

HOUSE BILL No. 2415

By Committee on Federal and State Affairs

2-25

AN ACT to provide general and professional liability insurance pool for nursing home residents.

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

Section 1. (a) This act shall be known and may be cited as the adult care home group-funded pool act.

(b) This act shall apply to adult care home group-funded pools and all contracts issued under the adult care home group-funded pool act, and amendments thereto.

Sec. 2. (a) The group-funded pool is created for the payment of valid claims and judgments against participating facilities. Each participating facility shall remit monthly premiums to the fund, as provided by section 8, and amendments thereto, as of the first business day of each month. Premium payments may be prepaid upon terms approved by the board. Assessments and other payments, together with earned income, surplus and all other monies accruing to the fund, shall be held in trust by the board for the purposes set forth herein.

(b) The fund shall be a cash fund under the direction and control of the board, as set forth herein.

(c) Only claims or judgments arising from a claim or claims made during a period of participation in the fund based on a wrongful act or acts which occurs during the same period of participation in the fund shall be covered by the fund. The fund may offer tail coverage to participating facilities upon terms approved by the board.

(d) A participating facility shall be dismissed as a participant in the fund for nonpayment of premium assessments or excessive claims over a 12-month period and for such other reasons as set forth in the bylaws of the proposed fund, as determined by the rules and regulations of the fund. The board shall provide by regulation for a grace period for curing a default in the payment of assessments or other payments prior to formal dismissal and may impose a late fee not to exceed \$5 per occupied bed per event of default. Upon dismissal of a facility from the fund, wrongful acts occurring during such facility's prior period or periods of participation shall be covered.

Sec. 3. (a) Except as otherwise provided in this act, adult care home

1 facilities may enter into agreements to pool their liabilities for the purpose
2 of satisfying personal injury claims by or on behalf of residents of partic-
3 ipating facilities. Such arrangements shall be known as group-funded
4 pools, which shall not be determined to be insurance or insurance com-
5 panies, and shall not be subject to the provisions of Chapter 40 of the
6 Kansas Statutes Annotated, and amendments thereto.

7 (b) For the purposes of this section, “adult care home facility” shall
8 have the meaning ascribed to it in K.S.A. 39-923, and amendments
9 thereto.

10 Sec. 4. (a) Application for a certificate of authority to operate a
11 group-funded pool under this act shall be made to the commissioner of
12 insurance not less than 60 days prior to the proposed inception date of
13 such group-funded pool. The application shall include the following:

14 (1) A copy of the bylaws of the proposed group-funded pool, a copy
15 of the articles of incorporation, if any, and a copy of all agreements and
16 rules of the proposed group-funded pool. If any of the bylaws, articles of
17 incorporation, agreement or rules are changed, the group-funded pool
18 shall notify the commissioner within 30 days after such change.

19 (2) When there is a change in the membership of the board of trust-
20 ees or change of administrator, the group-funded pool shall notify the
21 commissioner within 30 days after such change.

22 (3) The address where the books and records of the group-funded
23 pool will be maintained at all times. If this address is changed, the group-
24 funded pool shall notify the commissioner within 30 days after such
25 change.

26 (4) Evidence consisting of a current financial statement on a form
27 approved by the commissioner showing that the combined net worth of
28 all members applying for coverage on the inception date of the group-
29 funded pool is in an amount not less than one million dollars.

30 (5) An agreement providing that all members of the group-funded
31 pool shall be jointly and severally liable for the payment of claims to the
32 extent of the assets of the group-funded pool. If approved claims exceed
33 the assets of the group-funded pool, members may be assessed for any
34 shortfall.

35 (6) A copy of the procedures adopted by the group-funded pool to
36 provide services with respect to underwriting matters.

37 (7) A copy of the procedures adopted by the group-funded pool to
38 provide claims adjusting and accumulation of income and expense loss
39 data.

40 (8) Any other relevant factors the commissioner may deem necessary.

