

HOUSE BILL No. 2749

By Committee on Insurance

1-31

AN ACT amending the health care provider insurance availability act; concerning the board of governors; providing for certain investments; disclosure of certain information; amending K.S.A. 40-3406 and 40-3413 and K.S.A. 2001 Supp. 40-3403 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 40-3403 is hereby amended to read as follows: 40-3403. (a) For the purpose of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a health care provider, self-insurer or inactive health care provider subsequent to the time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust in the state treasury and accounted for separately from other state funds. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) (1) There is hereby created a board of governors which shall be composed of such members and shall have such powers, duties and functions as are prescribed by this act. The board of governors shall:

(A) Administer the fund and exercise and perform other powers, duties and functions required of the board under the health care provider insurance availability act;

(B) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;

(C) prepare and publish, on or before October 1 of each year, a summary of the fund's activity during the preceding fiscal year, including but not limited to the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the amount in the fund at the end of the fiscal year; and

(D) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily

1 leaves the state for the purpose of obtaining additional education or train-
2 ing or to participate in religious, humanitarian or government service
3 programs. Whenever a health care provider has previously left the state
4 for one of the reasons specified in this paragraph and returns to the state
5 and recommences practice, the board of governors may refund any
6 amount paid by the health care provider pursuant to subsection (m) of
7 this section if no claims have been filed against such health care provider
8 during the provider's temporary absence from the state.

9 (2) The board shall consist of ~~10 persons appointed by the commis-~~
10 ~~sioner of insurance, 11 persons~~ as provided by this subsection (b) and as
11 follows:

12 (A) Three members who are licensed to practice medicine and sur-
13 gery in Kansas who are doctors of medicine and who are on a list of
14 nominees submitted to the commissioner by the Kansas medical society;

15 (B) three members who are representatives of Kansas hospitals and
16 who are on a list of nominees submitted to the commissioner by the
17 Kansas hospital association;

18 (C) two members who are licensed to practice medicine and surgery
19 in Kansas who are doctors of osteopathic medicine and who are on a list
20 of nominees submitted to the commissioner by the Kansas association of
21 osteopathic medicine;

22 (D) one member who is licensed to practice chiropractic in Kansas
23 and who is on a list of nominees submitted to the commissioner by the
24 Kansas chiropractic association;

25 (E) one member who is a licensed professional nurse authorized to
26 practice as a registered nurse anesthetist who is on a list of nominees
27 submitted to the commissioner by the Kansas association of nurse anes-
28 thetists; *and*

29 (F) *one member who is the chairperson of the governing board es-*
30 *ablished by K.S.A. 40-3413, and amendments thereto, or other board*
31 *member designated by the chairperson.*

32 *The persons appointed under paragraphs (A) through (E) shall be ap-*
33 *pointed by the commissioner of insurance.*

34 (3) When a vacancy occurs in the membership of the board of gov-
35 ernors created by this act, the commissioner shall appoint a successor of
36 like qualifications from a list of three nominees submitted to the com-
37 missioner by the professional society or association prescribed by this
38 section for the category of health care provider required for the vacant
39 position on the board of governors. All appointments made shall be for a
40 term of office of four years, but no member shall be appointed for more
41 than ~~two~~ *three* successive four-year terms. Each member shall serve until
42 a successor is appointed and qualified. Whenever a vacancy occurs in the
43 membership of the board of governors created by this act for any reason

1 other than the expiration of a member's term of office, the commissioner
2 shall appoint a successor of like qualifications to fill the unexpired term.
3 In each case of a vacancy occurring in the membership of the board of
4 governors, the commissioner shall notify the professional society or as-
5 sociation which represents the category of health care provider required
6 for the vacant position and request a list of three nominations of health
7 care providers from which to make the appointment.

8 (4) The board of governors shall organize on July 1 of each year and
9 shall elect a chairperson and vice-chairperson from among its member-
10 ship. Meetings shall be called by the chairperson or by a written notice
11 signed by three members of the board.

