

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Robert Tomlinson at 3:35 p.m. on January 29, 2002 in Room 527-S of the Capitol.

All members were present except: Rep. Gene O'Brien

Committee staff present: Bill Wolff, Legislative Research
Ken Wilke, Legislative Revisor
Mary Best, Administrative Assistant

Conferees appearing before the committee: Robert Hayes, Health Care Stabilization Fund

Others attending: See Attached Guest List

The Chair recognized Mr. Robert Hayes, Executive Director, Health Care Stabilization Fund, who came before the committee to present two draft proposals for the aforementioned organization. A copy of the proposal is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

Mr. Hayes stated the first proposal "contains changes related to the administrative activities of the Health Care Stabilization Fund" and the second proposal "makes changes to the portions of the Health Care Stabilization Fund law that provide for the submission of basic coverage documentation and health Care Stabilization Fund surcharge payments." Mr. Hayes continued on to explain the results these changes would have on the Fund. He also explained that the new wording would require the insurer to pay additional interest on overdue surcharge payments.

Mr. Hayes testified that copies of the proposal had been sent to the Kansas Medical Society, other health care providers professional associations, and to the insurance companies providing liability insurance for Kansas health care providers.

The motion was made by Representative Edmonds to move to introduce the bill. The motion was seconded by Representative Grant and passed by the committee.

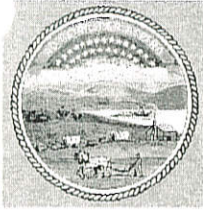
The Chairman then brought forth **HB 2247 - Kansas business health care partnership act, removal of sunset...** There was one question asked by a Representative and the bill was then back before the committee. Representative Grant made the motion to mark the bill favorable for passage. The motion was seconded by Representative Vickery and the motion passed and will be referred to General Orders.

With no further business the meeting was adjourned. The time was 3:40 p.m. The next meeting will be held February 5, 2002, at 3:30 p.m.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Jan 29, 2002

NAME	REPRESENTING
Bill Sneed	E MICA
BRAD SMOOT	BCBS
Dane Hollins	Anthem BCBS
BOB SMITH HAYES	HCSE
Kevin Davis	Am. Family Ins
John Reimer	HCSE
Phil SALTER	KMS
Robert Choromanski	KTLA
Sandy Braden	KS Assoc. of Financial Adv.
Kirk McConsey	KS Ins Dept
Natalie Briggs	WLBA
Chris Collins	KMS
David Hanson	KS Insur Assns



Health Care Stabilization Fund

Robert D. Hayes, Executive Director
300 S.W. 8th Avenue, Second Floor
Topeka, Kansas 66603-3912

Compliance Section
Claims Section
Fax

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January 22, 2002

The Honorable Bob Tomlinson
Chairman, House Insurance Committee
State Representative, 24th District
State Capitol, Room 303-N
Topeka, KS 66612

COPY

Re: 2002 Legislative Proposals

Dear Chairman Tomlinson:

On behalf of the Health Care Stabilization Fund Board of Governors I respectfully request introduction by your committee of the enclosed two draft proposals for the Health Care Stabilization Fund law.

The changes included in these proposals were presented to and reviewed by the Legislative Oversight Committee on the Health Care Stabilization Fund December 3, 2001. The oversight committee voted to recommend changes, which have been redrafted by the Office of the Revisor of Statutes into the two draft proposals.

The first proposal, labeled "A", contains changes related to the administrative activities of the Health Care Stabilization Fund. These are:

1. change to the Board membership of the Health Care Stabilization Fund;
2. change to the Board member office terms;
3. change in the investment authority provision for the Health Care Stabilization Fund;
4. change to the Health Care Provider Insurance Availability Plan Board membership; and
5. change in the availability of loss information.

The second proposal, labeled "B", makes changes to the portions of the Health Care Stabilization Fund law that provide for the submission of basic coverage documentation and Health Care Stabilization Fund surcharge payments. The changes being proposed would require that the basic coverage documentation and surcharge payment be submitted to the Health Care Stabilization Fund not later than sixty days after the effective date of the basic coverage. There is new wording that the insurer would have to pay additional interest on overdue surcharge payments.

Copies of these proposals have been sent to the Kansas Medical Society, other health care providers professional associations and to the insurance companies who provide the basic professional liability insurance for Kansas health care providers.

Sincerely,

Robert D. Hayes
Executive Director

RH:jh

Enclosures: 1. Legislative Proposal "A"
2. Legislative Proposal "B"

Keith Hall
Gregory Lundstrom
James Rider, D.O.

