are not people who are middle class, because spending down to get on Medicaid is what we do, not just in Kansas, but all across the country. So until we start to grapple with that federal/state partnership around Medicaid and what we are going to do around nursing home care, we are really ignoring what is a very significant issue and it is part of the reason why long-term care partnership programs are so expensive, Dr. Nielsen stated.

Dr. Nielsen stated further, federal law previously only allowed four states to have Long-Term Care Partnership. Under the Deficit Reduction Act of 2005, LTC Partnership programs were made available. Kansas was approved by CMS for its LTC Partnership in October 2007. A Long-Term Care Partnership is a program that allows individuals to purchase long-term care insurance that protects assets if their insurance LTC benefits are expended and Medicaid becomes necessary. Individuals must still meet income and functional eligibility requirements to qualify for Medicaid. The disregarded assets also apply to the Medicaid recovery process. Dr. Nielsen noted that as our population ages, new models of paying for long-term care must be identified so that Medicaid is not the choice of first resort. Medicaid is the largest payer for LTC, financing 35 percent of all costs. Fifty-six percent of nursing facility care is paid by Medicaid. LTC needs will increase by 270 percent by 2040. The Kansas Health Policy Authority and the Kansas Insurance Department introduced the LTC Partnership on October 1, 2007. These agencies and Kansas Department on Aging are working together to develop materials and provide public education. The 2005 Legislature enhanced the small employer health insurance premium tax credit to encourage greater usage of this program. Eligible employers must have established a health insurance plan or contributed to employee health savings accounts after

December 31, 2004. Challenges with the current tax credit include employers facing the upfront cost of paying these premiums before reimbursement and the limited marketing of this plan (Attachment 5).

Afternoon Session

Chairperson Teichman welcomed Tim Witsman, Wichita Independent Business Association (WIBA). Mr. Witsman testified in support of a study for tax credits and benefits pursuant to 2007 SB 11. Mr. Witsman noted that even though WIBA's members come from a variety of business sectors, their desire to retain or obtain the ability to provide affordable health insurance to their employees is a uniting factor. In summary, Mr. Witsman stated that the 2008 Legislative Session will have a tremendous opportunity to identify and explore market-driven solutions that will help keep health care costs down and coverage rates up. He said the WIBA plans to work with other business groups to further explore options and noted the importance of both the amount of and timing of the tax credit for small employers. He said there are great opportunities to make health care coverage in Kansas better and well planned tax credits are one mechanism that will help businesses provide coverage for their employees (Attachment 6).

Marlee Carpenter, Kansas Chamber, stated that the use of tax credits is a market-driven solution that is aimed to encourage small business owners to offer health insurance as an employee benefit. The Kansas Chamber will support any type of expansion to the current health insurance tax credit program. Ms. Carpenter noted, however, to be effective, tax credits must first be an incentive for both investing in health insurance, but also aimed at keeping health insurance as a benefit. Ms. Carpenter concluded that the Kansas Chamber encourages expansion of the current tax credit to include all small businesses that offer health insurance, as well as an increase in the credit amount (Attachment 7).

Ken Daniel, Midway Wholesale, Topeka, stated in summary: in almost any discussion of how to solve the health insurance problem, business people come up with income tax credits as a solution. He said until now, he has not been able to figure out how to make this work on the state level. Mr. Daniel said the big group that needs help but does not seem to be getting it is the "too poor to afford insurance but too rich for Medicaid." Health Savings Account arrangements can be their solution, and it can be an answer for the poorest and richest workers, too. (Attachment 8).

The Committee also received written testimony from Derrick Sontag, State Director, Kansas National Federation of Independent Business (Attachment 9).

The Chairperson asked for Committee discussion regarding testimony presented. Following discussion, Senator Pine asked for a chart showing the comparison of options available, what they do and what they cost, and who pays for them. The Chairperson asked Melissa Calderwood to prepare such a chart to be presented to the Committee at its next meeting. Conferees representing small business were encouraged to continue dialogue on this subject and report to the appropriate legislative committees in 2008. Committee members also requested further information on the financial impact of tax credits and insurance availability/uninsurance rates.

Mine Subsidence Insurance

Following a short break, Chairperson Teichman asked Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment, for his testimony regarding mine subsidence. Mr. Blackburn said underground mining has taken place in many areas of the state; however, many of the greatest concerns are located in the southeast portion of the state. He noted that many state agencies have been involved with the issue of subsidence and a simple answer for the historical problems has not been found. He said regulatory programs that now exist to set standards for future mining and oil well construction should prevent future areas of potential subsidence; however, many problem areas exist from past operations. No funding source is available to deal with the majority of the resulting problems, including structural damage to homes, businesses, and roads. He concluded it is difficult to determine an accurate fiscal impact of subsidence in the state each year because extreme weather situations tend to increase the incidence of subsidence events. Mr. Blackburn distributed images to illustrate areas of the state affected by subsidence, including Lyons, Hutchinson, Kanopolis, and Galena (Attachment 10).

Representative Doug Gatewood presented oral testimony in support of subsidence insurance. He said he has concerns because he has constituents, as do other members of the Committee, who could be getting some insurance on their property if this coverage was in effect now. So instead of just hearing that one is going to be available, he wants to see one is available with some competitive rates, Representative Gatewood said. SB 127 and HB 2099 give full administrative authority to the Insurance Commissioner's Office, so if there are any problems with the rules or the regulations, they have an opportunity to address them in the Insurance Commissioner's Office.