12 (5) The board of governors, in addition to other duties imposed by
13 this act, shall study and evaluate the operation of the fund and make such
14 recommendations to the legislature as may be appropriate to ensure the
15 viability of the fund.

16 (6) (A) The board shall appoint an executive director who shall be in
17 the unclassified service under the Kansas civil service act and may appoint
18 such attorneys, legal assistants, claims managers and compliance auditors
19 who shall also be in the unclassified service under the Kansas civil service
20 act. Such executive director, attorneys, legal assistants, claims managers
21 and compliance auditors shall receive compensation fixed by the board,
22 in accordance with appropriation acts of the legislature, not subject to
23 approval of the governor.

24 (B) The board may appoint such additional employees, and provide
25 all office space, services, equipment, materials and supplies, and all budg-
26 eting, personnel, purchasing and related management functions required
27 by the board in the exercise of the powers, duties and functions imposed
28 or authorized by the health care provider insurance availability act or may
29 enter into a contract with the commissioner of insurance for the provision,
30 by the commissioner, of all or any part thereof.

31 (7) The commissioner shall:

32 (A) Provide technical and administrative assistance to the board of
33 governors with respect to administration of the fund upon request of the
34 board;

35 (B) provide such expertise as the board may reasonably request with
36 respect to evaluation of claims or potential claims.

37 (c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), (p) and
38 (q), the fund shall be liable to pay: (1) Any amount due from a judgment
39 or settlement which is in excess of the basic coverage liability of all liable
40 resident health care providers or resident self-insurers for any personal
41 injury or death arising out of the rendering of or the failure to render
42 professional services within or without this state;

43 (2) subject to the provisions of subsection (m), any amount due from

1 a judgment or settlement which is in excess of the basic coverage liability
2 of all liable nonresident health care providers or nonresident self-insurers
3 for any such injury or death arising out of the rendering or the failure to
4 render professional services within this state but in no event shall the
5 fund be obligated for claims against nonresident health care providers or
6 nonresident self-insurers who have not complied with this act or for
7 claims against nonresident health care providers or nonresident self-in-
8 surers that arose outside of this state;

9 (3) subject to the provisions of subsection (m), any amount due from
10 a judgment or settlement against a resident inactive health care provider,
11 an optometrist or pharmacist who purchased coverage pursuant to sub-
12 section (n) or a physical therapist who purchased coverage pursuant to
13 subsection (o), for any such injury or death arising out of the rendering
14 of or failure to render professional services;

15 (4) subject to the provisions of subsection (m), any amount due from
16 a judgment or settlement against a nonresident inactive health care pro-
17 vider, an optometrist or pharmacist who purchased coverage pursuant to
18 subsection (n) or a physical therapist who purchased coverage pursuant
19 to subsection (o), for any injury or death arising out of the rendering or
20 failure to render professional services within this state, but in no event
21 shall the fund be obligated for claims against: (A) Nonresident inactive
22 health care providers who have not complied with this act; or (B) non-
23 resident inactive health care providers for claims that arose outside of this
24 state, unless such health care provider was a resident health care provider
25 or resident self-insurer at the time such act occurred;

26 (5) subject to subsection (b) of K.S.A. 40-3411, and amendments
27 thereto, reasonable and necessary expenses for attorney fees incurred in
28 defending the fund against claims;

29 (6) any amounts expended for reinsurance obtained to protect the
30 best interests of the fund purchased by the board of governors, which
31 purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-
32 3744, and amendments thereto, but shall not be subject to the provisions
33 of K.S.A. 75-4101, and amendments thereto;

34 (7) reasonable and necessary actuarial expenses incurred in admin-
35 istering the act, including expenses for any actuarial studies contracted
36 for by the legislative coordinating council, which expenditures shall not
37 be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
38 amendments thereto;

