

## HOUSE BILL No. 2516

By Committee on Insurance

1-27

1 AN ACT concerning health care provider liability insurance; relating to  
2 mutual insurance companies organized to provide health care provider  
3 liability insurance; health care provider insurance availability act;  
4 amending K.S.A. 40-12a02, 40-12a06, 40-12a09, 40-3402, 40-3403a,  
5 40-3403b, 40-3407, 40-3408, 40-3411, 40-3412, 40-3413, 40-3416, 40-  
6 3419 and 40-3422 and K.S.A. 2013 Supp. 40-3401, 40-3403, 40-3404,  
7 40-3414 and 40-3421 and repealing the existing sections.

8  
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) For all claims made on and after July 1, 2014, the  
11 amount of fund liability for a judgment or settlement against a resident or  
12 nonresident inactive health care provider shall be equal to the minimum  
13 professional liability insurance policy limits required pursuant to K.S.A.  
14 40-3402, and amendments thereto, plus the level of coverage selected by  
15 the health care provider pursuant to subsection (l) of K.S.A. 40-3403, and  
16 amendments thereto, at the time of the incident giving rise to a claim.

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

19 Sec. 2. K.S.A. 40-12a02 is hereby amended to read as follows: 40-  
20 12a02. (a) Except as otherwise provided in this act, the provisions of  
21 article 12 of chapter 40 of the Kansas Statutes Annotated, *and amendments*  
22 *thereto*, shall control the formation and operation of companies organized  
23 under this act.

24 (b) Any association of health care providers domiciled within the  
25 state of Kansas which has been in existence for three years or more, may,  
26 as provided in this act, form an insurance company for the purpose of  
27 issuing contracts of insurance providing liability insurance for health care  
28 providers which are members of the association, the member's employees,  
29 directors, professional associations and affiliates.

30 (c) Any two or more such associations of health care providers, may  
31 form an insurance company for the purpose of issuing contracts of  
32 insurance providing liability insurance for such association's respective  
33 members, the member's employees, directors, professional associations  
34 and affiliates ~~upon the assessment plan~~.

35 (d) *In addition to other requirements of law, any plan or agreement*  
36 *for the sale, merger, consolidation or change of control of any company*

1 organized under the provisions of this act shall not be effective unless such  
2 plan or agreement has been approved by resolution of the governing board  
3 of directors or board of trustees of the association which formed such  
4 company.

5 Sec. 3. K.S.A. 40-12a06 is hereby amended to read as follows: 40-  
6 12a06. (a) Any company organized under the provisions of this act shall be  
7 empowered to make contracts of insurance as provided herein and to cede  
8 to any insurer or accept from any insurer reinsurance on any portion of any  
9 such risk for the following kinds of insurance:

10 ~~(1) Against loss or liability arising out of the performance of~~  
11 ~~professional services rendered or which should have been rendered by an~~  
12 ~~insured.~~

13 ~~(2) Against loss or liability to persons or property for which the~~  
14 ~~insured may be liable or have assumed liability, including but not limited~~  
15 ~~to liability of any person who is a director or officer of a health care~~  
16 ~~provider arising out of acts performed or which should have been~~  
17 ~~performed by such director or officer.~~

18 ~~(3) Against loss or liability to persons or property resulting from the~~  
19 ~~ownership, maintenance or use of any ambulance, aircraft or other vehicle~~  
20 ~~used by an insured in connection with rendering professional services~~  
21 ~~authorized by article 12 of chapter 40 of the Kansas Statutes Annotated,~~  
22 ~~and amendments thereto.~~

23 (b) Any company organized under the provisions of this act shall be  
24 empowered to contract with the governing board of any plan created  
25 pursuant to K.S.A. 40-3413, and amendments thereto, to issue policies to  
26 any applicant for liability insurance under the provisions of any such plan,  
27 to service and manage such policies and in all respects to administer and  
28 carry out the functions of any plan as the same may be authorized by the  
29 contract. Policies may be issued to persons and corporations under the  
30 provisions of such contract even though the insured is not a member of the  
31 association of health care providers forming the insurance company. No  
32 provision of this act or of article 12 of chapter 40 of the Kansas Statutes  
33 Annotated, *and amendments thereto*, regarding the voting rights of  
34 members or the payment of dividends shall apply to policies issued under  
35 this subsection.

36 Sec. 4. K.S.A. 40-12a09 is hereby amended to read as follows: 40-  
37 12a09. Each company organized pursuant to this act shall file an annual  
38 statement each year in accordance with the requirements for domestic  
39 insurers writing the same kind of insurance. ~~Any company organized~~  
40 ~~pursuant to this section which states its liabilities for losses and loss~~  
41 ~~adjustment expenses on a present value basis on the effective date of this~~  
42 ~~act shall be allowed a reasonable period of time to discontinue such~~  
43 ~~practice in accordance with a plan approved by the commissioner.~~

1       Sec. 5. K.S.A. 2013 Supp. 40-3401 is hereby amended to read as  
2 follows: 40-3401. As used in this act the following terms shall have the  
3 meanings respectively ascribed to them herein.

4       (a) "Applicant" means any health care provider.

5       (b) "Basic coverage" means a policy of professional liability  
6 insurance required to be maintained by each health care provider pursuant  
7 to the provisions of subsection (a) or (b) of K.S.A. 40-3402, and  
8 amendments thereto.

