

Approved 4-29-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

3:00 ~~am~~/p.m. on April 26, 1989 in room 123-S of the Capitol.

All members were present except: Senators Winter, Yost, Moran, Bond, Feleciano, D. Kerr, Martin, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Ron Todd, Assistant Insurance Commissioner
Ted Faye, Attorney, Health Care Stabilization Fund
Bob Hays, Health Care Stabilization Fund
Jerry Slaughter, Kansas Medical Society
Richard Mason, Kansas Trial Lawyers
Tom Bell, Kansas Hospital Association

House Bill 2501 - Medical malpractice claims; phase out of health care stabilization fund.

The chairman explained some of the actuarial studies have been completed that may affect some of the provisions of the bill. The chairman then yielded to Senator Bond to bring the committee up to date on the bill.

Senator Bond explained the bill was re-referred to the committee for amendments and passed out again to the floor of the Senate. He said he will offer seven amendments. The bill does three main things, provides optional levels of coverage, addresses question of "tail coverage" and provides the phase out for 1989.

Ron Todd, Ted Faye and Bob Hays from the Insurance Department were present to respond to questions.

Ron Todd testified, as requested, we are enclosing an exhibit setting forth our actuary's estimates as to certain features contained in House Bill 2501 and related factors. This exhibit not only contains estimates as to probable surcharges necessary to accommodate a "phase-out" of the Fund, but also estimates probable surcharge differentials for different optional levels of coverage. Copies of his handouts are attached (See Attachments I). A copy of the comments from the actuary is also included in the handouts.

Senator Bond explained if we don't "phase out" the fund, we will still be increasing premiums. Considerable committee discussion was held. Senator Bond moved to amend the bill by deleting the references to the "phase-out" and inserting language as it appears on page 21, lines 12 through 15 of the attached balloon copy (See Attachment II). Senator Dave Kerr seconded the motion. Jerry Slaughter, Kansas Medical Society stated they support the motion and would like a clearer look at it in coming months. The Kansas Bar Association had no comments. Following discussion, the motion carried.

Senator Bond moved to amend the bill as indicated on page 11 of the balloon. Senator Feleciano seconded the motion. Senator Bond explained this is a technical amendment suggested by the Insurance Commissioner. Following committee discussion, the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 123-S, Statehouse, at 3:00 ~~am~~/p.m. on April 26, 1989

House Bill 2501 - continued

Senator Bond moved to amend the bill as it appears on page 12 of the balloon. Senator Feleciano seconded the motion. Jerry Slaughter explained the language in the amendment. Following discussion, the motion carried.

Tom Bell, Kansas Hospital Association, explained the amendments that appear on pages 21 and 22 of the balloon concerning city or county hospitals. Jerry Slaughter suggested amending the definition of employee so doctors cannot hide behind that provision. Richard Mason stated they had questions of this particular proposal. Considerable committee discussion was held concerning this amendment.

Senator Bond moved to amend the bill by removing Section 9. Senator Yost seconded the motion. The motion carried.

Senator Bond moved to amend the bill technically as shown on the balloon on page 22, line 7. Senator Moran seconded the motion. The motion carried.

Senator Bond moved to amend the bill as indicated in the balloon on page 10, lines 16 and 17, and page 11, lines 30 and 31. Senator Oleen seconded the motion. Following an explanation of the amendment, the motion carried.

The meeting adjourned.



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

FLETCHER BELL
Commissioner

April 26, 1989

The Honorable Richard Bond
Senator
State of Kansas
Topeka, Kansas 66612

Dear Senator Bond:

As requested, we are enclosing an exhibit setting forth our actuary's estimates as to certain features contained in House Bill No. 2501 and related factors. This exhibit not only contains estimates as to probable surcharges necessary to accommodate a "phase-out" of the Fund, but also estimates probable surcharge differentials for different optional levels of coverage.

We have the following comments that we believe should be brought to your attention:

Although we agree that optional levels of coverage should be made available to health care providers, the precise actuarial outcome resulting cannot presently be predicted. There is no way to accurately anticipate which providers will make which elections, e.g., will most low risk providers elect the \$100,000 level, or will some high risk providers elect \$100,000 and seek excess insurance elsewhere?

The Samsel v. Wheeler Transport Services, Inc., et al., case number 62,983, March 30, 1989 decision has also added some uncertainty to future projections. Until the Kansas Supreme Court issues its full decision, it is impossible to know how the court's rationale in Samsel will affect rates and the phase-out of the Fund.

For these reasons, we believe it most prudent to permit the optional levels of coverage in House Bill No. 2501 to become effective without a sunset date for the Fund. The oversight committee, established by House Bill No. 2501, can, at such time as present uncertainties are clarified, recommend a future cause of action to the legislature. The actuarial uncertainties that presently exist coupled with the interest of some legislators in seeking a second actuarial opinion, makes a sunset impractical at this time. This is true even if a delay in the phase-out for the Fund eventually increases balances required for termination.

Very truly yours,

Ron Todd
Assistant Insurance Commissioner

RT:tp
LE/6188

Attachment I
Senate Judiciary Committee

4-26-89

ESTIMATED HCSF SURCHARGE RATES

(Based on DANI Associates, Inc., letters dated 3/3/89 & 4/18/89)

July 1, 1994 HCSF Termination

Full Tail Coverage

Options

<u>FY</u>	<u>\$800,000</u>	<u>\$300,000</u>	<u>\$100,000</u>	<u>Average</u>
1990	155%	125%	105%	135%
1991	165%	125%	95%	140%
1992	180%	120%	85%	145%
1993	185%	115%	80%	145%
1994	185%	120%	80%	145%

No HCSF Termination

Current Tail Provision

<u>FY</u>	<u>** \$800,000</u>	<u>** \$300,000</u>	<u>** \$100,000</u>	<u>* Average</u>
1990	145%	115%	100%	125%
1991	111%	85%	65%	95%
1992	105%	70%	50%	85%
1993	108%	70%	50%	85%
1994	108%	70%	50%	85%

*These average amounts were provided in the 4/18/89 DANI Associates, Inc. letter.

**These surcharges were extrapolated from information in DANI Associates, Inc., letters dated 4/18/89 and 3/3/89.

3/3/89.

Other DANI Associates, Inc., Comments

1. On health care provider selection of optional limits:

The provided distribution of health care providers by selected optional limit appears to have been based on a survey of providers by number instead of basic limits premium. Although precise advance quantification of the distribution is not possible, the following example should suggest the bias attributable to the use of the contract distribution.

Let it be assumed that the basic limits premiums of those providers which would select \$300,000 Fund coverage are, on average, double those of the providers which would select \$100,000 Fund coverage. Furthermore, let it be assumed that the basic limits premiums of those providers which would select \$800,000 Fund coverage are, on average, double those of the providers which would select \$300,000 Fund coverage. These assumptions are designed to illustrate the premise that those providers with the greater loss potential are more likely to select higher coverage limits. On this basis, the distribution of coverage limits becomes 79.2%, 11.3%, and 9.5%, as opposed to the Proposal 3 distribution of 56%, 16%, and 27% utilized in our March 31, 1989 letter.

All else equal, the indicated Proposal 3 1989/90 average surcharge of 135% becomes 147%, while the 1993/94 average surcharge of 145% becomes 168%.