39 (8) periodically to the plan or plans, any amount due pursuant to
40 subsection (a)(3) of K.S.A. 40-3413 and amendments thereto;

41 (9) reasonable and necessary expenses incurred by the board of gov-
42 ernors in the administration of the fund or in the performance of other
43 powers, duties or functions of the board under the health care provider

1 insurance availability act;

2 (10) return of any unearned surcharge;

3 (11) subject to subsection (b) of K.S.A. 40-3411, and amendments
4 thereto, reasonable and necessary expenses for attorney fees and other
5 costs incurred in defending a person engaged or who was engaged in
6 residency training or the private practice corporations or foundations and
7 their full-time physician faculty employed by the university of Kansas
8 medical center or any nonprofit corporation organized to administer the
9 graduate medical education programs of community hospitals or medical
10 care facilities affiliated with the university of Kansas school of medicine
11 from claims for personal injury or death arising out of the rendering of
12 or the failure to render professional services by such health care provider;

13 (12) notwithstanding the provisions of subsection (m), any amount
14 due from a judgment or settlement for an injury or death arising out of
15 the rendering of or failure to render professional services by a person
16 engaged or who was engaged in residency training or the private practice
17 corporations or foundations and their full-time physician faculty em-
18 ployed by the university of Kansas medical center or any nonprofit cor-
19 poration organized to administer the graduate medical education pro-
20 grams of community hospitals or medical care facilities affiliated with the
21 university of Kansas school of medicine;

22 (13) subject to the provisions of K.S.A. 65-429, and amendments
23 thereto, reasonable and necessary expenses for the development and pro-
24 motion of risk management education programs and for the medical care
25 facility licensure and risk management survey functions carried out under
26 K.S.A. 65-429, and amendments thereto;

27 (14) notwithstanding the provisions of subsection (m), any amount,
28 but not less than the required basic coverage limits, owed pursuant to a
29 judgment or settlement for any injury or death arising out of the rendering
30 of or failure to render professional services by a person, other than a
31 person described in clause (12) of this subsection (c), who was engaged
32 in a postgraduate program of residency training approved by the state
33 board of healing arts but who, at the time the claim was made, was no
34 longer engaged in such residency program;

35 (15) subject to subsection (b) of K.S.A. 40-3411, and amendments
36 thereto, reasonable and necessary expenses for attorney fees and other
37 costs incurred in defending a person described in clause (14) of this sub-
38 section (c);

39 (16) expenses incurred by the commissioner in the performance of
40 duties and functions imposed upon the commissioner by the health care
41 provider insurance availability act, and expenses incurred by the com-
42 missioner in the performance of duties and functions under contracts
43 entered into between the board and the commissioner as authorized by

1 this section; and

2 (17) periodically to the state general fund reimbursements of
3 amounts paid to members of the health care stabilization fund oversight
4 committee for compensation, travel expenses and subsistence expenses
5 pursuant to subsection (e) of K.S.A. 40-3403b, and amendments thereto.

6 (d) All amounts for which the fund is liable pursuant to subsection
7 (c) shall be paid promptly and in full except that, if the amount for which
8 the fund is liable is \$300,000 or more, it shall be paid, by installment
9 payments of \$300,000 or 10% of the amount of the judgment including
10 interest thereon, whichever is greater, per fiscal year, the first installment
11 to be paid within 60 days after the fund becomes liable and each subse-
12 quent installment to be paid annually on the same date of the year the
13 first installment was paid, until the claim has been paid in full. Any at-
14 torney fees payable from such installment shall be similarly prorated.

15 (e) In no event shall the fund be liable to pay in excess of \$3,000,000
16 pursuant to any one judgment or settlement against any one health care
17 provider relating to any injury or death arising out of the rendering of or
18 the failure to render professional services on and after July 1, 1984, and
19 before July 1, 1989, subject to an aggregate limitation for all judgments
20 or settlements arising from all claims made in any one fiscal year in the
21 amount of \$6,000,000 for each health care provider.