9       (c) "Commissioner" means the commissioner of insurance.

10       (d) "Fiscal year" means the year commencing on the effective date of  
11 this act and each year, commencing on the first day of ~~that month,~~ *July*  
12 thereafter.

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

15       (f) "Health care provider" means a person licensed to practice any  
16 branch of the healing arts by the state board of healing arts ~~with the~~  
17 ~~exception of physician assistants,~~ a person who holds a temporary permit  
18 to practice any branch of the healing arts issued by the state board of  
19 healing arts, a person engaged in a postgraduate training program  
20 approved by the state board of healing arts, a medical care facility licensed  
21 by the ~~department of health and environment,~~ a ~~health maintenance~~  
22 ~~organization issued a certificate of authority by the commissioner of~~  
23 ~~insurance~~ *state of Kansas,* a podiatrist licensed by the state board of  
24 healing arts, ~~an optometrist licensed by the board of examiners in~~  
25 ~~optometry,~~ a pharmacist licensed by the state board of pharmacy, a  
26 licensed professional nurse who is authorized to practice as a registered  
27 nurse anesthetist, a licensed professional nurse who has been granted a  
28 temporary authorization to practice nurse anesthesia under K.S.A. 65-  
29 1153, and amendments thereto, a professional corporation organized  
30 pursuant to the professional corporation law of Kansas by persons who are  
31 authorized by such law to form such a corporation and who are health care  
32 providers as defined by this subsection, a Kansas limited liability company  
33 organized for the purpose of rendering professional services by its  
34 members who are health care providers as defined by this subsection and  
35 who are legally authorized to render the professional services for which  
36 the limited liability company is organized, a partnership of persons who  
37 are health care providers under this subsection, a Kansas not-for-profit  
38 corporation organized for the purpose of rendering professional services  
39 by persons who are health care providers as defined by this subsection, a  
40 nonprofit corporation organized to administer the graduate medical  
41 education programs of community hospitals or medical care facilities  
42 affiliated with the university of Kansas school of medicine, a dentist  
43 certified by the state board of healing arts to administer anesthetics under

1 K.S.A. 65-2899, and amendments thereto, a psychiatric hospital licensed  
2 *prior to January 1, 1988, and continuously thereafter* under K.S.A. 75-  
3 3307b, and amendments thereto, or a mental health center or mental health  
4 clinic licensed by the ~~secretary of social and rehabilitation services, except~~  
5 ~~that health~~ state of Kansas. On and after January 1, 2015, "health care  
6 provider" also means a physician assistant licensed by the state board of  
7 healing arts, a licensed professional nurse who is authorized by the state  
8 board of nursing to practice as an advanced practice registered nurse, a  
9 licensed professional nurse who has been granted a temporary  
10 authorization by the state board of nursing to practice as an advanced  
11 practice registered nurse, a nursing facility licensed by the state of  
12 Kansas, an assisted living facility licensed by the state of Kansas or a  
13 residential health care facility licensed by the state of Kansas. "Health  
14 care provider" does not include: (1) Any state institution for people with  
15 intellectual disability; (2) any state psychiatric hospital; (3) any person  
16 holding an exempt license issued by the state board of healing arts; ~~or~~ (4)  
17 any person holding a visiting clinical professor license from the state board  
18 of healing arts; (5) any person holding an inactive license issued by the  
19 state board of healing arts; (6) any person holding a federally active  
20 license issued by the state board of healing arts; (7) an advanced practice  
21 registered nurse who practices solely in the course of employment or  
22 active duty in the United States government or any of its departments,  
23 bureaus or agencies or who, in addition to such employment or  
24 assignment, provides professional services as a charitable health care  
25 provider as defined under K.S.A. 75-6102, and amendments thereto; or (8)  
26 a physician assistant licensed by the state board of healing arts who  
27 practices solely in the course of employment or active duty in the United  
28 States government or any of its departments, bureaus or agencies or who,  
29 in addition to such employment or assignment, provides professional  
30 services as a charitable health care provider as defined under K.S.A. 75-  
31 6102, and amendments thereto.

32 (g) "Inactive health care provider" means a person or other entity who  
33 purchased basic coverage or qualified as a self-insurer on or subsequent to  
34 the effective date of this act but who, at the time a claim is made for  
35 personal injury or death arising out of the rendering of or the failure to  
36 render professional services by such health care provider, does not have  
37 basic coverage or self-insurance in effect solely because such person is no  
38 longer engaged in rendering professional service as a health care provider.

39 (h) "Insurer" means any corporation, association, reciprocal  
40 exchange, inter-insurer and any other legal entity authorized to write  
41 bodily injury or property damage liability insurance in this state, including  
42 workers compensation and automobile liability insurance, pursuant to the  
43 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of

1 Kansas Statutes Annotated, *and amendments thereto.*

2 (i) "Plan" means the operating and administrative rules and  
3 procedures developed by insurers and rating organizations or the  
4 commissioner to make professional liability insurance available to health  
5 care providers.

6 (j) "Professional liability insurance" means insurance providing  
7 coverage for legal liability arising out of the performance of professional  
8 services rendered or which should have been rendered by a health care  
9 provider.

10 (k) "Rating organization" means a corporation, an unincorporated  
11 association, a partnership or an individual licensed pursuant to K.S.A. 40-  
12 956, and amendments thereto, to make rates for professional liability  
13 insurance.