Dale Oglesby, Mayor of Galena, testified that after months of study, the Mine Task Force concluded that while the potential for widespread subsidence is remote, the financial repercussions of having no affordable insurance is now creating a silent, but substantial drag on the local economy. The Task Force, as well as the governing body of the City of Galena, supports a two-pronged approach to resolving this problem. First, the Task Force strongly supports making available some form of subsidence risk insurance to address investor concerns. Second, the Task Force is moving forward with appropriate studies that have the ultimate goal of forming a workable plan for stabilization and remediation. This will address safety concerns. He concluded that old mining drifts with less than 25 feet of overburden should be considered at risk for imminent failure and receive top priority for remediation. Drifts with greater than 25 feet to 50 feet should be considered either top priority or secondary priority, depending on soil conditions and stability above the drift. The deeper room and pillar mines under developed areas should have monitor wells installed and wire line logged annually. This would reveal any subsurface changes in depth, as well as any changes in ground stability above the mine and would indicate any progressive subsidence. This is a common sense, conservative approach that attacks the mining risk head on. Under this program, even small parcels of property could be economically verified safe for construction or other public uses (Attachment 11).

Thursday, November 8
Morning Session

Vice-Chairperson Shultz called the meeting to order. He asked for approval of the minutes of October 17-18, 2007. *Representative Neighbor moved approval of the minutes with one correction. Representative Metsker seconded. Motion passed.*

The Vice-Chairperson called on Melissa Calderwood, Kansas Legislative Research Department. Ms. Calderwood provided a brief summary of other states' laws for subsidence insurance coverage, as well as the Kansas Legislature's consideration of mine subsidence insurance coverage (2007 HB 2099 and SB 127). She noted the information was obtained through a review of other states' laws, insurance industry and state regulatory web sites and related sources to determine the availability of subsidence insurance. She continued that during the 2007 Session, two identical subsidence insurance measures (HB 2099 and SB 127) were introduced for legislative consideration. The bills incorporate Ohio subsidence insurance law by providing for optional insurance coverage (homeowner's and basic property insurance) under the proposed Kansas Subsidence Insurance Act. She said the bills create a mechanism for providing the coverage: the Kansas Mine Subsidence Insurance Underwriting Association, the Mine Subsidence Insurance Governing Board, and the Mine Subsidence Insurance Fund.

Ms. Calderwood continued, stating the House Committee reviewed both the underlying bill (HB 2099) and the version passed by the Senate Committee (SB 127). She said the Committee did not advance either bill and instead, recommended an interim study to review the issues associated with providing subsidence insurance coverage in Kansas (Attachment 12).

Next to testify was Pete Tavares, Jr., Policy Examiner, Kansas Insurance Department. Mr. Tavares said the Kansas Insurance Department is aware of the severity and scope of the problems presented by mine subsidence within Kansas. He said a major problem associated with the subsidence of these mines has been the inability of homeowners in at-risk areas to obtain loans for property acquisition due to the fact that they have not been able to find a carrier to write insurance for these new properties. Mr. Tavares provided the name of three insurers who write subsidence insurance policies through excess lines. Kansas residents may be able to obtain such a policy by contacting an independent agent. He noted that officials from the Insurance Department have been to Galena and have seen the immense physical and financial loss that can occur due to mine subsidence (Attachment 13).

Kerri Spielman, Kansas Association of Insurance Agents, testified that while the proponents of SB 127 cited concerns in four counties, the bill applies statewide to every residential, farm, and commercial structure. Ms. Spielman said an offer of mine subsidence insurance would have to be offered to millions of properties in Kansas to address a limited problem in four counties. She said their concern is that the Kansas Insurance Department will require a signed rejection to document the mandatory offer of coverage. She noted that as the bill reads, this signed rejection could have to be obtained on every renewal for an indefinite period. She concluded that during the session, KAIA recommended consideration of authorizing funding for an actuarial study by the Insurance Department of the feasibility of SB 127 and HB 2099. She said it is suspected it will come back saying that to develop a sufficient pool of funds to pay even a few, likely large losses, will require some kind of mandatory coverage. She said people simply are not going to voluntarily buy subsidence insurance any more than they buy flood or earthquake insurance today (Attachment 14).

Vice-Chairperson Shultz invited comments from Representative Richard Proehl, a banker, about the lender's perspective when a property is "uninsurable." Representative Proehl provided comment about the impact on the area real estate market, noting that the lack of coverage limits people's ability to buy homes.

The Vice-Chairperson said, following a short break, the Committee would continue discussion of assigned topics—health care tax credits and benefits, and mine subsidence insurance only. The credit union and its report topic will be discussed further at the December meeting. Committee members outlined information requests made earlier in the meeting and also requested information about insuring children and the Health Policy Authority proposal's impact on the rate of the uninsured.

Following discussion, the Vice-Chairperson closed the meeting, noting that the next meeting is scheduled for December 4 and 5, 2007. The meeting adjourned at 11:15 a.m.

Prepared by Bev Beam
Edited by Melissa Calderwood

Approved by Committee on:

December 4, 2007
(Date)