22 (f) The fund shall not be liable to pay in excess of the amounts spec-
23 ified in the option selected by the health care provider pursuant to sub-
24 section (l) for judgments or settlements relating to injury or death arising
25 out of the rendering of or failure to render professional services by such
26 health care provider on or after July 1, 1989.

27 (g) A health care provider shall be deemed to have qualified for cov-
28 erage under the fund:

29 (1) On and after July 1, 1976, if basic coverage is then in effect;

30 (2) subsequent to July 1, 1976, at such time as basic coverage be-
31 comes effective; or

32 (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414, and
33 amendments thereto.

34 (h) A health care provider who is qualified for coverage under the
35 fund shall have no vicarious liability or responsibility for any injury or
36 death arising out of the rendering of or the failure to render professional
37 services inside or outside this state by any other health care provider who
38 is also qualified for coverage under the fund. The provisions of this sub-
39 section shall apply to all claims filed on or after July 1, 1986.

40 (i) Notwithstanding the provisions of K.S.A. 40-3402, and amend-
41 ments thereto, if the board of governors determines due to the number
42 of claims filed against a health care provider or the outcome of those
43 claims that an individual health care provider presents a material risk of

1 significant future liability to the fund, the board of governors is authorized
2 by a vote of a majority of the members thereof, after notice and an op-
3 portunity for hearing in accordance with the provisions of the Kansas
4 administrative procedure act, to terminate the liability of the fund for all
5 claims against the health care provider for damages for death or personal
6 injury arising out of the rendering of or the failure to render professional
7 services after the date of termination. The date of termination shall be
8 30 days after the date of the determination by the board of governors.
9 The board of governors, upon termination of the liability of the fund
10 under this subsection, shall notify the licensing or other disciplinary board
11 having jurisdiction over the health care provider involved of the name of
12 the health care provider and the reasons for the termination.

13 (j) (1) Upon the payment of moneys from the health care stabiliza-
14 tion fund pursuant to subsection (c)(11), the board of governors shall
15 certify to the director of accounts and reports the amount of such pay-
16 ment, and the director of accounts and reports shall transfer an amount
17 equal to the amount certified, reduced by any amount transferred pur-
18 suant to paragraph (3) or (4) of this subsection (j), from the state general
19 fund to the health care stabilization fund.

20 (2) Upon the payment of moneys from the health care stabilization
21 fund pursuant to subsection (c)(12), the board of governors shall certify
22 to the director of accounts and reports the amount of such payment which
23 is equal to the basic coverage liability of self-insurers, and the director of
24 accounts and reports shall transfer an amount equal to the amount cer-
25 tified, reduced by any amount transferred pursuant to paragraph (3) or
26 (4) of this subsection (j), from the state general fund to the health care
27 stabilization fund.

28 (3) The university of Kansas medical center private practice foun-
29 dation reserve fund is hereby established in the state treasury. If the
30 balance in such reserve fund is less than \$500,000 on July 1 of any year,
31 the private practice corporations or foundations referred to in subsection
32 (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount
33 necessary to increase such balance to \$500,000 to the state treasurer for
34 credit to such reserve fund as soon after such July 1 date as is practicable.
35 Upon receipt of each such remittance, the state treasurer shall credit the
36 same to such reserve fund. When compliance with the foregoing provi-
37 sions of this paragraph have been achieved on or after July 1 of any year
38 in which the same are applicable, the state treasurer shall certify to the
39 board of governors that such reserve fund has been funded for the year
40 in the manner required by law. Moneys in such reserve fund may be
41 invested or reinvested in accordance with the provisions of K.S.A. 40-
42 3406, and amendments thereto, and any income or interest earned by
43 such investments shall be credited to such reserve fund. Upon payment

1 of moneys from the health care stabilization fund pursuant to subsection
2 (c)(11) or (c)(12) with respect to any private practice corporation or foun-
3 dation or any of its full-time physician faculty employed by the university
4 of Kansas, the director of accounts and reports shall transfer an amount
5 equal to the amount paid from the university of Kansas medical center
6 private practice foundation reserve fund to the health care stabilization
7 fund or, if the balance in such reserve fund is less than the amount so
8 paid, an amount equal to the balance in such reserve fund.