41 (b) After evaluating the application, the commissioner shall notify the
42 applicant if the plan submitted is inadequate. The commissioner shall
43 notify and fully explain to the applicant what additional requirements

1 must be met. If the application is denied, the applicant shall have 10 days
2 to make an application for hearing by the commissioner after the denial
3 notice is received. A record shall be made of such hearing and the cost
4 thereof shall be assessed against the applicant requesting the hearing.
5 Any hearing under this section shall be conducted in accordance with the
6 provisions of the Kansas administrative procedures act.

7 Sec. 5. As a condition precedent to obtaining authority to operate a
8 group-funded pool under this act in this state, each group-funded pool
9 shall file in the insurance department a written irrevocable consent, that
10 any action may be commenced against such group-funded pool in the
11 proper court of any county in this state in which the cause of action shall
12 arise or in which the plaintiff may reside by the service of process on the
13 commissioner of insurance of this state, and stipulating and agreeing that
14 such service shall be taken and held in all courts to be as valid and binding
15 as if due service had been made upon the trustees or the administrator
16 of such group-funded pool. Such consent shall be executed by the board
17 of trustees and shall be accompanied by a duly certified copy of the res-
18 olution passed by the trustees to execute such consent.

19 Sec. 6. (a) All certificates granted hereunder shall be perpetual un-
20 less sooner suspended or revoked by the commissioner or the attorney
21 general.

22 (b) Whenever the commissioner shall deem it necessary the com-
23 missioner may make, or direct to be made, an examination of the affairs
24 and the financial condition of any group-funded pool, except that once
25 every five years the commissioner shall conduct an examination of the
26 affairs and the financial condition of each group-funded pool. Each group-
27 funded pool shall submit a certified independent audited financial state-
28 ment no later than 90 days after the end of the fiscal year. The financial
29 statement shall include outstanding reserves for claims and for claims
30 incurred but not reported. Each group-funded pool shall file reports as
31 to income, expenses and loss data at such times and in such manner as
32 the commissioner shall require. Premium contributions to the group-
33 funded pool shall be based on rates developed by a licensed rating or-
34 ganization or rates of certain companies that have been filed and approved
35 by the commissioner or rates that are certified to be actuarially sound.
36 Any group-funded pool which does not use rates developed by an ap-
37 proved rating organization shall furnish the commissioner appropriate
38 evidence that such rates are actuarially sound. Whenever it appears to
39 the commissioner from such examination or other satisfactory evidence
40 that the ability to pay current and future claims of any such group-funded
41 pool is impaired, or that it is doing business in violation of any of the laws
42 of this state, or that its affairs are in an unsound condition so as to en-
43 danger its ability to pay or cause to be paid claims in the amount, manner

1 and time due, the commissioner shall, before filing such report or making
2 the same public, grant such group-funded pool upon reasonable notice a
3 hearing, and, if on such hearing the report be confirmed, the commis-
4 sioner may require any of the actions allowed under K.S.A. 40-222b, and
5 amendments thereto, or suspend the certificate of authority for such
6 group-funded pool until its ability to pay current and future claims shall
7 have been fully restored and the laws of the state fully complied with.
8 The commissioner may, if there is an unreasonable delay in restoring the
9 ability to pay claims of such group-funded pool and in complying with
10 the law or if rehabilitation or corrective action taken under K.S.A. 40-
11 222b, and amendments thereto, is unsuccessful, revoke the certificate of
12 authority of such group-funded pool to do business in this state. Upon
13 revoking any such certificate the commissioner shall communicate the
14 fact to the attorney general, whose duty it shall be to commence and
15 prosecute an action in the proper court to dissolve such group-funded
16 pool or to enjoin the same from doing or transacting business in this state.
17 The commissioner of insurance may call a hearing under K.S.A. 40-222b,
18 and amendments thereto, and the provisions thereof shall apply to group-
19 funded pools established under this act.

20 (c) On an annual basis, or within 30 days of any change thereto, each
21 group-funded pool shall supply to the commissioner the name and qual-
22 ifications of the designated administrator of the group-funded pools and
23 the terms of the specific and aggregate excess insurance contracts of the
24 group-funded pool.

