

Senator William Stouffer, Chairman  
Senator Victor Callahan  
Steve Reintjes, MD  
John Stanley, MD  
David Carpenter



Representative Robert Schaaf, MD  
Representative Curt Dougherty  
Lancer Gates, DO  
Gloria Solis, RN, MSN, MBA

## Health Care Stabilization Fund Feasibility Board

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Healthcare Stabilization Fund Feasibility Board  
June 5, 2009

### Board Members Participating:

Senator Stouffer  
Senator Callahan (via Teleconference)  
Representative Schaaf  
Dr. Reintjes  
Dr. Gates  
Gloria Solis  
David Carpenter  
Brent Kabler (representing DIFP Director John M. Huff)

### Also Participation from the Missouri Department of Insurance:

David Cox (via Teleconference)  
Tamara Kopp (via Teleconference)  
Mark Doerner

Sen. Stouffer called the meeting to order at approximately 12:30 p.m. For its first item of business, Sen. Stouffer took up and the Board promptly approved the draft Minutes for the Board's prior meetings of January 9, 2009 and April 27, 2009.

Next, the Board heard from Mark Doerner regarding a suggested modification to the Board's April 27, 2009 request to the Department to conduct a data call to collect information for the Board from Missouri's medical malpractice insurance companies. While the Board had requested that the data be collected under the Department's "market conduct examination authority," the modification would have the Board request the collection under "whatever legal authority was most appropriate." Sen. Stouffer asked why the Department was suggesting the change. Mr. Kabler noted that the suggested change was based on the fact that the current statutes and regulations on market conduct examinations could add several months to the collection process, since market conduct examination procedures allow the examined insurers substantial time to review and comment on their examinations. Mr. Doerner indicated that collecting the information collected through the Department's "investigations" authority under Section 374.190, RSMo did not have these restrictions, and that the nature of the data call was more in line with similar investigations conducted by the Department in the past. He also indicated the raw data collected through an investigation would not be considered "public" information, so that even if

conducted under the Department's "investigations" authority, the raw data would still be kept "confidential."

Rep. Schaaf indicated that it would be beneficial for the insurance companies responding to the data call to receive something useful in return for their efforts. He suggested a modification to the proposed language to say that the Department would, to the extent allowed by law, distribute the aggregated data among the insurers so that they could make more accurate rates, as per the decision of the Director. The Board discussed this amendment. Representative Schaaf indicated he was only recommending making industry-wide aggregations of data available to insurers. On a motion from Rep. Shaaf, his amendment was adopted. The language, as amended, reads as follows:

I move that the Health Care Stabilization Fund Feasibility Board modify its formal request of April 27, 2009 to the Department of Insurance, Financial Institutions & Professional Registration, to clarify that the Board recognizes the Department is authorized to collect the data referenced in its April 27<sup>th</sup> request by whatever means is most appropriate under the circumstances, including collecting the data by means of "an investigation" under Section 374.190, RSMo, and to the extent allowed by law, shall distribute the aggregated data to insurers so that they may make more accurate rates, as per the decision of the Director.

On a motion from Rep. Shaaf, the above motion, as amended, was adopted by the Board without opposition.

The Department staff then discussed their development of the data call. Mr. Kabler noted that it was probably the most extensive data call ever attempted by the Department, and that the staff was still working on a number of details. Sen. Stouffer asked that a draft be circulated before it was distributed to insurers.

Mr. Kabler request that the Board's provide input on the issue of the "scope" of the data call, such as whether it should cover only physicians or other types of health care providers as well. In part, the question was prompted by a concern that the data from insured hospitals would be very complex. In response to a question, Mr. Kabler indicated that we would not be able to compel information from perhaps a third of the market, because certain entities that provide medical malpractice insurance in Missouri, such as self-insured entities and federally-regulated risk retention groups, were outside the Department's "investigations" jurisdiction. Sen. Stouffer offered his opinion that, for a Missouri stabilization fund to be successful, it would need to be broadly-based, covering as wide a cross-section of the health care community as possible. Because the board's directive of April 27<sup>th</sup> contained no limitations on the types of health care providers covered, the conclusion was that the data call should cover all type of health care providers.

Department P&C Actuary David Cox noted that the Department would likely face difficulties because different insurance companies use different approaches to the data. For example, they do not necessarily define a "claim" the same way in their systems. This lack of uniformity could present problems as the

Department attempts to aggregate the information from the various insurers. Ideally, in order to be combinable, the data ought to be consistent.

In a similar vein, Mr. Kabler noted that the data call will not be able to answer some important questions. For example, it will not result in a report that says “Yes, Missouri should establish a stabilization fund, and that the state will be able to save “X” amount of dollars in doing so, and that we can justify these conclusions clearly and unambiguously in the data.” In order to be able to support such conclusions, we would need to conduct a multi-state, multi-variant analysis. Sen. Stouffer recognized this limitation, but noted that the data call will at least give us a snapshot of the market. Mr. Kabler agreed, indicating it would cover a ten-year period of the state’s medical malpractice insurance cycle.

Next, Mr. Kabler discussed trends in the state’s medical malpractice market. He noted that overall premiums were down, and that profits were robust. Claim trends were mostly in a positive direction, noting however, that there was a spike in claims just before the state’s recent tort reforms went into effect. The only increase was in “average indemnity payments” for 2008, but that one year of data does not necessarily reflect a trend. He also noted there may be a lag before insurers respond to the state’s recent tort reforms with lower premium rates because they will want to see the data on the effects of the reforms before reducing their rates. Rep. Shaaf concurred.

Then, Mr. Doerner discussed the elements of a compromise that had been reached during the recent legislative session between the Department and one major medical malpractice entity on Senate Bill 410. At issue was the Department’s ability to collect data under Sections 383.105 and 383.106, RSMo. The compromise resulted from a more extensive delineation of the steps the Department would be required to take in order to safeguard the confidentiality of the data submitted, plus a more specific listing of the various types of the premium, loss, exposure and claim information the Department would be authorized to collect. In response to a question from Rep. Shaaf, Mr. Kabler made clear the proposed language would still require the Department to make information available to insurers to assist them in their ratemaking. It was also pointed out that the proposed language would still allow the data to be collected by an “advisory organization,” and there was then a discussion of the pros and cons of using an advisory organization in Missouri for medical malpractice data collection. David Cox pointed out that the key hurdle to such an approach was the cost to insurance companies of reworking their data systems to meet the extensive data reporting requirements of the advisory organization.

Finally, Mr. Doerner discussed a law review article that compared the overall experience of those states which had established patient compensation funds. He pointed out that the article mentioned one often overlooked potential benefit to having a stabilization fund, that being to help coordinate and advance safety and loss control measures on a state-wide basis. He pointed out that Mr. Kabler’s recent analysis of the data shows that Missouri has considerable room for improvement in areas that are frequently discussed in the safety and loss control community, such as preventing slips-and-falls and reducing hospital-acquired infections. Arguably, a state fund that was providing excess insurance to a broad cross-section of the market would be in a position to advance loss control efforts in areas like these as a way to control the fund’s losses.

Sen. Stouffer discussed the timing of the next meeting, leaving it up to the Department to make the plans for some time in the upcoming quarter. With that, the meeting was adjourned.

FINAL APPROVED