9 (4) The graduate medical education administration reserve fund is
10 hereby established in the state treasury. If the balance in such reserve
11 fund is less than \$40,000 on July 1 of any year, the nonprofit corporations
12 organized to administer the graduate medical education programs of com-
13 munity hospitals or medical care facilities affiliated with the university of
14 Kansas school of medicine shall remit the amount necessary to increase
15 such balance to \$40,000 to the state treasurer for credit to such reserve
16 fund as soon after such July 1 date as is practicable. Upon receipt of each
17 such remittance, the state treasurer shall credit the same to such reserve
18 fund. When compliance with the foregoing provisions of this paragraph
19 have been achieved on or after July 1 of any year in which the same are
20 applicable, the state treasurer shall certify to the board of governors that
21 such reserve fund has been funded for the year in the manner required
22 by law. Moneys in such reserve fund may be invested or reinvested in
23 accordance with the provisions of K.S.A. 40-3406, and amendments
24 thereto, and any income or interest earned by such investments shall be
25 credited to such reserve fund. Upon payment of moneys from the health
26 care stabilization fund pursuant to subsection (c)(11) or (c)(12) with re-
27 spect to any nonprofit corporations organized to administer the graduate
28 medical education programs of community hospitals or medical care fa-
29 cilities affiliated with the university of Kansas school of medicine the
30 director of accounts and reports shall transfer an amount equal to the
31 amount paid from the graduate medical education administration reserve
32 fund to the health care stabilization fund or, if the balance in such reserve
33 fund is less than the amount so paid, an amount equal to the balance in
34 such reserve fund.

35 (5) Upon payment of moneys from the health care stabilization fund
36 pursuant to subsection (c)(14) or (c)(15), the board of governors shall
37 certify to the director of accounts and reports the amount of such pay-
38 ment, and the director of accounts and reports shall transfer an amount
39 equal to the amount certified from the state general fund to the health
40 care stabilization fund.

41 (k) Notwithstanding any other provision of the health care provider
42 insurance availability act, no psychiatric hospital licensed under K.S.A.
43 75-3307b, and amendments thereto, shall be assessed a premium sur-

1 charge or be entitled to coverage under the fund if such hospital has not
2 paid any premium surcharge pursuant to K.S.A. 40-3404, and amend-
3 ments thereto, prior to January 1, 1988.

4 (l) On or after July 1, 1989, every health care provider shall make an
5 election to be covered by one of the following options provided in this
6 subsection (l) which shall limit the liability of the fund with respect to
7 judgments or settlements relating to injury or death arising out of the
8 rendering of or failure to render professional services on or after July 1,
9 1989. Such election shall be made at the time the health care provider
10 renews the basic coverage in effect on July 1, 1989, or, if basic coverage
11 is not in effect, such election shall be made at the time such coverage is
12 acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice
13 of the election shall be provided by the insurer providing the basic cov-
14 erage in the manner and form prescribed by the board of governors and
15 shall continue to be effective from year to year unless modified by a
16 subsequent election made prior to the anniversary date of the policy. The
17 health care provider may at any subsequent election reduce the dollar
18 amount of the coverage for the next and subsequent fiscal years, but may
19 not increase the same, unless specifically authorized by the board of gov-
20 ernors. Any election of fund coverage limits, whenever made, shall be
21 with respect to judgments or settlements relating to injury or death arising
22 out of the rendering of or failure to render professional services on or
23 after the effective date of such election of fund coverage limits. Such
24 election shall be made for persons engaged in residency training and
25 persons engaged in other postgraduate training programs approved by
26 the state board of healing arts at medical care facilities or mental health
27 centers in this state by the agency or institution paying the surcharge
28 levied under K.S.A. 40-3404, and amendments thereto, for such persons.
29 The election of fund coverage limits for a nonprofit corporation organized
30 to administer the graduate medical education programs of community
31 hospitals or medical care facilities affiliated with the university of Kansas
32 school of medicine shall be deemed to be effective at the highest option.
33 Such options shall be as follows:

