

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 11, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Linda Sheppard, Kansas Insurance Department

Others attending:

See attached list.

Linda Sheppard, Kansas Insurance Department (Attachment 1)

Due to late arrival of Chair Teichman, Vice Chair Brownlee, called the meeting to order.

Action on

**SB 390 - Regulating the use of genetic testing by insurance and health care entities.**

Linda Sheppard, Kansas Insurance Department, added further testimony to answer questions of committee members regarding this bill. Ms. Sheppard stated that with regard to incentives to participate in genetic testing, under the terms of the federal regulations, which could also be adopted specifically for Kansas by the commissioner of insurance, the offering of rewards in exchange for genetic information is specifically prohibited. She added that the prohibition against underwriting is broadly defined to include changes in deductibles and cost sharing mechanisms and the providing of discounts, rebates, payments in kind, or additional benefits.

Ms. Sheppard said with regard to privacy protections for genetic information, the federal regulations state that genetic information acquired under the provisions of the act may not be disclosed except (1) to the individual or family member about whom the information pertains, (2) to an occupational or other health researcher if such research is conducted in compliance with federal regulations, (3) in response to a court order, (4) to government officials investigating compliance with the Act, (5) when it supports an employee's request for FMLA leave, or (6) to federal, state or local public health agencies with regard to information about the manifestation of contagious diseases or disorders that present an imminent hazard of death or illness, with notice of such disclosure to the individual who is the subject of the disclosure. She noted that the federal regulations also specifically state that these regulations do not apply to the use or disclosure of genetic information that is "health information" subject to the existing HIPAA protections.

In addition, Ms. Sheppard said with regard to support for voluntary testing provisions as stated during the February 9 hearing, the provisions in subsection (c) of **SB 390** that would permit insurers in Kansas to request, but not require, that insureds undergo genetic testing is patterned after the language in the federal Genetic Information Nondiscrimination Act. She said the motivation for the federal Act was testimony from individuals who wished to undergo genetic testing because of concerns about a history of disease in their families but were fearful of what actions might be taken by their employers or insurers when they became aware of the test results. She noted that in response to these concerns, Congress chose to permit insurers to request such testing for research purposes, subject to numerous conditions and at their expense, which would also allow the information to be shared with the individuals who were tested. (Attachment 1)

Senator Colyer said in the second part of the bill which allows this sort of testing, Section C on page 2 line

CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on February 11, 2010, in Room 152-S of the Capitol.

8 extending for much of the page which defines the testing that the insurance companies may request, it is not the individuals who request the testing, it is the insurance company requesting this of the individual. He asked if it is required by federal regulations that we have those provisions and are there other states who are putting in the voluntary testing?

Ms. Sheppard said the answer to the first question is no, that is not required by federal regulations. She added that she is not aware of which states have passed this language and which have not. This language came directly out of the federal action, she said.

Senator Brownlee asked if this Bill wasn't passed, what would be the effect?

Linda Sheppard said there would be no impact. She added that primarily the impact to the department would be that it would not be possible for an individual to require their genetic test information through this test mechanism that is in this bill to allow the insurance companies to do this and give this information to their insureds.

Senator Holland asked for clarification in Subsection 5 at the bottom of page 2, line 42 (e) where it states an insurer writing life insurance, disability income insurance or long-term care insurance coverage that obtains information under paragraphs (1) or (2) of subsection (b) shall not: (2) provide for rates or any other aspect of coverage that is not reasonably related to the risk involved. What does that mean?

Senator Barnett asked Ken Wilke if Section (c) is eliminated does this bill do anything else?

Mr. Wilke said if Subsection (c) is eliminated, you would still have the two new paragraphs in Subsection (b) in place and that would prohibit the insurance company from basically giving the premium to get this type of information, but what it does do is take out the mechanism for the insured to obtain the results of their test.

Senator Brownlee asked if the insured could still obtain this information on their own?

Ken Wilke said they wouldn't have the mechanism contained in this bill to get that information. He said this provides an easier mechanism.

Linda Sheppard said she would find the answers to these and other questions and get back to the committee.

Vice Chair Brownlee said this bill would not be worked today, that the committee would wait for answers to their questions.

Action on

**SB 389 - Dentists; prohibition on limiting payment for services not covered under insurance policy.**

Senator Colyer offered an amendment to this bill. He said he discussed with the revisor potential additional language. He said his understanding of the current bill is that it would only prohibit this from those who have employer provided insurance and that there would be language that would prohibit this for an individually purchased insurance as well as standard S-chip sorts of coverage.