An additional source of bias which we cannot quantify but can identify at this time is the understatement of the Proposal 3 indicated \$800,000 and \$300,000 coverage level rates. The rates presented in our March 31, 1989, letter, necessarily assumed that health care providers were equally likely to select one of the three offered coverage levels. The likelihood that providers with lesser loss potential would opt for lower coverage levels, however, would remove their favorable experience from the higher coverage levels experience and thus would require the higher coverage rates to be increased.

2. On the Kansas Supreme Court's Samsel's decision:

It is our opinion based on the limited information available regarding the Kansas Supreme Court's Samsel decision, that it is impossible at this time to actuarial predict the extent of any Fund savings. Whenever additional information regarding the Samsel decision is available and if sufficient favorable loss data is available to support favorable actuarial projections, then the related savings will be incorporated in the Fund's savings recommendation.

3. On extension of the HCSF's termination date to 7/1/96:

Extension of the Fund termination date from July 1, 1994, to July 1, 1996, would most likely serve to increase both active and inactive providers' liabilities relative to underlying basic limits subject premiums without regard to optionally selected Fund limits of liability. Both individual coverage and overall surcharge rates would be expected to rise from the 1993/94 rates indicated in our March 31, 1989, letter. There would ^{be} potential offsetting savings in the last two additional years (i.e., due to the completion of amortized deficiencies as of July 1, 1984); however, it is difficult to project that these possible savings would substantial reduce the 1994/95 and 1995/96 surcharge rates below the estimated 1993/94 indications.

RDH:11fc
5123

As Amended by Senate Committee
[As Amended by House Committee of the Whole]
As Amended by House Committee

Session of 1989

HOUSE BILL No. 2501

By Committee on Insurance

2-22

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

AN ACT relating to medical malpractice claims; amending and supplementing the health care provider insurance availability act; providing for reduced levels of coverage by the health care stabilization fund ~~and providing for the eventual termination of the fund, repealing certain statutes limiting awards in medical malpractice actions;~~ amending the Kansas tort claims act with respect to claims against certain governmental entities or employees thereof; amending K.S.A. 40-3402, 40-3415, 40-3416 and 75-6115, ~~K.S.A. 1987 Supp. 40-3413 as amended by section 124 of chapter 356 of the laws of 1988,~~ and K.S.A. 1988 Supp. 40-3401, 40-3403, 40-3404, 40-3414 and 60-3410 and repealing the existing sections; also repealing K.S.A. 40-3405 and 40-3414 as amended by section 125 of chapter 356 of the laws of 1988, K.S.A. 1987 Supp. 40-3403 as amended by section 123 of chapter 356 of the laws of 1988 and K.S.A. 1988 Supp. ~~60-3407,~~ 60-3409 and 60-3411.

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

Section 1. K.S.A. 1988 Supp. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

- (a) "Applicant" means any health care provider.
- (b) "Basic coverage" means a policy of professional liability insurance required to be maintained by each health care provider pursuant to the provisions of subsection (a) or (b) of K.S.A. 40-3402 and amendments thereto.
- (c) "Commissioner" means the commissioner of insurance.
- (d) "Fiscal year" means the year commencing on the effective date of this act and each year, commencing on the first day of that month, thereafter.

Attachment II
Senate Judiciary Com.
4-26-89

1 (e) "Fund" means the health care stabilization fund established
2 pursuant to subsection (a) of K.S.A. 40-3403 and amendments
3 thereto.

4 (f) "Health care provider" means a person licensed to practice
5 any branch of the healing arts by the state board of healing arts, a
6 person who holds a temporary permit to practice any branch of the
7 healing arts issued by the state board of healing arts, a person
8 engaged in a postgraduate training program approved by the state
9 board of healing arts, a medical care facility licensed by the de-
10 partment of health and environment, a health maintenance organi-
11 zation issued a certificate of authority by the commissioner of
12 insurance, an optometrist licensed by the board of examiners in
13 optometry, a podiatrist licensed by the state board of healing arts,
14 a pharmacist licensed by the state board of pharmacy, a licensed
15 professional nurse who is authorized to practice as a registered nurse
16 anesthetist, a licensed professional nurse who has been granted a
17 temporary authorization to practice nurse anesthesia under K.S.A.
18 ~~1987~~ 1988 Supp. 65-1153 and amendments thereto, a professional
19 corporation organized pursuant to the professional corporation law
20 of Kansas by persons who are authorized by such law to form such
21 a corporation and who are health care providers as defined by this
22 subsection, a partnership of persons who are health care providers
23 under this subsection, a Kansas not-for-profit corporation organized
24 for the purpose of rendering professional services by persons who
25 are health care providers as defined by this subsection, a dentist
26 certified by the state board of healing arts to administer anesthetics
27 under K.S.A. 65-2899 and amendments thereto, a physical therapist
28 registered by the state board of healing arts, a psychiatric hospital
29 licensed under K.S.A. 75-3307b and amendments thereto, or a men-
30 tal health center or mental health clinic licensed by the secretary
31 of social and rehabilitation services, except that health care provider
32 does not include (1) any state institution for the mentally retarded,
33 (2) any state psychiatric hospital or (3) any person holding an exempt
34 license issued by the state board of healing arts.

35 (g) "Inactive health care provider" means: ~~(1)~~ A person or other
36 entity who purchased basic coverage or qualified as a self-insurer on
37 or subsequent to ~~the effective date of this act~~ July 1, 1976, ~~and~~
38 ~~before July 1, 1980~~, but who, at the time a claim is made for
39 personal injury or death arising out of the rendering of or the failure
40 to render professional services by such health care provider, does
41 not have basic coverage or self-insurance in effect solely because
42 such person is no longer engaged in rendering professional service
43 as a health care provider; ~~or (2) a person or other entity who~~
44

1 *purchased basic coverage or qualified as a self-insurer on or*
2 *subsequent to the effective date of the health care provider*
3 *insurance availability act July 1, 1980, and was so qualified*
4 *on June 30, 1994.*

5 (h) "Insurer" means any corporation, association, reciprocal ex-
6 change, inter-insurer and any other legal entity authorized to write
7 bodily injury or property damage liability insurance in this state,
8 including workmen's compensation and automobile liability insur-
9 ance, pursuant to the provisions of the acts contained in article 9,
10 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

11 (i) "Plan" means the operating and administrative rules and pro-
12 cedures developed by insurers and rating organizations or the com-
13 missioner to make professional liability insurance available to health
14 care providers.

15 (j) "Professional liability insurance" means insurance providing
16 coverage for legal liability arising out of the performance of profes-
17 sional services rendered or which should have been rendered by a
18 health care provider.

19 (k) "Rating organization" means a corporation, an unincorporated
20 association, a partnership or an individual licensed pursuant to K.S.A.
21 40-930 or 40-1114, or both, and amendments thereto, to make rates
22 for professional liability insurance.

23 (l) "Self-insurer" means a health care provider who qualifies as
24 a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

25 (m) "Medical care facility" means the same when used in the
26 health care provider insurance availability act as the meaning ascribed
27 to that term in K.S.A. 65-425 and amendments thereto, except that
28 as used in the health care provider insurance availability act such
29 term, as it relates to insurance coverage under the health care prov-
30 ider insurance availability act, also includes any director, trustee,
31 officer or administrator of a medical care facility.