34 (1) *OPTION 1.* The fund shall not be liable to pay in excess of
35 \$100,000 pursuant to any one judgment or settlement for any party
36 against such health care provider, subject to an aggregate limitation for
37 all judgments or settlements arising from all claims made in the fiscal year
38 in an amount of \$300,000 for such provider.

39 (2) *OPTION 2.* The fund shall not be liable to pay in excess of
40 \$300,000 pursuant to any one judgment or settlement for any party
41 against such health care provider, subject to an aggregate limitation for
42 all judgments or settlements arising from all claims made in the fiscal year
43 in an amount of \$900,000 for such provider.

1 (3) *OPTION 3*. The fund shall not be liable to pay in excess of
2 \$800,000 pursuant to any one judgment or settlement for any party
3 against such health care provider, subject to an aggregate limitation for
4 all judgments or settlements arising from all claims made in the fiscal year
5 in an amount of \$2,400,000 for such health care provider.

6 (m) The fund shall not be liable for any amounts due from a judgment
7 or settlement against resident or nonresident inactive health care provid-
8 ers who first qualify as an inactive health care provider on or after July 1,
9 1989, unless such health care provider has been in compliance with K.S.A.
10 40-3402, and amendments thereto, for a period of not less than five years.
11 If a health care provider has not been in compliance for five years, such
12 health care provider may make application and payment for the coverage
13 for the period while they are nonresident health care providers, nonres-
14 ident self-insurers or resident or nonresident inactive health care provid-
15 ers to the fund. Such payment shall be made within 30 days after the
16 health care provider ceases being an active health care provider and shall
17 be made in an amount determined by the board of governors to be suf-
18 ficient to fund anticipated claims based upon reasonably prudent actuarial
19 principles. The provisions of this subsection shall not be applicable to any
20 health care provider which becomes inactive through death or retirement,
21 or through disability or circumstances beyond such health care provider's
22 control, if such health care provider notifies the board of governors and
23 receives approval for an exemption from the provisions of this subsection.
24 Any period spent in a postgraduate program of residency training ap-
25 proved by the state board of healing arts shall not be included in com-
26 putation of time spent in compliance with the provisions of K.S.A. 40-
27 3402, and amendments thereto.

28 (n) Notwithstanding the provisions of subsection (m) or any other
29 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
30 the contrary, the fund shall not be liable for any claim made on or after
31 July 1, 1991, against a licensed optometrist or pharmacist relating to any
32 injury or death arising out of the rendering of or failure to render pro-
33 fessional services by such optometrist or pharmacist prior to July 1, 1991,
34 unless such optometrist or pharmacist qualified as an inactive health care
35 provider prior to July 1, 1991.

36 (o) Notwithstanding the provisions of subsection (m) or any other
37 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
38 the contrary, the fund shall not be liable for any claim made on or after
39 July 1, 1995, against a physical therapist registered by the state board of
40 healing arts relating to any injury or death arising out of the rendering of
41 or failure to render professional services by such physical therapist prior
42 to July 1, 1995, unless such physical therapist qualified as an inactive
43 health care provider prior to July 1, 1995.