Ken Wilke explained that right now, this appears to apply only to group insurance by an employer. He said it would be easy to add in individually purchased policies. He said when it comes to S-chip and medicaid provided services, that gets into a potential waiver situation with SRS/KHPA. He said what we can do is include them to the extent the law allows. He said he has discussed this with Senator Colyer and that it meets the senator's requirements.

Senator Colyer moved to amend SB 389 as stated by Ken Wilke. The motion was seconded by Senator

CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on February 11, 2010, in Room 152-S of the Capitol.

Kelsey. Motion carried.

Senator Kelsey moved to pass the bill out favorably as amended. Senator Barnett seconded. Motion carried.

The next meeting is scheduled for February 16, 2010.

The meeting was adjourned at 10:10 a.m.

**SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE  
GUEST LIST**

DATE: 2-11-10

NAME	REPRESENTING
Alex Rotoyantz	P.F.A.
Bill Sneed	ANIP
Maree Compندر	KAHP
John Beetz	KID
Cindy Herber	KIO
Linda Sheppard	KID
Ken Cochran	CBA
Kari Prestey	Kearney & Associates
John Peternia	The Debt Assoc.



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

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February 10, 2010

**TRANSMITTED BY E-MAIL**

**teichman@senate.state.ks.us**

The Honorable Senator Ruth Teichman, Chair  
Financial Institutions & Insurance Committee  
300 SW 10<sup>th</sup> Avenue,  
State Capitol, Room 236 E  
Topeka, KS 66612

**RE: SB 390 / Genetic Testing**

Dear Madam Chairman:

As requested at the conclusion of the February 9th hearing on SB 390 we are providing the following information in response to various questions raised by members of the Committee.

1. Incentives to Participate in Genetic Testing

Under the terms of the federal regulations, which could also be adopted specifically for Kansas by the commissioner of insurance, the offering of rewards in exchange for genetic information is specifically prohibited. Using the example suggested by Sen. Steineger, under the federal regulations wellness programs are specifically prohibited from offering rewards for participation in genetic testing. The prohibition against "underwriting" is broadly defined to include changes in deductibles and cost sharing mechanisms and the providing of discounts, rebates, payments in kind, or additional benefits.

2. Privacy Protections for Genetic Information

The federal regulations state that genetic information acquired under the provisions of the Act may not be disclosed except (1) to the individual or family member about whom the information pertains, (2) to an occupational or other health researcher if such research is conducted in compliance with federal regulations, (3) in response to a court order, (4) to government officials investigating compliance with the Act, (5) when it supports an employee's request for FMLA leave, or (6) to federal, state or local public health agencies with regard to information about the manifestation of contagious diseases or disorders that present an imminent hazard of death or illness, with notice of such disclosure to the individual who is the subject of the disclosure.

*FI&I Committee  
2-11-10  
Attachment 1*

Senator Ruth Teichman  
February 10, 2010  
Page Two

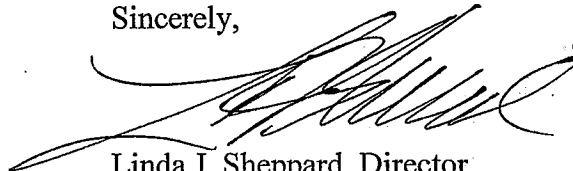
The federal regulations also specifically state that these regulations do not apply to the use or disclosure of genetic information that is "health information" subject to the existing HIPAA protections.

3. Support for Voluntary Testing Provisions

As stated during the February 9th hearing, the provisions in subsection (c) of SB 390 that would permit insurers in Kansas to request, but not require, that insureds undergo genetic testing is patterned after the language in the federal Genetic Information Nondiscrimination Act. The motivation for the federal Act was testimony from individuals who wished to undergo genetic testing because of concerns about a history of disease in their families but were fearful of what actions might be taken by their employers or insurers when they became aware of the test results. In response to these concerns Congress chose to permit insurers to request such testing for research purposes, subject to numerous conditions and at their expense, which would also allow the information to be shared with the individuals who were tested. The Department supports this approach to making it possible for those individuals in Kansas who may wish to agree to such testing for their personal benefit.

Thank you for the opportunity to provide you with this information and please let us know if you have additional questions.

Sincerely,



Linda J. Sheppard, Director  
Accident & Health Division

cc: Sandy Praeger, Commissioner of Insurance  
Cindy Hermes, Director, Government and Public Affairs

*Handwritten notes:*  
F.I.I. Committee  
2-11-10  
Linda J. Sheppard