BOARD OF GOVERNORS
Mark Praeger, M.D., Chairperson
Gene Schmidt, Vice Chairperson
Steve Preston, CRNA

HOUSE INSURANCE
DATE: January 29, 2002
ATTACHMENT #1

Proposal A

2002

lrs1448

PROPOSED HOUSE BILL NO. _____

By

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

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

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

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

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

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

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

in the fund at the end of the fiscal year; and

(D) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily leaves the state for the purpose of obtaining additional education or training or to participate in religious, humanitarian or government service programs. Whenever a health care provider has previously left the state for one of the reasons specified in this paragraph and returns to the state and recommences practice, the board of governors may refund any amount paid by the health care provider pursuant to subsection (m) of this section if no claims have been filed against such health care provider during the provider's temporary absence from the state.

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

(A) Three members who are licensed to practice medicine and surgery in Kansas who are doctors of medicine and who are on a list of nominees submitted to the commissioner by the Kansas medical society;

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

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

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

(E) one member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist who is on a list of nominees submitted to the commissioner by the Kansas association of nurse anesthetists; and

(F) one member who is the chairperson of the governing board

established by K.S.A. 40-3413, and amendments thereto, or other board member designated by the chairperson.

The persons appointed under paragraphs (A) through (E) shall be appointed by the commissioner of insurance.

(3) When a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three nominees submitted to the commissioner by the professional society or association prescribed by this section for the category of health care provider required for the vacant position on the board of governors. All appointments made shall be for a term of office of four years, but no member shall be appointed for more than two three successive four-year terms. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board of governors created by this act for any reason other than the expiration of a member's term of office, the commissioner shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board of governors, the commissioner shall notify the professional society or association which represents the category of health care provider required for the vacant position and request a list of three nominations of health care providers from which to make the appointment.

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

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

(6) (A) The board shall appoint an executive director who shall be in the unclassified service under the Kansas civil service act and may appoint such attorneys, legal assistants,

claims managers and compliance auditors who shall also be in the unclassified service under the Kansas civil service act. Such executive director, attorneys, legal assistants, claims managers and compliance auditors shall receive compensation fixed by the board, in accordance with appropriation acts of the legislature, not subject to approval of the governor.

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

(7) The commissioner shall:

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

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

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

(2) subject to the provisions of subsection (m), any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable nonresident health care providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against nonresident health care providers or nonresident self-insurers who have not complied with

this act or for claims against nonresident health care providers or nonresident self-insurers that arose outside of this state;

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

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

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

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

(7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, which expenditures shall not be subject to the provisions of

K.S.A. 75-3738 through 75-3744, and amendments thereto;

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

(9) reasonable and necessary expenses incurred by the board of governors in the administration of the fund or in the performance of other powers, duties or functions of the board under the health care provider insurance availability act;

(10) return of any unearned surcharge;

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

(12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine;

(13) subject to the provisions of K.S.A. 65-429, and amendments thereto, reasonable and necessary expenses for the development and promotion of risk management education programs and for the medical care facility licensure and risk management

survey functions carried out under K.S.A. 65-429, and amendments thereto;

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

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

(16) expenses incurred by the commissioner in the performance of duties and functions imposed upon the commissioner by the health care provider insurance availability act, and expenses incurred by the commissioner in the performance of duties and functions under contracts entered into between the board and the commissioner as authorized by this section; and

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

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is \$300,000 or more, it shall be paid, by installment payments of \$300,000 or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within 60 days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in

full. Any attorney fees payable from such installment shall be similarly prorated.

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

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the health care provider pursuant to subsection (1) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

(g) A health care provider shall be deemed to have qualified for coverage under the fund:

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

(2) subsequent to July 1, 1976, at such time as basic coverage becomes effective; or

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

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

(i) Notwithstanding the provisions of K.S.A. 40-3402, and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider or the

outcome of those claims that an individual health care provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

(j) (1) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4) of this subsection (j), from the state general fund to the health care stabilization fund.

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

(3) The university of Kansas medical center private practice foundation reserve fund is hereby established in the state

treasury. If the balance in such reserve fund is less than \$500,000 on July 1 of any year, the private practice corporations or foundations referred to in subsection (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount necessary to increase such balance to \$500,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any private practice corporation or foundation or any of its full-time physician faculty employed by the university of Kansas, the director of accounts and reports shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(4) The graduate medical education administration reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than \$40,000 on July 1 of any year, the nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall remit the amount necessary to increase such balance to \$40,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable.

Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine the director of accounts and reports shall transfer an amount equal to the amount paid from the graduate medical education administration reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

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

(k) Notwithstanding any other provision of the health care provider insurance availability act, no psychiatric hospital licensed under K.S.A. 75-3307b₁ and amendments thereto₁ shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404₁ and amendments thereto₁ prior to January 1, 1988.

(1) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection (1) which shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on July 1, 1989, 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, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Any election of fund coverage limits, whenever made, shall be with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after the effective date of such election of fund coverage limits. Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. The election of fund coverage limits for a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to be effective at the highest option. Such options shall be as follows:

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

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

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

(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive health care providers who first qualify as an inactive health care provider on or after July 1, 1989, unless such health care provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a health care provider has not been in compliance for five years, such health care provider may make application and payment for the coverage for the period while they are nonresident health care providers, nonresident self-insurers or resident or nonresident inactive health care providers to the fund. Such payment shall be made within 30 days after the health care provider ceases being an active health care provider and shall be made in an amount determined by the board of governors to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any health care provider which becomes

inactive through death or retirement, or through disability or circumstances beyond such health care provider's control, if such health care provider notifies the board of governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto.

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

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

(p) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1997, against a health maintenance organization relating to any injury or death arising out of the rendering of or failure to render professional services by such health maintenance organization prior to July 1, 1997, unless such health maintenance organization qualified as an inactive health care provider prior to July 1, 1997, and obtained

coverage pursuant to subsection (m). Health maintenance organizations not qualified as inactive health care providers prior to July 1, 1997, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1997, and payment within 30 days from notice of the calculated amount as determined by the board of governors to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

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

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

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

(b) repurchase agreements with a Kansas bank or primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal

and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds;

(c) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(d) corporate bonds that do not exceed three years to maturity and which at the time of purchase are rated in one of the two highest credit rating categories by a nationally recognized investment rating firm;

~~(d)~~ (e) interest-bearing time deposits in any commercial bank located in Kansas; or

~~(e)~~ (f) the municipal investment pool fund, under K.S.A. 12-1677a, and amendments thereto.

Sec. 3. K.S.A. 40-3413 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 and the board of governors 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 periodically the plan shall compare the

premiums earned to the losses and expenses sustained by the plan. 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, however such transfers shall not occur more often than once each three months;

(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 and board of governors 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, consistent with the recommendations of the board of governors, shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsection (a), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

(c) If no plan meeting the standards set forth in subsection

(a) is submitted to the commissioner and board of governors within 60 calendar days from the effective date of this act or within the period stated in any order disapproving an existing plan, the commissioner with the assistance of the board of governors shall after a hearing, if necessary to carry out the purpose of this act, prepare and promulgate a plan meeting such requirements.

(d) If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner and board of governors find that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this act, the commissioner and board of governors may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring discontinuance of such activity or practice.

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

(f) An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance written under the plan to an insurance agent licensed for any

other insurer participating in the plan or to any insurer participating in the plan. Such commission shall be reasonably equivalent to the usual customary commission paid on similar types of policies issued in the voluntary market.

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

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

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

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

Proposal B

2002

lrs1451

PROPOSED HOUSE BILL NO. _____

By

AN ACT amending the health care provider insurance availability act; concerning coverage documentation and surcharge payment due date; providing for payment of interest; amending K.S.A. 40-3402 and K.S.A. 2001 Supp. 40-3404 and repealing the existing sections.

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

Section 1. K.S.A. 40-3402 is hereby amended to read as follows: 40-3402. (a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995 nor to health maintenance organizations on or after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any health care provider may offer to such health care provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage shall, within 30 ~~60~~ days after the ~~premium-for-the-basic-coverage-is--received--by~~ ~~the--insurer--or--within--30-days-from-the-effective-date-of-this~~ ~~act,--whichever--is--later~~ date the basic coverage becomes effective, shall notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be

issued, the name and address of all health care providers covered by the policy, the amount of the annual premium, the inception and expiration dates of the coverage and, such other information as the board of governors shall require and shall be accompanied by the surcharge payment required by subsection (b) of K.S.A. 40-3404, and amendments thereto. A copy of the notice required by this subsection shall be furnished the named insured.

(2) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the board of governors, the state agency which licenses, registers or certifies the named insured and the named insured. Such notice shall be provided no less than 30 days prior to the effective date of any termination initiated by the insurer or within 10 days after the date coverage is terminated at the request of the named insured and shall include the name and address of the health care provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after July 1, 1976, shall contain or be endorsed to provide basic coverage as required by subsection (a) ~~of this section~~. Notwithstanding any omitted or inconsistent language, any contract of professional liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) Unless a nonresident health care provider is a self-insurer, such health care provider shall not render professional service as a health care provider in this state

unless such health care provider maintains coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404₁ and amendments thereto₁ directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1).