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

16 (m) "Medical care facility" means the same when used in the health  
17 care provider insurance availability act as the meaning ascribed to that  
18 term in K.S.A. 65-425, and amendments thereto, except that as used in the  
19 health care provider insurance availability act such term, as it relates to  
20 insurance coverage under the health care provider insurance availability  
21 act, also includes any director, trustee, officer or administrator of a medical  
22 care facility.

23 (n) "Mental health center" means a mental health center licensed by  
24 the ~~secretary of social and rehabilitation services~~ *state of Kansas* under  
25 K.S.A. 75-3307b, and amendments thereto, except that as used in the  
26 health care provider insurance availability act such term, as it relates to  
27 insurance coverage under the health care provider insurance availability  
28 act, also includes any director, trustee, officer or administrator of a mental  
29 health center.

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

37 (p) "State institution for people with intellectual disability" means  
38 Winfield state hospital and training center, Parsons state hospital and  
39 training center and the Kansas neurological institute.

40 (q) "State psychiatric hospital" means Larned state hospital,  
41 Osawatomie state hospital and Rainbow mental health facility.

42 (r) "Person engaged in residency training" means:

43 (1) A person engaged in a postgraduate training program approved by

1 the state board of healing arts who is employed by and is studying at the  
2 university of Kansas medical center only when such person is engaged in  
3 medical activities which do not include extracurricular, extra-institutional  
4 medical service for which such person receives extra compensation and  
5 which have not been approved by the dean of the school of medicine and  
6 the executive vice-chancellor of the university of Kansas medical center.  
7 Persons engaged in residency training shall be considered resident health  
8 care providers for purposes of K.S.A. 40-3401 et seq., and amendments  
9 thereto; and

10 (2) a person engaged in a postgraduate training program approved by  
11 the state board of healing arts who is employed by a nonprofit corporation  
12 organized to administer the graduate medical education programs of  
13 community hospitals or medical care facilities affiliated with the university  
14 of Kansas school of medicine or who is employed by an affiliate of the  
15 university of Kansas school of medicine as defined in K.S.A. 76-367, and  
16 amendments thereto, only when such person is engaged in medical  
17 activities which do not include extracurricular, extra-institutional medical  
18 service for which such person receives extra compensation and which have  
19 not been approved by the chief operating officer of the nonprofit  
20 corporation or the chief operating officer of the affiliate and the executive  
21 vice-chancellor of the university of Kansas medical center.

22 (s) "Full-time physician faculty employed by the university of Kansas  
23 medical center" means a person licensed to practice medicine and surgery  
24 who holds a full-time appointment at the university of Kansas medical  
25 center when such person is providing health care.

26 (t) "Sexual act" or "sexual activity" means that sexual conduct which  
27 constitutes a criminal or tortious act under the laws of the state of Kansas.

28 (u) "*Board*" means the board of governors created by K.S.A. 40-3403,  
29 and amendments thereto.

30 (v) "*Board of directors*" means the governing board created by K.S.A.  
31 40-3413, and amendments thereto.

32 (w) "*Locum tenens contract*" means a temporary agreement not  
33 exceeding 182 days per calendar year that employs a health care provider  
34 to actively render professional services in this state.

35 (x) "*Professional services*" means patient care or other services  
36 authorized under the act governing licensure of a health care provider.

37 Sec. 6. K.S.A. 40-3402 is hereby amended to read as follows: 40-  
38 3402. (a) A policy of professional liability insurance approved by the  
39 commissioner and issued by an insurer duly authorized to transact business  
40 in this state in which the limit of the insurer's liability is not less than  
41 \$200,000 per claim, subject to not less than a \$600,000 annual aggregate  
42 for all claims made during the policy period, shall be maintained in effect  
43 by each resident health care provider as a condition to rendering of active

1 *licensure or other statutory authorization to render* professional service as  
2 a health care provider in this state, unless such health care provider is a  
3 self-insurer. This provision shall not apply to optometrists and pharmacists  
4 on or after July 1, 1991 nor to physical therapists on and after July 1, 1995  
5 nor to health maintenance organizations on or after July 1, 1997. Such  
6 policy shall provide as a minimum coverage for claims made during the  
7 term of the policy which were incurred during the term of such policy or  
8 during the prior term of a similar policy. Any insurer offering such policy  
9 of professional liability insurance to any health care provider may offer to  
10 such health care provider a policy as prescribed in this section with  
11 deductible options. Such deductible shall be within such policy limits.

12 (1) Each insurer providing basic coverage shall, within 30 days after  
13 ~~the premium for the basic coverage is received by the insurer or within 30~~  
14 ~~days from the effective date of this act, whichever is later,~~ *effective date of*  
15 *any policy issued in accordance with this subsection*, notify the board of  
16 governors that such coverage is or will be in effect. Such notification shall  
17 be on a form approved by the board of governors and shall include  
18 information identifying the professional liability policy issued or to be  
19 issued, the name and address of all health care providers covered by the  
20 policy, the amount of the annual premium, the ~~inception~~ *effective* and  
21 expiration dates of the coverage and such other information as the board of  
22 governors shall require. A copy of the notice required by this subsection  
23 shall be furnished the named insured.

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

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

1 exceed those limits of insurance provided by such policy prior to July 1,  
2 1984.

