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To: Health Care Stabilization Fund Oversight Committee
From: Melissa Calderwood-Renick, Assistant Director for Research
Re: 2015 Amendments to the Health Care Provider Insurance Availability Act

HCPIAA AMENDMENTS—2015 SESSION

During the 2014 Oversight Committee meeting, Committee staff, representatives of the Health Care Stabilization Fund Board of Governors, and health care providers' representatives addressed enacted legislation [2014 HB 2516], which included amendments to the Health Care Provider Insurance Availability Act (HCPIAA). Potential future legislation also was discussed, including technical amendments to the 2014 law. A synopsis of introduced and enacted legislation, including committee action and hearings' detail, follows.

Introduced Legislation

SB 101. As introduced, this bill would have amended the HCPIAA to clarify exemptions from the defined term "health care provider" under the HCPIAA to designate certain health care providers who would not be subject to a requirement to purchase basic professional liability insurance coverage or pay surcharges as required with such coverage.

The bill would have specified the definition of "health care provider" does not include persons holding an exempt license from the State Board of Nursing and would clarify language in the exclusion provision for Advanced Practice Registered Nurses (APRNs) and Physician Assistants (PAs) who are employed in or on active duty in the federal government or who provide professional services as a charitable health care provider and would have extended this exclusion from the definition to nurse anesthetists.

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Health Care Stabilization Fund Board of Governors. In the Senate Committee, the Executive Director of the Board of Governors indicated the bill contained technical clarifications of exemptions from the definition of "health care provider" under the HCPIAA. Exemption from this definition would allow those designated health care providers to avoid professional liability insurance requirements, as well as the surcharge requirements associated with Health Care Stabilization Fund coverage. The Executive Director stated the Board of Governors has granted over 30 temporary exemptions to health care providers since enactment of the 2014 law; some of these exemptions were granted to APRNs and PAs who will eventually require permanent exemptions as long as they are covered under the federal Tort Claims Act or the Kansas Tort Claims Act.

The Senate Committee recommended an amendment to add nurse anesthetists to an existing list of health care providers who are not included in the definition of “health care provider” under the HCPIAA. The amendment was requested by the Executive Director of the Health Care Stabilization Fund Board of Governors, who indicated 2014 HB 2516 (law) exempted federally-employed nurse midwives, but failed to exempt nurse anesthetists who work for the military or a federal agency.

In the House Committee on Insurance, the same proponent testified and was the only conferee. The House Committee on Insurance recommended an amendment to insert provisions relating to authorization of certain facilities to obtain self-insurance coverage under the HCPIAA (SB 117 [as recommended by the Senate Committee on Financial Institutions and Insurance] into SB 101 [as amended by the Senate Committee]).

SB 117. As introduced, this bill would have amended the HCPIAA to allow health care systems that own or operate more than one medical care facility or more than one health care facility to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance from the Health Care Stabilization Fund Board of Governors. [Under the existing law, the self-insurance provisions of the HCPIAA applies to a health care provider, or system owning or operating two or more medical care facilities, the Kansas Soldiers’ Home, the Kansas Veterans’ Home, persons engaged in certain post-graduate training, and persons engaged in residency training.]

The bill was introduced by the Senate Committee on Financial Institutions at the request of the Kansas Health Care Association. In the Senate Committee, a representative of Midwest Health, Inc. stated adult long-term care facilities are requesting the opportunity to apply for self-insurance just as other defined health care providers are allowed under the law. The representative highlighted an increased focus on risk management and the management of liability claims and the increased premiums associated with being unable to self-insure under the Health Care Stabilization Fund for its Kansas facilities. In order to comply with 2014 law (HB 2516), the representative indicated Midwest Health had to form its own licensed insurance company in Kansas in order to provide the coverage it would have been able to self-insure under the Health Care Stabilization Fund. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living indicated its members are coming into compliance with the new law and requested the same consideration be given to other facilities currently allowed to self-insure.

The Executive Director of the Health Care Stabilization Fund Board of Governors submitted neutral testimony outlining how the agency reviews applications for self-insurance and information on certificates of self-insurance granted by the Board of Governors, as of January 1, 2015. The Executive Director of the Kansas Medical Society submitted neutral testimony, with stated concerns regarding self-insurance. The testimony notes self-insurers must demonstrate the ability to meet their financial obligation to pay claims; in the event they become insolvent or are unable to pay claims, the Health Care Stabilization Fund would likely be liable to cover any outstanding judgments or settlements against the insolvent self-insurer. Insolvency by a self-insurer would then raise liability costs for the other providers statewide, should the Health Care Stabilization Fund pay for such claims. There was no opposition testimony at the bill hearing.

Enacted Legislation

Ultimately, both SB 101 and SB 117 became vehicles for the advancement of legislation relating to the regulation of transportation network companies (rideshare services such as UBER). Provisions originally introduced in SB 101 (with Senate Committee amendments) and SB 117 were included in an insurance conference committee report for HB 2064. The Conference Committee Report was adopted by the Senate on April 2 (40-0 vote) and by the House on April 29 (117-0). The amendments to the HCPIAA became effective upon publication in the statute book (July 1, 2015).

MCR/mkl