32 (n) "Mental health center" means a mental health center licensed
33 by the secretary of social and rehabilitation services under K.S.A.
34 75-3307b and amendments thereto, except that as used in the health
35 care provider insurance availability act such term, as it relates to
36 insurance coverage under the health care provider insurance avail-
37 ability act, also includes any director, trustee, officer or administrator
38 of a mental health center.

39 (o) "Mental health clinic" means a mental health clinic licensed
40 by the secretary of social and rehabilitation services under K.S.A.
41 75-3307b and amendments thereto, except that as used in the health
42 care provider insurance availability act such term, as it relates to
43 insurance coverage under the health care provider insurance avail-

1 ability act, also includes any director, trustee, officer or administrator
2 of a mental health clinic.

3 (p) "State institution for the mentally retarded" means Norton
4 state hospital, Winfield state hospital and training center, Parsons
5 state hospital and training center and the Kansas neurological
6 institute.

7 (q) "State psychiatric hospital" means Larned state hospital, Os-
8 awatomie state hospital, Rainbow mental health facility and Topeka
9 state hospital.

10 (r) "Person engaged in residency training" means a person en-
11 gaged in a postgraduate training program approved by the state board
12 of healing arts who is employed by and is studying at the university
13 of Kansas medical center only when such person is engaged in med-
14 ical activities which do not include extracurricular, extra-institutional
15 medical service for which such person receives extra compensation
16 and which have not been approved by the dean of the school of
17 medicine and the executive vice-chancellor of the university of Kan-
18 sas medical center. Persons engaged in residency training shall be
19 considered resident health care providers for purposes of K.S.A. 40-
20 3401 *et seq.*, and amendments thereto.

21 Section 2. K.S.A. 40-3402 is hereby amended to read as follows:
22 40-3402. (a) A policy of professional liability insurance approved by
23 the commissioner and issued by an insurer duly authorized to transact
24 business in this state in which the limit of the insurer's liability is
25 not less than \$200,000 per occurrence, subject to not less than a
26 \$600,000 annual aggregate for all claims made during the policy
27 period, shall be maintained in effect by each resident health care
28 provider as a condition to rendering professional service as a health
29 care provider in this state, unless such health care provider is a self-
30 insurer. Such policy shall provide as a minimum coverage for claims
31 made during the term of the policy which were incurred during the
32 term of such policy or during the prior term of a similar policy. Any
33 insurer offering such policy of professional liability insurance to any
34 health care provider may offer to such health care provider a policy
35 as prescribed in this section with deductible options. Such deductible
36 shall be within such policy limits.

37 ~~(1) Policies of professional liability insurance maintained by~~
38 ~~health care providers in accordance with subsection (a), which are~~
39 ~~issued to be effective or renewed to be effective on or after July 1,~~
40 ~~1993, shall have an expiration date of June 30, 1994.~~

} _____ delete

41 (1)(2) Each insurer providing basic coverage shall within 30 days
42 after the premium for the basic coverage is received by the insurer
43 or within 30 days from the effective date of this act, whichever is

(1)

1 later, notify the commissioner that such coverage is or will be in
 2 effect. Such notification shall be on a form approved by the com-
 3 missioner and shall include information identifying the professional
 4 liability policy issued or to be issued, the name and address of all
 5 health care providers covered by the policy, the amount of the annual
 6 premium, the inception and expiration dates of the coverage and
 7 such other information as the commissioner shall require. A copy of
 8 the notice required by this subsection shall be furnished the named
 9 insured.

10 ~~(2)~~ ~~(3)~~ In the event of termination of basic coverage by cancel- (2)
 11 lation, nonrenewal, expiration or otherwise by either the insurer or
 12 named insured, notice of such termination shall be furnished by the
 13 insurer to the commissioner, the state agency which licenses, reg-
 14 isters or certifies the named insured and the named insured. Such
 15 notice shall be provided no less than 30 days prior to the effective
 16 date of any termination initiated by the insurer or within 10 days
 17 after the date coverage is terminated at the request of the named
 18 insured and shall include the name and address of the health care
 19 provider or providers for whom basic coverage is terminated and
 20 the date basic coverage will cease to be in effect. No basic coverage
 21 shall be terminated by cancellation or failure to renew by the insurer
 22 unless such insurer provides a notice of termination as required by
 23 this subsection.

24 ~~(3)~~ ~~(4)~~ Any professional liability insurance policy issued, deliv- (3)
 25 ered or in effect in this state on and after the effective date of this
 26 act shall contain or be endorsed to provide basic coverage as required
 27 by subsection (a) of this section. Notwithstanding any omitted or
 28 inconsistent language, any contract of professional liability insurance
 29 shall be construed to obligate the insurer to meet all the mandatory
 30 requirements and obligations of this act. The liability of an insurer
 31 for claims made prior to July 1, 1984, shall not exceed those limits
 32 of insurance provided by such policy prior to July 1, 1984.

33 (b) Unless a nonresident health care provider is a self-insurer,
 34 such provider shall not render professional service as a health care
 35 provider in this state unless such provider maintains coverage in
 36 effect as prescribed by subsection (a), except such coverage may be
 37 provided by a nonadmitted insurer who has filed the form required
 38 by subsection (b)(1).

39 (1) Every insurance company authorized to transact business in
 40 this state, that is authorized to issue professional liability insurance
 41 in any jurisdiction, shall file with the commissioner, as a condition
 42 of its continued transaction of business within this state, a form
 43 prescribed by the commissioner declaring that its professional liability

1 insurance policies, wherever issued, shall be deemed to provide at
2 least the insurance required by this subsection when the insured is
3 rendering professional services as a nonresident health care provider
4 in this state. Any nonadmitted insurer may file such a form.

5 (2) Every nonresident health care provider who is required to
6 maintain basic coverage pursuant to this subsection shall pay the
7 surcharge levied by the commissioner pursuant to subsection (a) of
8 K.S.A. 40-3404 and amendments thereto directly to the commis-
9 sioner and shall furnish to the commissioner the information required
10 in subsection (a)(1).

11 (c) Every health care provider that is a self-insurer, the university
12 of Kansas medical center for persons engaged in residency training
13 or a medical care facility or mental health center for self-insurers
14 under subsection (e) of K.S.A. 40-3414 and amendments thereto shall
15 pay the surcharge levied by the commissioner pursuant to subsection
16 (a) of K.S.A. 40-3404 and amendments thereto directly to the com-
17 missioner and shall furnish to the commissioner the information re-
18 quired in subsection (a)(1).

19 (d) In lieu of a claims made policy otherwise required under this
20 section, a person engaged in a postgraduate training program op-
21 erated by the university of Kansas medical center who is providing
22 services as a health care provider but while providing such services
23 is not covered by the self-insurance provisions of subsection (d) of
24 K.S.A. 40-3414 and amendments thereto may obtain basic coverage
25 under an occurrence form policy if such policy provides professional
26 liability insurance coverage and limits which are substantially the
27 same as the professional liability insurance coverage and limits re-
28 quired by subsection (a) of K.S.A. 40-3402 and amendments thereto.
29 Where such occurrence form policy is in effect, the provisions of
30 the health care provider insurance availability act referring to claims
31 made policies shall be construed to mean occurrence form policies.