3 (b) ~~Unless A nonresident health care provider is a self-insurer, such~~  
4 ~~health care provider~~ shall not *be licensed to actively* render professional  
5 service as a health care provider in this state unless such health care  
6 provider maintains *continuous* coverage in effect as prescribed by  
7 subsection (a), except such coverage may be provided by a nonadmitted  
8 insurer who has filed the form required by subsection (b)(1). This  
9 provision shall not apply to optometrists and pharmacists on or after July  
10 1, 1991 nor to physical therapists on and after July 1, 1995.

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

20 (2) Every nonresident health care provider who is required to  
21 maintain basic coverage pursuant to this subsection shall pay the surcharge  
22 levied by the board of governors pursuant to subsection (a) of K.S.A. 40-  
23 3404, and amendments thereto, directly to the board of governors and shall  
24 furnish to the board of governors the information required in subsection (a)  
25 (1).

26 (c) Every health care provider that is a self-insurer, the university of  
27 Kansas medical center for persons engaged in residency training, as  
28 described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto,  
29 the employers of persons engaged in residency training, as described in  
30 subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, the private  
31 practice corporations or foundations and their full-time physician faculty  
32 employed by the university of Kansas medical center or a medical care  
33 facility or mental health center for self-insurers under subsection (e) of  
34 K.S.A. 40-3414, and amendments thereto, shall pay the surcharge levied  
35 by the board of governors pursuant to subsection (a) of K.S.A. 40-3404,  
36 and amendments thereto, directly to the board of governors and shall  
37 furnish to the board of governors the information required in subsection (a)  
38 (1) and (a)(2).

39 (d) In lieu of a claims made policy otherwise required under this  
40 section, a person engaged in residency training who is providing services  
41 as a health care provider but while providing such services is not covered  
42 by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and  
43 amendments thereto, may obtain basic coverage under an occurrence form



1 policy if such policy provides professional liability insurance coverage and  
2 limits which are substantially the same as the professional liability  
3 insurance coverage and limits required by subsection (a) of K.S.A. 40-  
4 3402, and amendments thereto. Where such occurrence form policy is in  
5 effect, the provisions of the health care provider insurance availability act  
6 referring to claims made policies shall be construed to mean occurrence  
7 form policies.

8 *(e) In lieu of a claims made policy otherwise required under this*  
9 *section, a nonresident health care provider employed pursuant to a locum*  
10 *tenens contract to provide services in this state as a health care provider*  
11 *may obtain basic coverage under an occurrence form policy if such policy*  
12 *provides professional liability insurance coverage and limits which are*  
13 *substantially the same as the professional liability insurance coverage and*  
14 *limits required by K.S.A. 40-3402, and amendments thereto. Where such*  
15 *occurrence form policy is in effect, the provisions of the health care*  
16 *provider insurance availability act referring to claims made policies shall*  
17 *be construed to mean occurrence form policies.*

18 Sec. 7. K.S.A. 2013 Supp. 40-3403 is hereby amended to read as  
19 follows: 40-3403. (a) For the purpose of paying damages for personal  
20 injury or death arising out of the rendering of or the failure to render  
21 professional services by a health care provider, self-insurer or inactive  
22 health care provider subsequent to the time that such health care provider  
23 or self-insurer has qualified for coverage under the provisions of this act,  
24 there is hereby established the health care stabilization fund. The fund  
25 shall be held in trust in the state treasury and accounted for separately from  
26 other state funds. The board of governors shall administer the fund or  
27 contract for the administration of the fund with an insurance company  
28 authorized to do business in this state.

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

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

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

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

1 (D) have the authority to grant *temporary* exemptions from the  
2 provisions of ~~subsection (m) of this section when a health care provider~~  
3 ~~temporarily leaves the state for the purpose of obtaining additional~~  
4 ~~education or training or to participate in religious, humanitarian or~~  
5 ~~government service programs. Whenever a health care provider has~~  
6 ~~previously left the state for one of the reasons specified in this paragraph~~  
7 ~~and returns to the state and recommences practice, the board of governors~~  
8 ~~may refund any amount paid by the health care provider pursuant to~~  
9 ~~subsection (m) of this section if no claims have been filed against such~~  
10 ~~health care provider during the provider's temporary absence from the state~~  
11 *K.S.A. 40-3402 and 40-3404, and amendments thereto, to health care*  
12 *providers who have exceptional circumstances and verify in writing that*  
13 *the health care provider will not render professional services in this state*  
14 *during the period of exemption. Whenever the board grants such an*  
15 *exemption, the board shall notify the state agency which licenses the*  
16 *exempted health care provider.*

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

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

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

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

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

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

37 (F) *one member who is a representative of adult care homes who is*  
38 *on a list of nominees submitted to the commissioner by statewide*  
39 *associations comprised of members who represent adult care homes.*

40 (3) When a vacancy occurs in the membership of the board of  
41 governors created by this act, the commissioner shall appoint a successor  
42 of like qualifications from a list of three nominees submitted to the  
43 commissioner by the professional society or association prescribed by this

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

14 (4) The board of governors shall organize ~~on~~ <sup>in</sup> July ~~1~~ of each year  
15 and shall elect a chairperson and vice-chairperson from among its  
16 membership. Meetings shall be called by the chairperson or by a written  
17 notice signed by three members of the board.