25 Sec. 7. (a) Premium contributions to the group-funded pool shall be
26 based upon appropriate manual classification and rates, plus or minus
27 applicable experience credits or debits, and minus any advance discount
28 approved by the trustees, not to exceed 25% of manual premium. The
29 group-funded pool shall use rules, classifications and rates as promulgated
30 by an approved rating organization for general and/or professional liability
31 insurance if the group-funded pool has been in operation for less than
32 five years. Such rates shall either be the rates effective June 1, 2002, or
33 the prospective loss costs, as defined in K.S.A. 40-1113, and amendments
34 thereto, plus expenses necessary to administer the group-funded pool.
35 For purposes of subsection (b), the prospective loss costs shall be pre-
36 sumed to be the 70% required to be deposited in the claims fund. If the
37 group-funded pool has been in operation for more than five years, the
38 board of trustees may determine such rates. In lieu of the foregoing, the
39 board of trustees may determine such classification, rates and discounts
40 as approved by the commissioner.

41 (b) An amount equal to at least 70% of the annual premium shall be
42 maintained in a designated depository for the purpose of paying claims
43 in a claims fund account. If the group-funded pool has been in operation

1 for more than five years the commissioner may authorize allocation of a
2 different amount to the claims fund account, if solvency of the group-
3 funded pool would not be endangered. The remaining annual premium
4 shall be placed into a designated depository for the payment of taxes, fees
5 and administrative and other operational costs in an administrative fund
6 account.

7 (c) Any moneys for a fund year in excess of the amount necessary to
8 fulfill all obligations of the group-funded pool for that fund year, including
9 any obligation to retain adequate surplus funds in lieu of specific and
10 aggregate excess insurance, may be declared to be refundable by the
11 trustees not less than 12 months after the end of the fund year. Any such
12 refund shall be paid only to those members who remained participants
13 in the group-funded pool for an entire year. Payment of previously earned
14 refunds shall not be contingent on continued membership in the group-
15 funded pool.

16 Sec. 8. The trustees shall not utilize any of the contributions col-
17 lected as premiums for any purpose unrelated to the group-funded pool.
18 Monies not needed for current obligations may be invested by the trus-
19 tees. Such investments shall be limited to investments permitted by
20 K.S.A. 12-1677b and 75-4209, and amendments thereto, except that a
21 group-funded pool which has been in existence for at least five years shall
22 be permitted to invest in any of the securities or other investments per-
23 mitted by Article 2a of Chapter 40 of the Kansas Statutes Annotated and
24 amendments thereto.

25 Sec. 9. As a condition precedent to the continuation of the certificate
26 of authority provided in this act, all group-funded pools shall pay no later
27 than 90 days after the end of each fiscal year a tax upon the annual Kansas
28 gross premium collected by the group-funded pool at the rate of 1% per
29 annum applied to the collective premium relating to all Kansas members
30 of the group-funded pool for the preceding fiscal year. In the computation
31 of the tax, all group-funded pools shall be entitled to deduct any annual
32 Kansas gross premiums returned on account of cancellation or dividends
33 returned to members of such group-funded pools or expenditures used
34 for the purchase of specific and aggregate excess insurance.

35 Sec. 10. (a) Each proposed and authorized group-funded pool and
36 each person representing such proposed or authorized group-funded pool
37 shall be subject to the provisions of Article 24 of Chapter 40 of the Kansas
38 Statutes Annotated and amendments thereto.

39 (b) Each group-funded pool shall be subject to the provisions of
40 K.S.A. 40-246b to 40-246e, inclusive, and amendments thereto.

41 Sec. 11. (a) After the inception date of the group-funded pool, pro-
42 spective new members of the group-funded pool shall submit an appli-
43 cation for membership to the board of trustees or its administrator. The

1 trustees may approve the application for membership pursuant to the
2 bylaws of the group-funded pool.

3 (b) Before the time that membership in a group-funded pool is
4 granted, the applicant for such membership shall be provided a written
5 notice stating that:

6 (1) The group-funded pool is not an insurance company subject to
7 the general laws and rules and regulations relating to insurance compa-
8 nies; and

9 (2) The group-funded pool is subject to separate regulation by the
10 state insurance department as authorized by state statute and cannot com-
11 mence or continue operations without a certificate of authority. Such
12 authorization shall not constitute an endorsement or recommendation of
13 the coverage provided.