32 ~~(e) The provisions of this section shall expire on July 1, 1994.~~

33 Sec. 3. K.S.A. 1988 Supp. 40-3403 is hereby amended to read
34 as follows: 40-3403. (a) For the purpose of paying damages for per-
35 sonal injury or death arising out of the rendering of or the failure
36 to render professional services by a health care provider, self-insurer
37 or inactive health care provider subsequent to the time that such
38 health care provider or self-insurer has qualified for coverage under
39 the provisions of this act, there is hereby established the health care
40 stabilization fund. The fund shall be held in trust in a segregated
41 fund in the state treasury. The commissioner shall administer the
42 fund or contract for the administration of the fund with an insurance
43 company authorized to do business in this state.

delete

1 (b) (1) There is hereby created a board of governors. The board
2 of governors shall:

3 (A) Provide technical assistance with respect to administration of
4 the fund;

5 (B) provide such expertise as the commissioner may reasonably
6 request with respect to evaluation of claims or potential claims;

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

10 (D) prepare and publish, on or before October 1 of each year,
11 a summary of the fund's activity during the preceding fiscal year,
12 including but not limited to the amount collected from surcharges,
13 the highest and lowest surcharges assessed, the amount paid from
14 the fund, the number of judgments paid from the fund, the number
15 of settlements paid from the fund and the amount in the fund at
16 the end of the fiscal year.

17 (2) The board shall consist of 14 persons appointed by the com-
18 missioner of insurance, as follows: (A) The commissioner of insurance,
19 or the designee of the commissioner, who shall act as chairperson;
20 (B) two members appointed from the public at large who are not
21 affiliated with any health care provider; (C) three members licensed
22 to practice medicine and surgery in Kansas who are doctors of med-
23 icine; (D) three members who are representatives of Kansas hospitals;
24 (E) two members licensed to practice medicine and surgery in Kansas
25 who are doctors of osteopathic medicine; (F) one member licensed
26 to practice chiropractic in Kansas; (G) one member who is a licensed
27 professional nurse authorized to practice as a registered nurse an-
28 esthetist; and (H) one member of another category of health care
29 providers. Meetings shall be called by the chairperson or by a written
30 notice signed by three members of the board. The board, in addition
31 to other duties imposed by this act, shall study and evaluate the
32 operation of the fund and make such recommendations to the leg-
33 islatre as may be appropriate to ensure the viability of the fund.

34 (3) The board shall be attached to the insurance department and
35 shall be within the insurance department as a part thereof. All budg-
36 eting, purchasing and related management functions of the board
37 shall be administered under the direction and supervision of the
38 commissioner of insurance. All vouchers for expenditures of the board
39 shall be approved by the commissioner of insurance or a person
40 designated by the commissioner.

41 (c) Subject to subsections (d), (e), (f), (i) ~~and~~, (k), and (m) the
42 fund shall be liable to pay: (1) Any amount due from a judgment
43 or settlement which is in excess of the basic coverage liability of all

1 liable resident health care providers or resident self-insurers for any
2 personal injury or death arising out of the rendering of or the failure
3 to render professional services within or without this state; (2) *subject*
4 *to the provisions of subsection (m)*, any amount due from a judgment
5 or settlement which is in excess of the basic coverage liability of all
6 liable nonresident health care providers or nonresident self-insurers
7 for any such injury or death arising out of the rendering or the
8 failure to render professional services within this state but in no
9 event shall the fund be obligated for claims against nonresident health
10 care providers or nonresident self-insurers who have not complied
11 with this act or for claims against nonresident health care providers
12 or nonresident self-insurers that arose outside of this state; (3) *subject*
13 *to the provisions of subsection (m)*, any amount due from a judgment
14 or settlement against a resident inactive health care provider for any
15 such injury or death arising out of the rendering of or failure to
16 render professional services; (4) *subject to the provisions of subsec-*
17 *tion (m)*, any amount due from a judgment or settlement against a
18 nonresident inactive health care provider for any injury or death
19 arising out of the rendering or failure to render professional services
20 within this state, but in no event shall the fund be obligated for
21 claims against: (A) Nonresident inactive health care providers who
22 have not complied with this act; or (B) nonresident inactive health
23 care providers for claims that arose outside of this state, unless such
24 health care provider was a resident health care provider or resident
25 self-insurer at the time such act occurred; (5) reasonable and nec-
26 essary expenses for attorney fees incurred in defending the fund
27 against claims; (6) any amounts expended for reinsurance obtained
28 to protect the best interests of the fund purchased by the commis-
29 sioner, which purchase shall be subject to the provisions of K.S.A.
30 75-3738 through 75-3744, and amendments thereto, but shall not be
31 subject to the provisions of K.S.A. 75-4101 and amendments thereto;
32 (7) reasonable and necessary actuarial expenses incurred in admin-
33 istering the act, which expenditures shall not be subject to the
34 provisions of K.S.A. 75-3738 through 75-3744, and amendments
35 thereto; (8) annually to the plan or plans, any amount due pursuant
36 to subsection (a)(3) of K.S.A. 40-3413 and amendments thereto; (9)
37 reasonable and necessary expenses incurred by the insurance de-
38 partment and the board of governors in the administration of the
39 fund; (10) return of any unearned surcharge; (11) reasonable and
40 necessary expenses for attorney fees and other costs incurred in
41 defending a person engaged or who was engaged in residency training
42 from claims for personal injury or death arising out of the rendering
43 of or the failure to render professional services by such health care

1 provider; (12) any amount due from a judgment or settlement for
2 an injury or death arising out of the rendering of or failure to render
3 professional services by a person engaged or who was engaged in
4 residency training; ~~and and~~ (13) ~~amounts authorized by the court~~
5 ~~pursuant to K.S.A. 1986 Supp. 60-3411 and amendments~~
6 ~~thereto; and~~ (14) reasonable and necessary expenses for the de-
7 velopment and promotion of risk management education programs;
8 ~~and (14) any amount due from a judgment or settlement against~~
9 ~~an individual described in subsection (m) who has paid for past acts~~
10 ~~coverage for any injury or death arising out of the rendering of or~~
11 ~~failure to render professional services.~~

12 (d) All amounts for which the fund is liable pursuant to subsection
13 (c) shall be paid promptly and in full except that, ~~in any case arising~~
14 ~~out of a cause of action which accrued before July 1, 1986~~, if
15 the amount for which the fund is liable is \$300,000 or more, it shall
16 be paid; by installment payments of \$300,000 or 10% of the amount
17 of the judgment including interest thereon, whichever is greater,
18 per fiscal year, the first installment to be paid within 60 days after
19 the fund becomes liable and each subsequent installment to be paid
20 annually on the same date of the year the first installment was paid,
21 until the claim has been paid in full. Any attorney fees payable from
22 such installment shall be similarly prorated.

23 (e) In no event shall the fund be liable to pay in excess of
24 \$3,000,000 pursuant to any one judgment or settlement against any
25 one health care provider relating to any injury or death arising out
26 of the rendering of or the failure to render professional services on
27 and after July 1, 1984, and before July 1, ~~1986~~ 1989, subject to an
28 aggregate limitation for all judgments or settlements arising from all
29 claims made in any one fiscal year in the amount of \$6,000,000 for
30 each provider.