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

22 (6) (A) The board shall appoint an executive director who shall be in  
23 the unclassified service under the Kansas civil service act and may ~~appoint~~  
24 ~~such~~ *employ* attorneys, ~~legal assistants, claims managers and compliance~~  
25 ~~auditors and other employees~~ who shall also be in the unclassified service  
26 under the Kansas civil service act. Such executive director, attorneys, ~~legal~~  
27 ~~assistants, claims managers and compliance auditors and other employees~~  
28 shall receive compensation fixed by the board, in accordance with  
29 appropriation acts of the legislature, not subject to approval of the  
30 governor.

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

38 (7) The commissioner shall:

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

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

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

8       (2) subject to the provisions of ~~subsection~~ *subsections (f) and (m)*,  
9 any amount due from a judgment or settlement which is in excess of the  
10 basic coverage liability of all liable nonresident health care providers or  
11 nonresident self-insurers for any such injury or death arising out of the  
12 rendering or the failure to render professional services within this state but  
13 in no event shall the fund be obligated for claims against nonresident  
14 health care providers or nonresident self-insurers who have not complied  
15 with this act or for claims against nonresident health care providers or  
16 nonresident self-insurers that arose outside of this state;

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

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

34       (5) subject to subsection (b) of K.S.A. 40-3411, and amendments  
35 thereto, reasonable and necessary expenses for attorney fees, *depositions,*  
36 *expert witnesses and other costs* incurred in defending the fund against  
37 claims, *which expenditures shall not be subject to the provisions of K.S.A.*  
38 *75-3738 through 75-3744, and amendments thereto;*

39       (6) any amounts expended for reinsurance obtained to protect the best  
40 interests of the fund purchased by the board of governors, which purchase  
41 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and  
42 amendments thereto, but shall not be subject to the provisions of K.S.A.  
43 75-4101, and amendments thereto;

1 (7) reasonable and necessary actuarial expenses incurred in  
2 administering the act, including expenses for any actuarial studies  
3 contracted for by the legislative coordinating council, which expenditures  
4 shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744,  
5 and amendments thereto;

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

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

12 (10) ~~return of any unearned~~ surcharge *refunds payable when the*  
13 *notice of cancellation requirements of K.S.A. 40-3402, and amendments*  
14 *thereto, are met;*

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

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

34 (13) subject to the provisions of K.S.A. 65-429, and amendments  
35 thereto, reasonable and necessary expenses for the development and  
36 promotion of risk management education programs and for the medical  
37 care facility licensure and risk management survey functions carried out  
38 under K.S.A. 65-429, and amendments thereto;

39 (14) notwithstanding the provisions of subsection (m), any amount,  
40 but not less than the required basic coverage limits, owed pursuant to a  
41 judgment or settlement for any injury or death arising out of the rendering  
42 of or failure to render professional services by a person, other than a  
43 person described in ~~clause~~ *paragraph* (12) of this subsection (c), who was

1 engaged in a postgraduate program of residency training approved by the  
2 state board of healing arts but who, at the time the claim was made, was no  
3 longer engaged in such residency program;

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

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

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

18 (d) All amounts for which the fund is liable pursuant to subsection (c)  
19 shall be paid promptly and in full except that, if the amount for which the  
20 fund is liable is \$300,000 or more, it shall be paid, by installment  
21 payments of \$300,000 or 10% of the amount of the judgment including  
22 interest thereon, whichever is greater, per fiscal year, the first installment  
23 to be paid within 60 days after the fund becomes liable and each  
24 subsequent installment to be paid annually on the same date of the year the  
25 first installment was paid, until the claim has been paid in full. ~~Any~~  
26 ~~attorney fees payable from such installment shall be similarly prorated.~~

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

34 (f) ~~The fund shall not~~ *In no event shall the fund* be liable to pay in  
35 excess of the amounts specified in the option selected by ~~the~~ *an active or*  
36 *inactive* health care provider pursuant to subsection (l) for judgments or  
37 settlements relating to injury or death arising out of the rendering of or  
38 failure to render professional services by such health care provider on or  
39 after July 1, 1989.

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

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

43 (2) subsequent to July 1, 1976, at such time as basic coverage

1 becomes effective; or

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

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

10 (i) Notwithstanding the provisions of K.S.A. 40-3402, and  
11 amendments thereto, if the board of governors determines due to the  
12 number of claims filed against a health care provider or the outcome of  
13 those claims that an individual health care provider presents a material risk  
14 of significant future liability to the fund, the board of governors is  
15 authorized by a vote of a majority of the members thereof, after notice and  
16 an opportunity for hearing in accordance with the provisions of the Kansas  
17 administrative procedure act, to terminate the liability of the fund for all  
18 claims against the health care provider for damages for death or personal  
19 injury arising out of the rendering of or the failure to render professional  
20 services after the date of termination. The date of termination shall be 30  
21 days after the date of the determination by the board of governors. The  
22 board of governors, upon termination of the liability of the fund under this  
23 subsection, shall notify the licensing or other disciplinary board having  
24 jurisdiction over the health care provider involved of the name of the  
25 health care provider and the reasons for the termination.