1 (p) Notwithstanding the provisions of subsection (m) or any other
2 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
3 the contrary, the fund shall not be liable for any claim made on or after
4 July 1, 1997, against a health maintenance organization relating to any
5 injury or death arising out of the rendering of or failure to render pro-
6 fessional services by such health maintenance organization prior to July
7 1, 1997, unless such health maintenance organization qualified as an in-
8 active health care provider prior to July 1, 1997, and obtained coverage
9 pursuant to subsection (m). Health maintenance organizations not qual-
10 ified as inactive health care providers prior to July 1, 1997, may purchase
11 coverage from the fund for periods of prior compliance by making ap-
12 plication prior to August 1, 1997, and payment within 30 days from notice
13 of the calculated amount as determined by the board of governors to be
14 sufficient to fund anticipated claims based on reasonably prudent actu-
15 arial principles.

16 (q) Notwithstanding anything in article 34 of chapter 40 of the Kansas
17 Statutes Annotated to the contrary, the fund shall in no event be liable
18 for any claims against any health care provider based upon or relating to
19 the health care provider's sexual acts or activity, but in such cases the
20 fund may pay reasonable and necessary expenses for attorney fees in-
21 curred in defending the fund against such claim. The fund may recover
22 all or a portion of such expenses for attorney fees if an adverse judgment
23 is returned against the health care provider for damages resulting from
24 the health care provider's sexual acts or activity.

25 Sec. 2. K.S.A. 40-3406 is hereby amended to read as follows: 40-
26 3406. After consultation with the board of governors the director of in-
27 vestments may invest and reinvest moneys in the fund in accordance with
28 investment policies established by the pooled money investment board
29 under K.S.A. 75-4232, and amendments thereto, in the following:

30 (a) Direct obligations of, or obligations that are insured as to principal
31 and interest by, the United States of America or any agency thereof and
32 obligations and securities of the United States sponsored enterprises
33 which under federal law may be accepted as security for public funds,
34 including investments in mortgage-backed securities;

35 (b) repurchase agreements with a Kansas bank or primary govern-
36 ment securities dealer which reports to the market reports division of the
37 federal reserve bank of New York for direct obligations of, or obligations
38 that are insured as to principal and interest by, the United States govern-
39 ment or any agency thereof and obligations and securities of United States
40 government sponsored enterprises which under federal law may be ac-
41 cepted as security for public funds;

42 (c) commercial paper that does not exceed 270 days to maturity and
43 which has received one of the two highest commercial paper credit ratings

- 1 by a nationally recognized investment rating firm;
2 *(d) corporate bonds that do not exceed three years to maturity and*
3 *which at the time of purchase are rated in one of the two highest credit*
4 *rating categories by a nationally recognized investment rating firm;*
5 ~~(d)~~ *(e) interest-bearing time deposits in any commercial bank located*
6 *in Kansas; or*
7 ~~(e)~~ *(f) the municipal investment pool fund, under K.S.A. 12-1677a,*
8 *and amendments thereto.*

9 Sec. 3. K.S.A. 40-3413 is hereby amended to read as follows: 40-
10 3413. (a) Every insurer and every rating organization shall cooperate in
11 the preparation of a plan or plans for the equitable apportionment among
12 such insurers of applicants for professional liability insurance and such
13 other liability insurance as may be included in or added to the plan, who
14 are in good faith entitled to such insurance but are unable to procure the
15 same through ordinary methods. Such plan or plans shall be prepared
16 and filed with the commissioner and the board of governors within a
17 reasonable time but not exceeding 60 calendar days from the effective
18 date of this act. Such plan or plans shall provide:

19 (1) Reasonable rules governing the equitable distribution of risks by
20 direct insurance, reinsurance or otherwise including the authority to make
21 assessments against the insurers participating in the plan or plans;

22 (2) rates and rate modifications applicable to such risks which shall
23 be reasonable, adequate and not unfairly discriminatory;

24 (3) a method whereby periodically the plan shall compare the pre-
25 miums earned to the losses and expenses sustained by the plan. If there
26 is any surplus of premiums over losses and expenses received for that year
27 such surplus shall be transferred to the fund. If there is any excess of
28 losses and expenses over premiums earned such losses shall be transferred
29 from the fund, however such transfers shall not occur more often than
30 once each three months;

31 (4) the limits of liability which the plan shall be required to provide,
32 but in no event shall such limits be less than those limits provided for in
33 subsection (a) of K.S.A. 40-3402, and amendments thereto;

34 (5) a method whereby applicants for insurance, insureds and insurers
35 may have a hearing on grievances and the right of appeal to the
36 commissioner.