31 (f) ~~Except as provided by K.S.A. 1986 Supp. 60-3411 and~~
32 ~~amendments thereto; The fund shall not be liable to pay in~~
33 ~~excess of \$1,000,000 pursuant to any one judgment or settle-~~
34 ~~ment for any party against any one health care provider relating~~
35 ~~to any injury or death arising out of the rendering of or the~~
36 ~~failure to render professional services on and after July 1, 1986~~
37 ~~1989, and before July 1, 1990; subject to an aggregate limitation~~
38 ~~for all judgments or settlements arising from all claims made~~
39 ~~in any one fiscal year in the amount of \$3,000,000 for each~~
40 ~~provider.~~

41 (g) ~~The fund shall not be liable to pay in excess of \$500,000~~
42 ~~pursuant to any one judgment or settlement for any party~~
43 ~~against any one health care provider relating to any injury or~~

1 *death arising out of the rendering of or the failure to render*
 2 *professional services on and after July 1, 1990, and before July*
 3 *1, 1991, subject to an aggregate limitation for all judgments*
 4 *or settlements arising from all claims made in one fiscal year*
 5 *in the amount of \$1,500,000 for each provider.*

6 *(h) The fund shall not be liable to pay in excess of \$300,000*
 7 *pursuant to any one judgment or settlement for any party*
 8 *against any one health care provider relating to any injury or*
 9 *death arising out of the rendering of or the failure to render*
 10 *professional services on and after July 1, 1991, and before July*
 11 *1, 1994, subject to an aggregate limitation for all judgments*
 12 *or settlements arising from all claims made in one fiscal year*
 13 *in the amount of \$900,000 for each provider.*

14 (f) The fund shall not be liable to pay in excess of the amounts
 15 specified in the option selected by the health care provider pursuant
 16 to subsection (l) for judgments or settlements ~~from claims in any~~
 17 ~~one fiscal year~~ relating to injury or death arising out of the ren- delete
 18 dering of or failure to render professional services by such health
 19 care provider on or after July 1, 1989.

20 ~~(g)~~ ~~(+)~~ (g) A health care provider shall be deemed to have qual-
 21 ified for coverage under the fund: (1) On and after the effective date
 22 of this act if basic coverage is then in effect; (2) subsequent to the
 23 effective date of this act, at such time as basic coverage becomes
 24 effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A.
 25 40-3414 and amendments thereto.

26 ~~(h)~~ ~~(+)~~ (h) A health care provider who is qualified for coverage
 27 under the fund shall have no vicarious liability or responsibility for
 28 any injury or death arising out of the rendering of or the failure to
 29 render professional services inside or outside this state by any other
 30 health care provider who is also qualified for coverage under the
 31 fund. The provisions of this subsection shall apply to all claims filed
 32 on or after the effective date of this act.

33 ~~(i)~~ ~~(+)~~ (i) Notwithstanding the provisions of K.S.A. 40-3402 and
 34 amendments thereto, if the board of governors determines due to
 35 the number of claims filed against a health care provider or the
 36 outcome of those claims that an individual health care provider pre-
 37 sents a material risk of significant future liability to the fund, the
 38 board of governors is authorized by a vote of a majority of the
 39 members thereof, after notice and an opportunity for hearing in
 40 accordance with the provisions of the Kansas administrative pro-
 41 cedure act, to terminate the liability of the fund for all claims against
 42 the health care provider for damages for death or personal injury
 43 arising out of the rendering of or the failure to render professional

1 services after the date of termination. The date of termination shall
2 be 30 days after the date of the determination by the board of
3 governors. The board of governors, upon termination of the liability
4 of the fund under this subsection, shall notify the licensing or other
5 disciplinary board having jurisdiction over the health care provider
6 involved of the name of the health care provider and the reasons
7 for the termination.

8 (j) (i) (1) Upon the payment of moneys from the health
9 care stabilization fund pursuant to subsection (c)(11), the commis-
10 sioner shall certify to the director of accounts and reports the amount
11 of such payment, and the director of accounts and reports shall
12 transfer an amount equal to the amount certified from the state
13 general fund to the health care stabilization fund.

14 (2) Upon the payment of moneys from the health care stabili-
15 zation fund pursuant to subsection (c)(12), the commissioner shall
16 certify to the director of accounts and reports the amount of such
17 payment which is equal to the basic coverage liability of self-insurers,
18 and the director of accounts and reports shall transfer an amount
19 equal to the amount certified from the state general fund to the
20 health care stabilization fund.

21 (k) (m) (k) Notwithstanding any other provision of the health
22 care provider insurance availability act, no psychiatric hospital li-
23 censed under K.S.A. 75-3307b and amendments thereto shall be
24 assessed a premium surcharge or be entitled to coverage under the
25 fund if such hospital has not paid any premium surcharge pursuant
26 to K.S.A. 40-3404 and amendments thereto prior to January 1, 1988.

27 (l) ~~As of July 1, 1989, every health care provider shall make an~~
28 ~~irrevocable~~ election to be covered by one of the following options
29 provided in this subsection which shall limit the liability of the fund
30 with respect to judgments or settlements ~~from claims against such~~
31 ~~health care provider in any one fiscal year~~ relating to injury or
32 death arising out of the rendering of or failure to render profes-
33 sional services on or after July 1, 1989. ~~Such election shall continue~~
34 ~~to be effective from year to year unless modified by a subsequent~~
35 ~~election made prior to the anniversary date of the policy. The health~~
36 ~~care provider may at any subsequent election reduce the dollar~~
37 ~~amount of the coverage for the next and subsequent fiscal years,~~
38 ~~but may not increase the same.~~ Such options shall be as follows:

39 (1) OPTION 1. The fund shall not be liable to pay in excess of
40 \$100,000 pursuant to any one judgment or settlement for any party
41 against such health care provider, subject to an aggregate limitation
42 for all judgments or settlements arising from all claims made in
43 the fiscal year in an amount of \$300,000 for such provider.

on or after

delete

shall be made at the time the health care provider renews the basic coverage in effect at the time this act becomes effective or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the commissioner and

unless specifically authorized by the board of governors.

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

6 (3) OPTION 3. The fund shall not be liable to pay in excess of
7 \$800,000 pursuant to any one judgment or settlement for any party
8 against such health care provider, subject to an aggregate limitation
9 for all judgments or settlements arising from all claims made in
10 the fiscal year in an amount of \$2,400,000 for such provider.

11 ~~(m) The fund shall not be liable, with respect to any individual
12 who was rendering professional services as a health care provider
13 in this state and participating in the fund on July [March] 1, 1989,
14 or any [other] individual who commenced rendering [rendered]
15 professional services as a health care provider in this state and
16 participated in the fund after July 1, 1989 [for a period of less
17 than 10 years], to pay any amount prescribed in subsection (c) if
18 [a claim therefor was made after] such individual has discontinued
19 rendering professional services as a health care provider in this
20 state and participation in such fund before July 1, 1994, and com-
21 menced or continued to render such professional services in a lo-
22 cation outside of this state, unless such individual makes payment
23 for past acts coverage by the fund within 30 days of such individual's
24 termination of participation in the fund in an amount determined
25 by the commissioner to be sufficient to fund anticipated claims based
26 upon reasonably prudent actuarial principles.~~

27 (m) The fund shall not be liable for any amounts due from a
28 judgment or settlement which is in excess of the basic coverage
29 liability of all liable nonresident health care providers, nonresident
30 self-insurers, or resident or nonresident inactive health care pro-
31 viders who first qualify as health care provider on or after July
32 1, 1989, unless such health care provider makes payment for the
33 coverage for the period while they are nonresident health care pro-
34 viders, nonresident self-insurers or resident or nonresident inactive
35 health care providers to the fund. Such payment shall be made within
36 30 days after the health care provider ceases being an active health
37 care provider and shall be made in an amount determined by the
38 commissioner to be sufficient to fund anticipated claims based upon
39 reasonably prudent actuarial principles. The provisions of this sub-
40 section shall not be applicable to any health care provider which
41 becomes inactive through death, disability or circumstances beyond
42 such health care provider's control.

against

an inactive

has been in compliance with K.S.A. 40-3402
for a period of not less than five years and
makes application and

retirement

, provided such health care provider notifies
the board of governors and receives approval
for an exemption from the provisions of this
subsection because of disability or circumst
beyond such health care provider's control.

