

SESSION OF 2010

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 414**

As Amended by Senate Committee of the Whole

**Brief\***

SB 414, as amended, would amend the Health Care Provider Insurance Availability Act to exempt transfers from the State General Fund (SGF) to the Health Care Stabilization Fund (HCSF) as required by KSA 2009 Supp. 40-3403(j) from the allotment authority delegated by statute (KSA 75-3722) to the Secretary of Administration.

The bill also makes a technical amendment to the requirement for payment of the annual surcharge, striking the word "fiscal."

*Deferral of Payment to the Health Care Stabilization Fund.* The bill would further amend the Act to provide that the funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The Director of Accounts and Reports would be required to maintain a record of the amounts certified by the Health Care Stabilization Fund Board of Governors for the specified fiscal years. The bill establishes a process for the repayment of the deferred State General Fund payments, as follows: beginning on July 1, 2013 and on an annual basis through July 1, 2017, twenty percent of the total amount of the SGF deferred transfers are to be transferred to the Health Care Stabilization Fund. No interest will be allowed to accrue on the deferred payments.

The bill would become effective upon publication in the *Kansas Register*.

---

\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

2009 KSA 40-3403(j) pertains to the reimbursement for the costs and expenses associated with the administration of a self-insurance program for the full-time faculty, private practice foundations and corporations, and the residents of the University of Kansas School of Medicine and the Wichita Center for Graduate Medical Education. (When the costs, including claims and legal expenses, exceed the amount paid by the Faculty Foundations [Private Practice Foundation Reserve Fund], the SGF, upon certification of the amount of the payments made by the HCSF, transfers the difference to the HCSF).

### **Background**

A recent Attorney General's opinion [2009-16] made, among other conclusions, the finding that, "[n]othing in the allotment system statute nor in the Health Care Provider Insurance Availability Act indicates that the statutory transfers of funds specified in KSA 40-3403 are exempt from the allotment system."

The bill was introduced at the request of the Kansas Medical Society whose representative indicated that in February 2009 and again in July 2009, the Secretary of Administration issued an allotment order pursuant to KSA 75-3722 which withheld the SGF transfers owed the HCSF for medical malpractice claims the HCSF had already paid. The representative further stated that the effect of the allotment orders (and those recommended by the Governor for FY 2011) is a shifting to physicians, hospitals, and other health care providers in the private sector of the costs associated with claims against residents and faculty at KU (the Kansas University Medical Center (KUMC)) that are legally the responsibility of the State of Kansas. The Executive Director of the HCSF Board of Governors stated that the allotment orders interfere with the long-standing statutory relationship between the State of Kansas and the HCSF and jeopardize the actuarial integrity of the HCSF. Other proponents of the bill included the

President, University of Kansas Physicians (also serves as a professor), KU School of Medicine, and representatives of the Kansas Association of Osteopathic Medicine and the Kansas Hospital Association. There were no opponents present at the Committee hearing.

The Senate Committee on Financial Institutions and Insurance recommended an amendment to the publication date for the bill. The amendment was requested by a representative of the HCSF.

The Senate Committee of the Whole recommended an amendment to the bill that establishes a repayment process for the deferred transfers of SGF payment to the Health Care Stabilization Fund for the reimbursement associated with the administration of a self-insurance program for KUMC residents and faculty.

The fiscal note prepared by the Division of the Budget on the original bill states that the HCSF Board of Governors estimates that for FY 2011, the passage of the bill would result in a cost to the SGF of between \$2.4 million and \$3.0 million. The Board of Governors also noted that in February 2009 and July 2009, the Secretary of Administration issued allotment orders that suspended the transfers from the SGF to the HCSF Board of Governors on behalf of the KUMC residents and faculty. During FY 2009, the note continues, the total claims and expenses amounted to \$3.5 million and the agency estimates that claims and expenses for FY 2010 will amount to approximately \$2.9 million. Both the FY 2009 and FY 2010 amounts are higher than the ten-year average.

The fiscal note concludes by stating that no transfer from the SGF is recommended in either FY 2010 or FY 2011 by the Governor.