26 (j) (1) Subject to the provisions of paragraph (7) of this subsection (j),  
27 upon the payment of moneys from the health care stabilization fund  
28 pursuant to subsection (c)(11), the board of governors shall certify to the  
29 ~~director of accounts and reports~~ *secretary of administration* the amount of  
30 such payment, and the ~~director of accounts and reports~~ *secretary of*  
31 *administration* shall transfer an amount equal to the amount certified,  
32 reduced by any amount transferred pursuant to paragraph (3) or (4) of this  
33 subsection (j), from the state general fund to the health care stabilization  
34 fund.

35 (2) Subject to the provisions of paragraph (7) of this subsection (j),  
36 upon the payment of moneys from the health care stabilization fund  
37 pursuant to subsection (c)(12), the board of governors shall certify to the  
38 ~~director of accounts and reports~~ *secretary of administration* the amount of  
39 such payment which is equal to the basic coverage liability of self-  
40 insurers, and the ~~director of accounts and reports~~ *secretary of*  
41 *administration* shall transfer an amount equal to the amount certified,  
42 reduced by any amount transferred pursuant to paragraph (3) or (4) of this  
43 subsection (j), from the state general fund to the health care stabilization

1 fund.

2 (3) The university of Kansas medical center private practice  
3 foundation reserve fund is hereby established in the state treasury. If the  
4 balance in such reserve fund is less than \$500,000 on July 1 of any year,  
5 the private practice corporations or foundations referred to in subsection  
6 (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount  
7 necessary to increase such balance to \$500,000 to the state treasurer for  
8 credit to such reserve fund as soon after such July 1 date as is practicable.  
9 Upon receipt of each such remittance, the state treasurer shall credit the  
10 same to such reserve fund. When compliance with the foregoing  
11 provisions of this paragraph have been achieved on or after July 1 of any  
12 year in which the same are applicable, the state treasurer shall certify to  
13 the board of governors that such reserve fund has been funded for the year  
14 in the manner required by law. Moneys in such reserve fund may be  
15 invested or reinvested in accordance with the provisions of K.S.A. 40-  
16 3406, and amendments thereto, and any income or interest earned by such  
17 investments shall be credited to such reserve fund. Upon payment of  
18 moneys from the health care stabilization fund pursuant to subsection (c)  
19 (11) or (c)(12) with respect to any private practice corporation or  
20 foundation or any of its full-time physician faculty employed by the  
21 university of Kansas, the ~~director of accounts and reports~~ *secretary of*  
22 *administration* shall transfer an amount equal to the amount paid from the  
23 university of Kansas medical center private practice foundation reserve  
24 fund to the health care stabilization fund or, if the balance in such reserve  
25 fund is less than the amount so paid, an amount equal to the balance in  
26 such reserve fund.

27 (4) The graduate medical education administration reserve fund is  
28 hereby established in the state treasury. If the balance in such reserve fund  
29 is less than \$40,000 on July 1 of any year, the nonprofit corporations  
30 organized to administer the graduate medical education programs of  
31 community hospitals or medical care facilities affiliated with the university  
32 of Kansas school of medicine shall remit the amount necessary to increase  
33 such balance to \$40,000 to the state treasurer for credit to such reserve  
34 fund as soon after such July 1 date as is practicable. Upon receipt of each  
35 such remittance, the state treasurer shall credit the same to such reserve  
36 fund. When compliance with the foregoing provisions of this paragraph  
37 have been achieved on or after July 1 of any year in which the same are  
38 applicable, the state treasurer shall certify to the board of governors that  
39 such reserve fund has been funded for the year in the manner required by  
40 law. Moneys in such reserve fund may be invested or reinvested in  
41 accordance with the provisions of K.S.A. 40-3406, and amendments  
42 thereto, and any income or interest earned by such investments shall be  
43 credited to such reserve fund. Upon payment of moneys from the health



1 care stabilization fund pursuant to subsection (c)(11) or (c)(12) with  
2 respect to any nonprofit corporations organized to administer the graduate  
3 medical education programs of community hospitals or medical care  
4 facilities affiliated with the university of Kansas school of medicine the  
5 ~~director of accounts and reports~~ *secretary of administration* shall transfer  
6 an amount equal to the amount paid from the graduate medical education  
7 administration reserve fund to the health care stabilization fund or, if the  
8 balance in such reserve fund is less than the amount so paid, an amount  
9 equal to the balance in such reserve fund.

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

16 (6) Transfers from the state general fund to the health care  
17 stabilization fund pursuant to subsection (j) shall not be subject to the  
18 provisions of K.S.A. 75-3722, and amendments thereto.

19 (7) The funds required to be transferred from the state general fund to  
20 the health care stabilization fund pursuant to paragraphs (1) and (2) of this  
21 subsection (j) for the fiscal years ending June 30, 2010, June 30, 2011,  
22 June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1,  
23 2013. The ~~director of accounts and reports~~ *secretary of administration*  
24 shall maintain a record of the amounts certified by the board of governors  
25 pursuant to paragraphs (1) and (2) of this subsection (j) for the fiscal years  
26 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.  
27 Beginning July 1, 2013, in addition to any other transfers required  
28 pursuant to subsection (j), the state general fund transfers which are  
29 deferred pursuant to this paragraph shall be transferred from the state  
30 general fund to the health care stabilization fund in the following manner:  
31 On July 1, 2013, and annually thereafter through July 1, 2017, an amount  
32 equal to 20% of the total amount of state general fund transfers deferred  
33 pursuant to this paragraph for the fiscal years ending June 30, 2010, June  
34 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred  
35 pursuant to this paragraph shall not accrue interest thereon.