1 *medical malpractice liability action pursuant to a contingent fee*
 2 *arrangement, such claimant's attorney fees from any recovery from*
 3 *the health care stabilization fund may not exceed the following:*

4 (A) *Twenty-five percent of the first \$500,000 recovered from the*
 5 *fund;*

6 (B) *twenty percent of the next \$500,000 recovered from the fund;*
 7 *and*

8 (C) *fifteen percent of any amount recovered from the fund which*
 9 *exceeds \$1,000,000.*

10 (2) *In lieu of the provisions of subsection (1) of this subsection,*
 11 *a claimant has the right to pay for the attorney fees on a mutually*
 12 *satisfactory hourly or fixed fee basis. Such election must be exercised*
 13 *in written form at the time of employment of the attorney.*

14 (3) *The provisions of subsection (1) of this subsection shall not*
 15 *apply to the first \$200,000 recovered from the fund when the fund*
 16 *provides first dollar coverage.*

17 Sec. 4. K.S.A. 1988 Supp. 40-3404 is hereby amended to read
 18 as follows: 40-3404. (a) Except for any health care provider whose
 19 participation in the fund has been terminated pursuant to subsection
 20 (i) of K.S.A. 40-3403 and amendments thereto, the commissioner
 21 shall levy an annual premium surcharge on each health care provider
 22 who has obtained basic coverage and upon each self-insurer for each
 23 fiscal year ~~commencing before July 1, 1994.~~ Such premium surcharge
 24 shall be an amount equal to a percentage of the annual premium
 25 paid by the health care provider for the basic coverage required to
 26 be maintained as a condition to coverage by the fund by subsection
 27 (a) of K.S.A. 40-3402 and amendments thereto. The annual premium
 28 surcharge upon each self-insurer, except for the university of Kansas
 29 medical center for persons engaged in residency training, shall be
 30 an amount equal to a percentage of the amount such self-insurer
 31 would pay for basic coverage as calculated in accordance with rating
 32 procedures approved by the commissioner pursuant to K.S.A. 40-
 33 3413 and amendments thereto. The annual premium surcharge upon
 34 the university of Kansas medical center for persons engaged in re-
 35 sidency training shall be an amount equal to a percentage of an
 36 assumed aggregate premium of \$600,000.

37 (b) In the case of a resident health care provider who is not a
 38 self-insurer, the premium surcharge shall be collected in addition to
 39 the annual premium for the basic coverage by the insurer and shall
 40 not be subject to the provisions of K.S.A. 40-252, 40-1113 and 40-
 41 2801 *et seq.*, and amendments thereto. The amount of the premium
 42 surcharge shall be shown separately on the policy or an endorsement
 43 thereto and shall be specifically identified as such. Such premium
 44

delete

1 surcharge shall be due and payable by the insurer to the commis-
 2 sioner within 30 days after the annual premium for the basic coverage
 3 is received by the insurer, but in the event basic coverage is in
 4 effect at the time this act becomes effective, such surcharge shall
 5 be based upon the unearned premium until policy expiration and
 6 annually thereafter. Within 15 days immediately following the ef-
 7 fective date of this act, the commissioner shall send to each insurer
 8 information necessary for their compliance with this subsection. The
 9 certificate of authority of any insurer who fails to comply with the
 10 provisions of this subsection shall be suspended pursuant to K.S.A.
 11 40-222 and amendments thereto until such insurer shall pay the
 12 annual premium surcharge due and payable to the commissioner.
 13 In the case of a nonresident health care provider or a self-insurer,
 14 the premium surcharge shall be collected in the manner prescribed
 15 in K.S.A. 40-3402 and amendments thereto.

16 (c) The premium surcharge shall be an amount deemed sufficient
 17 by the commissioner to fund anticipated claims based upon reason-
 18 ably prudent actuarial principles. In setting the amount of such
 19 surcharge, the commissioner: (1) May require any health care prov-
 20 ider who has paid a surcharge for less than 24 months to pay a
 21 higher surcharge than other health care providers; (2) shall require
 22 that any health care provider who is insured by a policy of profes-
 23 sional liability insurance with deductibles pay a surcharge based on
 24 an amount equal to a percentage on the annual amount of premium
 25 that would have been paid by the health care provider for basic
 26 coverage required to be maintained by the fund as provided by
 27 K.S.A. 40-3402 and amendments thereto without any deductibles;

28 ~~and (3) shall amortize any anticipated deficiencies in the fund over~~
 29 ~~a reasonable period of time, and (4) shall determine that the amount~~
 30 ~~is fixed at a rate estimated to be sufficient to achieve a fund balance~~
 31 ~~by July 1, 1994, equal to the fund's liabilities for claims filed or~~
 32 ~~which may be filed in the future. [Notwithstanding the foregoing,~~
 33 ~~upon certification by the commissioner to the director of accounts~~
 34 ~~and reports that the fund is insufficient to pay an amount amounts~~
 35 ~~for which the fund is liable and upon confirmation by the director~~
 36 ~~of accounts and reports of such deficiency, the commissioner may~~
 37 ~~annually make an additional assessment assessments upon health~~
 38 ~~care providers in an amount amounts necessary to accommodate~~
 39 ~~the deficiency, any deficiencies. In the event a surplus exists in the~~
 40 ~~fund after payment of all amounts for which the fund is liable, any~~
 41 ~~such surplus shall be returned on a pro rata basis to those health~~
 42 ~~care providers who were qualified under this act during fiscal year~~
 43 ~~1990 through 1994. The agencies responsible for the licensing, cert~~

and

delete

~~ification or registration of health care providers shall provide any necessary assistance to the commissioner and the health care stabilization fund oversight committee with regard to the collection of such assessments.]~~

delete

See: 5. K.S.A. 1987 Supp. 40-3413, as amended by section 124 of chapter 356 of the laws of 1988, is hereby amended to read as follows: 40-3413. (a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

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

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

(3) a method whereby annually the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year. If there is any surplus of premiums over losses and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned such losses shall be transferred from the fund;

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

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

(b) The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection (a). As soon as reasonably possible after the plan has been filed the commissioner shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30

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

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

21 (d) If, after a hearing conducted in accordance with the
22 provisions of the Kansas administrative procedure act, the com-
23 missioner finds that any activity or practice of any insurer or
24 rating organization in connection with the operation of such
25 plan or plans is unfair or unreasonable or otherwise inconsistent
26 with the provisions of this act, the commissioner may issue a
27 written order specifying in what respects such activity or prac-
28 tice is unfair or unreasonable or otherwise inconsistent with
29 the provisions of this act and requiring discontinuance of such
30 activity or practice.

