

Healthcare Stabilization Fund Feasibility Board  
Friday, September 28, 2007

Meeting Minutes

**Call to Order:** The meeting was called to order at 12:40pm.

**Board Members in Attendance:** Senator William Stouffer (Chair), Senator Victor Callahan, Representative Curt Dougherty, Representative Robert Schaaf, Dr. Lancer Gates, Dr. Steven Reintjes, Dr. John Stanley, Gloria Solis, RN, David Carpenter

**Others in Attendance:** Linda Bohrer, Dianna Pell, Unni Mundaya, Brent Kabler

**Materials:** Handouts included powerpoint slides titled “Missouri Physicians: Distribution and Trends FY 2003-2005,” “Medical Malpractice Insurance: Base Rate Guide,” and “Recent Trends in Missouri’s Medical Malpractice Market” and DIFP’s 2006 Missouri Medical Malpractice Insurance Report was also available.

**Approval of Minutes:** A motion was made by Sen. Callahan and seconded by Dr. Stanley to approve the minutes from the June board meeting, with all in favor.

**Geographic Distribution of Doctors in Missouri**

Unni Mundaya reviewed “Missouri Physicians: Distribution and Trends FY 2003-2005.” The source for this data is the Division of Professional Registration. Dr. Reintjes said that when a doctor applies for a license in Missouri, they enter a status of active, inactive or part-time. However, many retired physicians keep an active Missouri license. Do we know how many really are active and are located in Missouri? Brent Kabler said that only doctors with Missouri business addresses were included in the report. Rep. Schaaf said he spoke with the Executive Director of the Board of Healing Arts and there is still a problem because not all doctors with active licenses are actually practicing. That is why it is important to get malpractice insurance data to know who is really practicing. To find out if the Healthcare Stabilization Fund is feasible, we need to know how much people are paying, but we will not have that information until June 2008. Currently companies report total premium to DIFP, not total number of policies. Mr. Kabler said that a large missing piece will still be the self-insured hospitals, but the department is trying to find that information through DHSS. Rep. Schaaf said he is interested in sponsoring a bill that would require a doctor to fill out some additional information when renewing his or her license. This way the board could get information by county and by specialty. Dr. Stanley asked whether a bill was necessary because the Board of Healing Arts should be able to ask for the information already. Rep. Schaaf said the bill could be important in case the Board of Healing Art does not want to ask for the information. Sen. Callahan asked whether faulty data would likely overstate or understate the number of doctors. Mr. Kabler said it is more likely that the numbers would be overstated.

Rep. Schaaf said that the Board of Healing Arts collects data on doctors’ current medical malpractice experiences in detail. Can we use it? Mr. Kabler said the Division of Market

Regulation requested it, but we are not a high priority for the Board. DIFP gets a report on each claim as well. Dr. Gates asked if the HCSFFB could get a copy of the current questionnaire for licensure application or renewal. Linda Bohrer said yes and that she would ask a representative from the Board of Healing Arts to come to the next meeting as well. Dr. Gates asked if handout included Doctors of Osteopathy. Mr. Mundaya confirmed that it does. Mr. Kabler asked if Mr. Mundaya could track down the American Medical Associations methodology for reporting on number of doctors. Mr. Mundaya said that he was unable to find out how either set of data (AMA or Professional Registration) were coded or processed. Rep. Schaaf said he thought that the AMA data comes from a survey of doctors. Dr. Reintjes said he counted the number of neurosurgeons he knows and could not get to 96 – Mr. Mundaya said he would provide Dr. Reintjes with the list to check. David Carpenter said that he found it perplexing that we do not know how many doctors are actually practicing in Missouri. How do we deal with complex problems if we cannot get past that? Rep. Schaaf said his fellow legislators will try to get funds in the budget to enable data collection. Dr. Reintjes said it is interesting to observe a net reduction in the workforce in 2005. Mr. Kabler asked if that information accorded with doctors' experiences. Rep. Schaaf suggested it may be a baby boom effect. Dr. Stanley asked if the differences are statistically significant. Mr. Kabler said the malpractice crisis in 2001-2004 could have something to do with it as well, but Dr. Gates pointed out that physicians typically hold a license until it expires, so we may still see some years where physician numbers reduce.