36 (k) Notwithstanding any other provision of the health care provider  
37 insurance availability act, no psychiatric hospital licensed under K.S.A.  
38 75-3307b, and amendments thereto, shall be assessed a premium surcharge  
39 or be entitled to coverage under the fund if such hospital has not paid any  
40 premium surcharge pursuant to K.S.A. 40-3404, and amendments thereto,  
41 prior to January 1, 1988.

42 (l) On or after July 1, 1989, every health care provider shall make an  
43 election to be covered by one of the following options provided in this

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

29 (1) *OPTION 1.* The fund shall not be liable to pay in excess of  
30 \$100,000 pursuant to any one judgment or settlement for any party against  
31 such health care provider, subject to an aggregate limitation for all  
32 judgments or settlements arising from all claims made in the fiscal year in  
33 an amount of \$300,000 for such provider.

34 (2) *OPTION 2.* The fund shall not be liable to pay in excess of  
35 \$300,000 pursuant to any one judgment or settlement for any party against  
36 such health care provider, subject to an aggregate limitation for all  
37 judgments or settlements arising from all claims made in the fiscal year in  
38 an amount of \$900,000 for such provider.

39 (3) *OPTION 3.* The fund shall not be liable to pay in excess of  
40 \$800,000 pursuant to any one judgment or settlement for any party against  
41 such health care provider, subject to an aggregate limitation for all  
42 judgments or settlements arising from all claims made in the fiscal year in  
43 an amount of \$2,400,000 for such health care provider.

1 (m) The fund shall not be liable for any amounts due from a judgment  
2 or settlement against resident or nonresident inactive health care providers  
3 who first qualify as an inactive health care provider on or after July 1,  
4 1989, unless such health care provider has been in compliance with K.S.A.  
5 40-3402, and amendments thereto, for a period of not less than five years.  
6 If a health care provider has not been in compliance for five years, such  
7 health care provider may make application and payment for the coverage  
8 for the period while they are nonresident health care providers, nonresident  
9 self-insurers or resident or nonresident inactive health care providers to the  
10 fund. Such payment shall be made within 30 days after the health care  
11 provider ceases being an active health care provider and shall be made in  
12 an amount determined by the board of governors to be sufficient to fund  
13 anticipated claims based upon reasonably prudent actuarial principles. The  
14 provisions of this subsection shall not be applicable to any health care  
15 provider which becomes inactive through death or retirement, or through  
16 disability or circumstances beyond such health care provider's control, if  
17 such health care provider notifies the board of governors and receives  
18 approval for an exemption from the provisions of this subsection. Any  
19 period spent in a postgraduate program of residency training approved by  
20 the state board of healing arts shall not be included in computation of time  
21 spent in compliance with the provisions of K.S.A. 40-3402, and  
22 amendments thereto. *The provisions of this subsection shall expire on July*  
23 *1, 2014.*

24 (n) ~~Notwithstanding the provisions of subsection (m) or any other~~  
25 ~~provision in article 34 of chapter 40 of the Kansas Statutes Annotated to~~  
26 ~~the contrary, the fund shall not be liable for any claim made on or after~~  
27 ~~July 1, 1991, against a licensed optometrist or pharmacist relating to any~~  
28 ~~injury or death arising out of the rendering of or failure to render~~  
29 ~~professional services by such optometrist or pharmacist prior to July 1,~~  
30 ~~1991, unless such optometrist or pharmacist qualified as an inactive health~~  
31 ~~care provider prior to July 1, 1991. In the event of a claim against a health~~  
32 ~~care provider for personal injury or death arising out of the rendering of~~  
33 ~~or the failure to render professional services by such health care provider,~~  
34 ~~the liability of the fund shall be limited to the amount of coverage selected~~  
35 ~~by the health care provider at the time of the incident giving rise to the~~  
36 ~~claim.~~

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

1 care provider prior to July 1, 1995.

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

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

26 Sec. 8. K.S.A. 40-3403a is hereby amended to read as follows: 40-  
27 3403a. Any health care provider whose fund coverage has been terminated  
28 under subsection (i) of K.S.A. 40-3403 ,and amendments thereto, shall, as  
29 a condition of licensure, maintain *continuous* professional liability  
30 insurance coverage equivalent to that provided by the fund and shall  
31 submit to the board of governors satisfactory proof of such coverage, as  
32 required by the ~~commissioner~~ *board*.

33 Sec. 9. K.S.A. 40-3403b is hereby amended to read as follows: 40-  
34 3403b. (a) There is hereby created a health care stabilization fund  
35 oversight committee to consist of eleven members, one of whom shall be  
36 the chairperson of the board of governors or another member of the board  
37 of governors designated by the chairperson, one of whom shall be  
38 appointed by the president of the state senate, one of whom shall be  
39 appointed by the minority leader of the state senate, one of whom shall be  
40 appointed by the speaker of the state house of representatives, one of  
41 whom shall be appointed by the minority leader of the state house of  
42 representatives and six of whom shall be persons appointed by the  
43 legislative coordinating council. The four members appointed by the

1 president and minority leader of the state senate and the speaker and  
2 minority leader of the state house of representatives shall be members of  
3 the state legislature. Of the six members appointed by the legislative  
4 coordinating council, four shall either be health care providers or be  
5 employed by health care providers, one shall be a representative of the  
6 insurance industry and one shall be appointed from the public at large who  
7 is not affiliated with any health care provider or the insurance industry, but  
8 none of such six members shall be members of the state legislature.  
9 Members serving on the committee on July 1, ~~1994~~ 2014, shall continue to  
10 serve at the pleasure of the appointing authority.