(c) Every health care provider that is a self-insurer, the university of Kansas medical center for persons engaged in residency training, as described in subsection (r)(1) of K.S.A. 40-3401₁ and amendments thereto, the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401₁ and amendments thereto, the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or a medical care facility or mental health center for self-insurers under subsection (e) of K.S.A. 40-3414₁ and amendments thereto₁ shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404₁ and amendments thereto₁ directly to the board of governors and shall furnish to the board

of governors the information required in subsection (a)(1) and (a)(2).

(d) In lieu of a claims made policy otherwise required under this section, a person engaged in residency training who is providing services as a health care provider but while providing such services is not covered by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and amendments thereto, may obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits which are substantially the same as the professional liability insurance coverage and limits required by subsection (a) of K.S.A. 40-3402, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the health care provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

Sec. 2. K.S.A. 2001 Supp. 40-3404 is hereby amended to read as follows: 40-3404. (a) Except for any health care provider whose participation in the fund has been terminated pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto, the board of governors shall levy an annual premium surcharge on each health care provider who has obtained basic coverage and upon each self-insurer for each fiscal year. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on or after July 1, 1995, nor to health maintenance organizations on and after July 1, 1997. Such premium surcharge shall be an amount based upon a rating classification system established by the board of governors which is reasonable, adequate and not unfairly discriminating. The annual premium surcharge upon the university of Kansas medical center for persons engaged in residency training, as described in paragraph (1) of subsection (r) of K.S.A. 40-3401, and amendments thereto, shall be based on an assumed aggregate premium of \$600,000. The annual premium surcharge upon the employers of persons engaged in residency training, as described in paragraph (2) of subsection (r) of K.S.A. 40-3401, and amendments thereto,

shall be based on an assumed aggregate premium of \$400,000. The surcharge on such \$400,000 amount shall be apportioned among the employers of persons engaged in residency training, as described in paragraph (2) of subsection (r) of K.S.A. 40-3401, and amendments thereto, based on the number of residents employed as of July 1 of each year. The annual premium surcharge upon any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be based upon an assumed aggregate premium of \$10,000. The surcharge on such assumed aggregate premium shall be apportioned among all such nonprofit corporations.

(b) (1) In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within ~~30~~ 60 days after the ~~annual premium for the basic coverage is received by the insurer, but in the event basic coverage is in effect at the time this act becomes effective, such surcharge shall be based upon the unearned premium until policy expiration and annually thereafter. Within 15 days immediately following the effective date of this act,~~ date basic coverage becomes effective. Premium surcharge payments submitted beyond the 60-day period shall include accrued interest beginning with the effective date of the basic coverage to the postmarked date of the premium surcharge payment submission. The interest accrued shall be calculated based on double the interest rate provided for in subsection (e)(1) of K.S.A. 40-204, and amendments thereto. Interest amounts shall be payable by the basic coverage insurer and shall not be the responsibility of the health care

provider. Premium surcharge payments shall be submitted with the notification form required by subsection (a)(1) of K.S.A. 40-3402, and amendments thereto. The board of governors shall send to each insurer information necessary for their compliance with this subsection.

(2) The certificate of authority of any insurer who fails to comply with the provisions of paragraph (1) of this subsection, shall be suspended pursuant to K.S.A. 40-222, and amendments thereto, until such insurer shall pay the annual premium surcharge due and payable to the board of governors, including any accrued interest amount due under paragraph (1).

(3) Nonresident compliance documents and surcharge payments must be submitted to the board of governors within 60 days of the effective date of the coverage period being requested by the nonresident health care provider. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be collected in the manner prescribed in K.S.A. 40-3402, and amendments thereto.

(c) In setting the amount of such surcharge, the board of governors may require any health care provider who has paid a surcharge for less than 24 months to pay a higher surcharge than other health care providers.

Sec. 3. K.S.A. 40-3402 and K.S.A. 2001 Supp. 40-3404 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

Senate

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Sen. Greta Goodwin

House

Rep. Eber Phelps
Rep. Jim Morrison

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Committee Secretary

Reviews the operation of the Fund and reports and makes recommendations to the Legislative Coordinating Council regarding the financial status of the Fund, including any recommendations for legislation necessary to implement recommendations of the Committee.

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