### **Base Rate Comparison**

Mr. Mundaya reviewed "Medical Malpractice Insurance: Base Rate Guide." DIFP is currently collecting data because of HB 1837 to establish base rates. This guide gives an example of what the data will look like. The purpose of the guide is so doctors can shop around for insurance. It will be available on DIFP's website. Risk rate is not included because of debits and credits for each individual. Ms. Bohrer said that hopefully the median rate publication (based on premium charged) and the base rate information will together help with understanding of the market. Rep. Schaaf added that hopefully it will make the market more efficient. Mr. Mundaya said the department will receive data by October 10, and our goal is to process and post the data by January. About 25 active insurers are involved. Ms. Bohrer said that the information is required as part of an emergency rule which is being challenged. If the department loses the rule, DIFP will have 2007 data but nothing in the future. Rep. Schaaf explained the issues surrounding the rule. Dr. Reintjes said the point is to create competition, which could stabilize rates. Mr. Kabler said that the company challenging the rule is concerned about the status of proprietary data, but DIFP already collects data which remains confidential – this would be no different.

### **2006 Medical Malpractice Insurance Report**

Mr. Kabler reviewed "Recent Trends in Missouri's Medical Malpractice Market." Profits have been healthy but profitability is cyclical – the cycle is about 7-10 years. Therefore, we will probably see a crisis again, with financial concerns, rate increases, etc. We do not know for sure how a crisis is caused but have some ideas such as that investment returns play a role. The data shows a huge jump in claims in 2005 ahead of August 30,

2005, when the new law went into effect. This is an anomaly and most claims were not legitimate. In determining the effects of tort reform, it is more effective to examine the issue in a few years when the new claims are closed. Rep. Schaaf asked if whether the department thinks the new law may be tossed out. Mr. Kabler said we do not know and in the meantime we operate as if it is a law. He added that we will not see rate changes immediately because companies use historic data to raise and lower rates, not projections. Sen. Stouffer suggested that decreases in suits could reflect a change in attitudes because it is less socially acceptable to sue now than before. Rep. Schaaf pointed out that frivolous lawsuits filed in 2005 could affect the median payout per claim for that year, especially if they settle for a small amount of money just to save legal costs. Mr. Kabler agreed, and said that that is what makes analysis difficult. We do not have that level of detail of data at this time. With new data coming in, we will hopefully be able to do more sophisticated analysis. There is now a cap on the amount that can be awarded per occurrence (previously it was per defendant). Ms. Bohrer said the new rule will ask for at least multiple defendants with the same company to be linked together electronically to one occurrence.

#### **Interim Report to General Assembly**

Rep. Schaaf said the report should include a statement that we need better data and the Assembly should act. Sen. Stouffer said we should express our frustration in getting quality data, for example how many doctors are actually practicing in the state. Dr. Gates said we need the ability to track data on an annual basis.

Dr. Stanley asked if the board will meet before the report is turned in. Ms. Bohrer said there is one more meeting on December 14, where we will need to discuss the final draft and get the board's approval. The draft will be sent to the board ahead of time for critique and questions. Sen. Stouffer said the board is required to continue to meet on a quarterly basis, and later meetings will be able to deal with the new data that DIFP will be receiving.

Dr. Reintjes said that the main question the board must answer is whether the tort reform act was enough to stabilize the medical malpractice market, or is more action needed. Rep. Schaaf added that budget should include enough money to collect the data. Mr. Carpenter echoed sentiments citing frustration with the lack of available data. Dr. Stanley said that the tort reform act has not been challenged yet. When it gets challenged, we may lose it. Dr. Reintjes said we do not even know yet if it has had a positive effect. Sen. Stouffer asked if the board could design a survey and send it to practitioners asking what their perspective is on malpractice, are they seeing pressure, and are they interested in a stabilization fund? Dr. Gates said maybe we could ask the Board of Healing Arts about a survey when they come.

Dr. Schaaf asked if the law requires reporting the base rate data to the General Assembly. Ms. Bohrer said she did not think so.

Ms. Bohrer asked if the board is interested in the JUA (high risk pool). It is very difficult to get into because the number of doctors who qualify is limited and the pool is very

expensive. There are very few doctors in it. Ms. Bohrer said she could bring data to the next meeting, but asked if the board would like a presentation on the functioning of the program and impediments to making it more reasonable. Dr. Gates said he was interested in comparing Missouri's JUA to Kansas' high risk pool. The former executive director of the Kansas Stabilization Fund could be available for help because he recently retired. Dr. Gates described the Kansas fund process. There is an issue in that few MO/KS border insurance companies write Kansas stabilization policies so Kansas residents may not be able to get a policy in Missouri. In the future we may see an influx of doctors back into Missouri if they cannot purchase Kansas stabilization policies.

#### **Next Meeting**

The next meeting will be on December 14. Mr. Carpenter will not be attending, but he said the room was available if the board wishes to use it.

#### **Adjournment**

The meeting adjourned at 2:25pm.