37 (b) The commissioner and board of governors shall review the plan
38 as soon as reasonably possible after filing in order to determine whether
39 it meets the requirements set forth in subsection (a). As soon as reason-
40 ably possible after the plan has been filed the commissioner, consistent
41 with the recommendations of the board of governors, shall in writing
42 approve or disapprove the plan. Any plan shall be deemed approved un-
43 less disapproved within 30 days. Subsequent to the waiting period the

1 commissioner may disapprove any plan on the ground that it does not
2 meet the requirements set forth in subsection (a), but only after a hearing
3 held upon not less than 10 days' written notice to every insurer and rating
4 organization affected specifying in what respect the commissioner finds
5 that such plan fails to meet such requirements, and stating when within
6 a reasonable period thereafter such plan shall be deemed no longer ef-
7 fective. Such order shall not affect any assignment made or policy issued
8 or made prior to the expiration of the period set forth in the order.
9 Amendments to such plan or plans shall be prepared, and filed and re-
10 viewed in the same manner as herein provided with respect to the original
11 plan or plans.

12 (c) If no plan meeting the standards set forth in subsection (a) is
13 submitted to the commissioner and board of governors within 60 calendar
14 days from the effective date of this act or within the period stated in any
15 order disapproving an existing plan, the commissioner with the assistance
16 of the board of governors shall after a hearing, if necessary to carry out
17 the purpose of this act, prepare and promulgate a plan meeting such
18 requirements.

19 (d) If, after a hearing conducted in accordance with the provisions of
20 the Kansas administrative procedure act, the commissioner and board of
21 governors find that any activity or practice of any insurer or rating organ-
22 ization in connection with the operation of such plan or plans is unfair or
23 unreasonable or otherwise inconsistent with the provisions of this act, the
24 commissioner and board of governors may issue a written order specifying
25 in what respects such activity or practice is unfair or unreasonable or
26 otherwise inconsistent with the provisions of this act and requiring dis-
27 continuance of such activity or practice.

28 (e) For every such plan or plans, there shall be a governing board
29 which shall meet at least annually to review and prescribe operating rules.
30 Such board shall consist of ~~nine~~ 10 members ~~to~~. *Nine of such members*
31 *shall* be appointed by the commissioner as follows: Three members shall
32 be representatives of foreign insurers, two members shall be represen-
33 tatives of domestic insurers, two members shall be representatives of the
34 general public, one member shall be a licensed insurance agent actively
35 engaged in the solicitation of casualty insurance and one member shall
36 be a health care provider. ~~The~~ *These* members shall be appointed for a
37 term of two years. *One member shall be the chairperson of the fund board*
38 *of governors, as provided in K.S.A. 40-3403, and amendments thereto, or*
39 *other board member designated by the chairperson.*

40 (f) An insurer participating in the plan approved by the commissioner
41 may pay a commission with respect to insurance written under the plan
42 to an insurance agent licensed for any other insurer participating in the
43 plan or to any insurer participating in the plan. Such commission shall be

1 reasonably equivalent to the usual customary commission paid on similar
2 types of policies issued in the voluntary market.

3 New Sec. 4. (a) The board of governors shall make claim and loss
4 information available in a manner which will not reveal the name of any
5 person or facility involved.

6 (b) This section shall be part of and supplemental to the health care
7 provider insurance availability act.

8 Sec. 5. K.S.A. 40-3406 and 40-3413 and K.S.A. 2001 Supp. 40-3403
9 are hereby repealed.

10 Sec. 6. This act shall take effect and be in force from and after its
11 publication in the statute book.

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