31 (e) For every such plan or plans, there shall be a governing
32 board which shall meet at least annually to review and pre-
33 scribe operating rules. Such board shall consist of nine mem-
34 bers to be appointed by the commissioner as follows: Three
35 members shall be representatives of foreign insurers; two mem-
36 bers shall be representatives of domestic insurers; two members
37 shall be representatives of the general public, one member
38 shall be a licensed insurance agent actively engaged in the
39 solicitation of casualty insurance and one member shall be a
40 health care provider. The members shall be appointed for a
41 term of two years.

42 (f) An insurer participating in the plan approved by the
43 commissioner may pay a commission with respect to insurance
44

1 written under the plan to an insurance agent licensed for any
2 other insurer participating in the plan or to any insurer par-
3 ticipating in the plan. Such commission shall be reasonably
4 equivalent to the usual customary commission paid on similar
5 types of policies issued in the voluntary market.

6 ~~(g) The provisions of this section shall expire on July 1,~~
7 ~~1989 1994, but any plan created hereunder shall continue to~~
8 ~~exist for the purpose of allowing policies then in effect to~~
9 ~~expire, transferring surplus to the fund, completing the payment~~
10 ~~of claims and receiving reimbursement therefor.~~

11 Sec. 6 5. K.S.A. 1988 Supp. 40-3414 is hereby amended to read
12 as follows: 40-3414. (a) Any health care provider, or any health care
13 system organized and existing under the laws of this state which
14 owns and operates two or more medical care facilities licensed by
15 the department of health and environment, whose aggregate annual
16 insurance premium is or would be \$100,000 or more for basic cov-
17 erage calculated in accordance with rating procedures approved by
18 the commissioner pursuant to K.S.A. 40-3413 and amendments
19 thereto, may qualify as a self-insurer by obtaining a certificate of
20 self-insurance from the commissioner. Upon application of any such
21 health care provider or health care system, on a form prescribed by
22 the commissioner, the commissioner may issue a certificate of self-
23 insurance if the commissioner is satisfied that the applicant is pos-
24 sessed and will continue to be possessed of ability to pay any judg-
25 ment for which liability exists equal to the amount of basic coverage
26 required of a health care provider obtained against such applicant
27 arising from the applicant's rendering of professional services as a
28 health care provider. In making such determination the commissioner
29 shall consider (1) the financial condition of the applicant, (2) the
30 procedures adopted and followed by the applicant to process and
31 handle claims and potential claims, (3) the amount and liquidity of
32 assets reserved for the settlement of claims or potential claims and
33 (4) any other relevant factors. The certificate of self-insurance may
34 contain reasonable conditions prescribed by the commissioner. Upon
35 ~~not less than five days' notice and a hearing pursuant to such~~
36 ~~notice in accordance with the provisions of the Kansas administrative~~
37 ~~procedure act~~, the commissioner may cancel a certificate of self-
38 insurance upon reasonable grounds therefor. Failure to pay any judg-
39 ment for which the self-insurer is liable arising from the self-insurer's
40 rendering of professional services as a health care provider, the
41 failure to comply with any provision of this act or the failure to
42 comply with any conditions contained in the certificate of self-in-
43 surance shall be reasonable grounds for the cancellation of such

1 certificate of self-insurance. The provisions of this subsection shall
2 not apply to the Kansas soldiers' home or to any person who is a
3 self-insurer pursuant to subsection (d) or (e).

4 (b) Any such health care provider or health care system that
5 holds a certificate of self-insurance shall pay the applicable surcharge
6 set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto.

7 (c) The Kansas soldiers' home shall be a self-insurer and shall
8 pay the applicable surcharge set forth in subsection (c) of K.S.A.
9 40-3402 and amendments thereto.

10 (d) A person engaged in residency training shall be self-insured
11 by the university of Kansas medical center for occurrences arising
12 during such training, and such person shall be deemed a self-insurer
13 for the purposes of the health care provider insurance availability
14 act. The university of Kansas medical center shall pay the applicable
15 surcharge set forth in subsection (c) of K.S.A. 40-3402 and amend-
16 ments thereto on behalf of such person. Such self-insurance shall be
17 applicable to a person engaged in residency training only when such
18 person is engaged in medical activities which do not include extra-
19 curricular, extra-institutional medical service for which such person
20 receives extra compensation and which have not been approved by
21 the dean of the school of medicine and the executive vice-chancellor
22 of the university of Kansas medical center.

23 (e) (1) A person engaged in a postgraduate training program ap-
24 proved by the state board of healing arts at a medical care facility
25 or mental health center in this state may be self-insured by such
26 medical care facility or mental health center in accordance with this
27 subsection (e) and in accordance with such terms and conditions of
28 eligibility therefor as may be specified by the medical care facility
29 or mental health center and approved by the commissioner. A person
30 self-insured under this subsection (e) by a medical care facility or
31 mental health center shall be deemed a self-insurer for purposes of
32 the health care provider insurance availability act. Upon application
33 by a medical care facility or mental health center, on a form pre-
34 scribed by the commissioner, the commissioner may authorize such
35 medical care facility or mental health center to self-insure persons
36 engaged in postgraduate training programs approved by the state
37 board of healing arts at such medical care facility or mental health
38 center if the commissioner is satisfied that the medical care facility
39 or mental health center is possessed and will continue to be possessed
40 of ability to pay any judgment for which liability exists equal to the
41 amount of basic coverage required of a health care provider obtained
42 against a person engaged in such a postgraduate training program
43 and arising from such person's rendering of or failure to render

1 professional services as a health care provider.

2 (2) In making such determination the commissioner shall consider
3 (A) the financial condition of the medical care facility or mental health
4 center, (B) the procedures adopted by the medical care facility or
5 mental health center to process and handle claims and potential
6 claims, (C) the amount and liquidity of assets reserved for the set-
7 tlement of claims or potential claims by the medical care facility or
8 mental health center and (D) any other factors the commissioner
9 deems relevant. The commissioner may specify such conditions for
10 the approval of an application as the commissioner deems necessary.
11 Upon approval of an application, the commissioner shall issue a
12 certificate of self-insurance to each person engaged in such post-
13 graduate training program at the medical care facility or mental
14 health center who is self-insured by such medical care facility or
15 mental health center.

16 (3) Upon ~~not less than five days'~~ notice and a hearing ~~pursuant~~
17 ~~to such notice in accordance with the provisions of the Kansas~~
18 ~~administrative procedure act~~, the commissioner may cancel, upon
19 reasonable grounds therefor, a certificate of self-insurance issued
20 pursuant to this subsection (e) or the authority of a medical care
21 facility or mental health center to self-insure persons engaged in
22 such postgraduate training programs at the medical care facility or
23 mental health center. Failure of a person engaged in such post-
24 graduate training program to comply with the terms and conditions
25 of eligibility to be self-insured by the medical care facility or mental
26 health center, the failure of a medical care facility or mental health
27 center to pay any judgment for which such medical care facility or
28 mental health center is liable as self-insurer of such person, the
29 failure to comply with any provisions of the health care provider
30 insurance availability act or the failure to comply with any conditions
31 for approval of the application or any conditions contained in the
32 certificate of self-insurance shall be reasonable grounds for cancel-
33 lation of such certificate of self-insurance or the authority of a medical
34 care facility or mental health center to self-insure such persons.