14 (c) Individual members may elect to terminate their participation in
15 a group-funded pool or be subject to cancellation by the group-funded
16 pool pursuant to the bylaws of such group-funded pool.

17 Sec. 12. To ensure the financial stability of the operations of each
18 group-funded pool established under this act, the board of trustees of
19 each group-funded pool shall be responsible for all operations of the
20 group-funded pool. The board of trustees shall consist of not less than
21 three persons selected according to the bylaws of the group-funded pool
22 for stated terms of office to direct the administration of a group-funded
23 pool. The board of trustees' duties shall include approving applications
24 by new members of the group-funded pool. The majority of the trustees
25 must be a member of the governing body or an officer or employee of
26 members of the group-funded pool, but a trustee may not be an owner,
27 officer or employee of any service agent or representative. All trustees
28 shall be residents of this state unless the group-funded pool was formed
29 on or before January 1, 2003, in which event the number of Kansas res-
30 ident trustees of the group-funded pool must be that percentage of all
31 trustees of the group-funded pool that equals the percentage of the num-
32 ber of Kansas lives covered by the group-funded pool with respect to all
33 lives covered by the group-funded pool on the last day of the prior fiscal
34 year of the operation of the group-funded pool. The board of trustees of
35 each fund shall take all necessary precautions to safeguard the assets of
36 the fund, including all of the following:

37 (a) Designate an administrator to administer the financial affairs of
38 the group-funded pool who shall furnish a fidelity bond to the group-
39 funded pool in an amount determined by the trustees to protect the
40 group-funded pool against the misappropriation or misuse of any moneys
41 or securities. The administrator shall file evidence of the bond with the
42 commissioner. The bond shall be one of the conditions required for ap-
43 proval of the establishment and continued operation of a group-funded

1 pool. Any administrator so designated shall be a resident of Kansas if an
2 individual or shall be authorized to do business in Kansas if a corporation.

3 (b) Retain control of all moneys collected or disbursed from the
4 group-funded pool and segregate all moneys into a claims fund account
5 and an administrative fund account. All administrative costs and other
6 disbursements shall be made from the administrative fund account. The
7 trustees may establish a revolving fund for use by the authorized service
8 agent which is replenished from time to time from the claims fund ac-
9 count. The service agent and its employees shall be covered by a fidelity
10 bond, with the group-funded pool as obligee, in an amount sufficient to
11 protect all moneys placed in the revolving fund.

12 (c) Audit the accounts and records of the group-funded pool annually
13 or at any time as required. The commissioner shall prescribe the type of
14 audits and a uniform accounting system for use by group-funded pool
15 and service agents to determine the ability of the group-funded pool to
16 pay current and future claims.

17 (d) The trustees shall not extend credit to individual members for any
18 purpose.

19 (e) The board of trustees shall not borrow any moneys from the
20 group-funded pool or in the name of the group-funded pool without ad-
21 vising the commissioner of the nature and purpose of the loan.

22 (f) The board of trustees may delegate authority for specific functions
23 to the administrator of the group-funded pool. The functions which the
24 board may delegate include such matters as contracting with a service
25 agent, determining the premium chargeable to and refunds payable to
26 members, investing surplus moneys and approving applications for mem-
27 bership. The board of trustees shall specifically define all authority it
28 delegates in the written minutes of the trustees' meetings. Any delegation
29 of authority shall not be effective without a formal resolution passed by
30 the trustees.

31 Sec. 13. Any person or agency soliciting for a proposed or authorized
32 group-funded pool shall hold a current license authorizing such person
33 to sell each line of insurance offered for sale. Any person licensed for the
34 kinds of insurance offered by the group-funded pool shall be deemed to
35 be certified by a company for the kinds of insurance permitted by the
36 group-funded pool.

37 Sec. 14. This act shall take effect and be in force from and after its
38 publication in the statute book.

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