35 (4) A medical care facility or mental health center authorized to
36 self-insure persons engaged in such postgraduate training programs
37 shall pay the applicable surcharge set forth in subsection (c) of K.S.A.
38 40-3402 and amendments thereto on behalf of such persons.

39 (5) As used in this subsection (e), "medical care facility" does
40 not include the university of Kansas medical center.

41 (f) For the purposes of subsection (a), "health care provider" may
42 include each health care provider in any group of health care pro-
43 viders who practice as a group to provide physician services only

1 for a health maintenance organization, any professional corporations,
2 partnerships or not-for-profit corporations formed by such group and
3 the health maintenance organization itself. The premiums for each
4 such provider, health maintenance organization and group corpo-
5 ration or partnership may be aggregated for the purpose of being
6 eligible for and subject to the statutory requirements for self-insur-
7 ance as set forth in this section.

8 (g) The provisions of subsections (a) and (f), relating to health
9 care systems, shall not affect the responsibility of individual health
10 care providers as defined in subsection (f) of K.S.A. 40-3401, and
11 amendments thereto, or organizations whose premiums are aggre-
12 gated for purposes of being eligible for self-insurance from individ-
13 ually meeting the requirements imposed by K.S.A. 40-3402, and
14 amendments thereto, with respect to the ability to respond to injury
15 or damages to the extent specified therein and K.S.A. 40-3404, and
16 amendments thereto, with respect to the payment of the health care
17 stabilization fund surcharge.

18 ~~(h) The provisions of this section shall expire on July 1, 1991.~~

_____ delete

19 Sec. 7 6. K.S.A. 40-3415 is hereby amended to read as follows:
20 40-3415. The board of governors, the commissioner, the attorney
21 general, *the health care stabilization fund oversight committee* and
22 the officers and employees of the state agencies which license, reg-
23 ister, certify or otherwise regulate health care providers are au-
24 thorized and directed to consult with and assist each other in
25 maintaining compliance with the provisions of this act.

26 Sec. 8 7. K.S.A. 40-3416 is hereby amended to read as follows:
27 40-3416. (a) Whenever the commissioner is informed or reasonably
28 suspects that a health care provider is rendering professional services
29 in violation of K.S.A. 40-3402 *and amendments thereto*, ~~said~~ such
30 commissioner shall report the suspected violation to the state agency
31 which licenses, registers or certifies such health care provider. Upon
32 receipt of such report or other evidence of a violation of K.S.A. 40-
33 3402 *and amendments thereto*, ~~said~~ such state agency shall make
34 such investigation as it deems necessary and take such other official
35 action as deemed appropriate. If a violation is found to exist, ~~said~~
36 such state agency shall promptly notify the attorney general of this
37 state. Upon such notice the attorney general or county attorney of
38 the proper county shall, in the name of the state, institute and
39 maintain an action to enjoin the health care provider from rendering
40 professional services in this state in the district court of the district
41 in which such health care provider is rendering professional services.

42 ~~(b) The provisions of this section shall expire on July 1, 1991.~~

_____ delete

43 New Sec. 9 8. (a) There is hereby created a health care stabi-

1 lization fund oversight committee to consist of five members, one
2 of which shall be the commissioner of insurance or the commis-
3 sioner's designee, who shall be chairperson, three who shall either
4 be health care providers or who shall be employed by health care
5 providers, and one who shall be a representative of the insurance
6 industry.

7 (b) The committee members, with the exception of the chair-
8 person, shall be appointed by the governor, two for a term of three
9 years and two for a term of two years. The committee members
10 shall be eligible for reappointment.

11 (c) The committee shall meet at least twice each year, or more
12 often if required; to: (1) ~~Review the progress made towards~~ phasing
13 out the fund, (2) annually report to the legislature and the governor
14 on the status of ~~the~~ phase out of the fund, (3) recommend any
15 ~~additional~~ legislation necessary to implement or alter the phase out
16 of the fund, (4) meet with insurers to determine the availability of
17 insurance for health care providers and encourage the writing of such
18 insurance, and (5) take such additional acts as are appropriate to
19 assist the state in providing access to health care to its citizens,
20 phase out the fund and provide for the availability of insurance for
21 health care providers.

22 (d) This section shall be a part of and supplemental to the health
23 care provider insurance availability act.

24 ~~New Sec. 10. Subsequent to July 1, 1994, and after the fund~~
25 ~~has paid all amounts required to be paid by it:~~

26 (a) ~~Any balance remaining shall be paid to the general fund.~~

27 (b) ~~Upon certification by the commissioner to the director~~
28 ~~of accounts and reports, that the fund is insufficient to pay an~~
29 ~~amount for which the fund is liable, the director shall transfer~~
30 ~~an amount equal to such insufficiency from the state general~~
31 ~~fund to the fund and the amount to be transferred is hereby~~
32 ~~appropriated for the fiscal year in which such amount is re-~~
33 ~~quired to be transferred.~~

34 (e) This section shall be a part of and supplemental to the
35 health care provider insurance availability act.

36 Sec. 11 9. K.S.A. 75-6115 is hereby amended to read as follows:
37 75-6115. (a) The Kansas tort claims act shall not be applicable to
38 claims arising from the rendering of or failure to render professional
39 services by a health care provider. Claims for damages against a
40 health care provider that is a governmental entity or an employee
41 of a governmental entity, arising out of the rendering or failure to
42 render professional services by such health care provider, may be
43 recovered in the same manner as claims for damages against any

Analyze the appropriateness of and
make recommendations to the legislature on
any recommended

, other than a hospital owned by a
municipality or the employees thereof.

other than a hospital owned by a
municipality or the employees thereof,

1 other health care provider. As used in this section, "health care
2 provider" shall have the meaning provided by K.S.A. 40-3401 and
3 amendments thereto.

4 ~~(b) The provisions of this section shall expire on July 1, 1994.~~

5 Sec. ~~12~~ 10. K.S.A. 1988 Supp. 60-3410 is hereby amended to
6 read as follows: 60-3410. The provisions of K.S.A. ~~1986~~ 1988 Supp.
7 ~~60-3406 through 60-3409~~ 60-3408 and amendments thereto shall
8 apply only to medical malpractice liability actions which are based
9 on causes of action accruing on or after July 1, 1986.

10 *New Sec. 11. If any provisions of this act or the application*
11 *thereof to any person or circumstances is held invalid, the invalidity*
12 *shall not affect other provisions or applications of the act which can*
13 *be given effect without the invalid provisions or application and, to*
14 *this end, the provisions of this act are severable.*

15 Sec. ~~13~~ ~~11~~ 12. K.S.A. 40-3402, 40-3405, 40-3414 as amended by
16 section 125 of chapter 356 of the laws of 1988, 40-3415, 40-3416 and
17 75-6115, K.S.A. 1987 Supp. 40-3403 as amended by section 123 of
18 chapter 356 of the laws of 1988 and 40-3413 as amended by section
19 ~~124~~ of chapter 356 of the laws of 1988, and K.S.A. 1988 Supp.
20 40-3401, 40-3403, 40-3404, 40-3414, ~~60-3407~~, 60-3409, 60-3410 and
21 60-3411 are hereby repealed.

22 Sec. 14 ~~12~~ 13. This act shall take effect and be in force from
23 and after its publication in the statute book.

As used in this section "hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

60-3406 through