11 (b) The legislative coordinating council shall designate a chairperson  
12 of the committee from among the members thereof. The committee shall  
13 meet upon the call of the chairperson. It shall be the responsibility of the  
14 committee to make an annual report to the legislative coordinating council  
15 on or before ~~September~~ January 1 of each year and to perform such  
16 additional duties as the legislative coordinating council shall direct. The  
17 report required to be made to the legislative coordinating council shall  
18 include recommendations to the legislature on the advisability of  
19 continuation or termination of the fund or any provisions of this act, an  
20 analysis of the market for insurance for health care providers,  
21 recommendations on ways to reduce claim and operational costs of the  
22 fund, and legislation necessary to implement recommendations of the  
23 committee.

24 (c) The board of governors shall provide any consulting actuarial firm  
25 contracting with the legislative coordinating council with such information  
26 or materials pertaining to the health care stabilization fund deemed  
27 necessary by the actuarial firm for performing the requirements of any  
28 actuarial reviews for the health care stabilization fund oversight committee  
29 notwithstanding any confidentiality prohibition, restriction or limitation  
30 imposed on such information or materials by any other law. The  
31 consulting actuarial firm and all employees and former employees thereof  
32 shall be subject to the same duty of confidentiality imposed by law on  
33 other persons or state agencies with regard to information and materials so  
34 provided and shall be subject to any civil or criminal penalties imposed by  
35 law for violations of such duty of confidentiality. Any reports of the  
36 consulting actuarial firm shall be made in a manner which will not reveal  
37 directly or indirectly the name of any persons or entities or individual  
38 reserve information involved in claims or actions for damages for personal  
39 injury or loss due to error, omission or negligence in the performance of  
40 professional services by health care providers. Information provided to the  
41 actuary shall not be subject to discovery, subpoena or other means of legal  
42 compulsion in any civil proceedings and shall be returned by the actuary to  
43 the health care stabilization fund.

1 (d) The staff of the legislative research department, the office of the  
2 revisor of statutes and the division of legislative administrative services  
3 shall provide such assistance as may be requested by the committee and to  
4 the extent authorized by the legislative coordinating council.

5 (e) Members of the committee attending meetings of the committee,  
6 or attending a subcommittee meeting thereof authorized by the committee,  
7 shall be paid compensation, travel expenses and subsistence expenses as  
8 provided in K.S.A. 75-3212, and amendments thereto.

9 (f) This section shall be a part of and supplemental to the health care  
10 provider insurance availability act.

11 Sec. 10. K.S.A. 2013 Supp. 40-3404 is hereby amended to read as  
12 follows: 40-3404. (a) Except for any health care provider whose  
13 participation in the fund has been terminated pursuant to subsection (i) of  
14 K.S.A. 40-3403, and amendments thereto, the board of governors shall  
15 levy an annual premium surcharge on each health care provider who has  
16 obtained basic coverage and upon each self-insurer for each year. This  
17 provision shall not apply to optometrists and pharmacists on or after July  
18 1, 1991, nor to physical therapists on or after July 1, 1995, nor to health  
19 maintenance organizations on and after July 1, 1997. Such premium  
20 surcharge shall be an amount based upon a rating classification system  
21 established by the board of governors which is reasonable, adequate and  
22 not unfairly discriminating. The annual premium surcharge upon the  
23 university of Kansas medical center for persons engaged in residency  
24 training, as described in paragraph (1) of subsection (r) of K.S.A. 40-3401,  
25 and amendments thereto, shall be based on an assumed aggregate premium  
26 of \$600,000. The annual premium surcharge upon the employers of  
27 persons engaged in residency training, as described in paragraph (2) of  
28 subsection (r) of K.S.A. 40-3401, and amendments thereto, shall be based  
29 on an assumed aggregate premium of \$400,000. The surcharge on such  
30 \$400,000 amount shall be apportioned among the employers of persons  
31 engaged in residency training, as described in paragraph (2) of subsection  
32 (r) of K.S.A. 40-3401, and amendments thereto, based on the number of  
33 residents employed as of July 1 of each year. The annual premium  
34 surcharge upon any nonprofit corporation organized to administer the  
35 graduate medical education programs of community hospitals or medical  
36 care facilities affiliated with the university of Kansas school of medicine  
37 shall be based upon an assumed aggregate premium of \$10,000. The  
38 surcharge on such assumed aggregate premium shall be apportioned  
39 among all such nonprofit corporations.

40 (b) In the case of a resident health care provider who is not a self-  
41 insurer, the premium surcharge shall be collected in addition to the annual  
42 premium for the basic coverage by the insurer and shall not be subject to  
43 the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and

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

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

22 Sec. 11. K.S.A. 40-3407 is hereby amended to read as follows: 40-  
23 3407. (a) Except for investment purposes, all payments from the fund shall  
24 be upon warrants of the ~~director of accounts and reports~~ *state of Kansas*  
25 ~~issued pursuant to vouchers approved by the chairperson of the board of~~  
26 ~~governors, or the chairperson's executive director or the executive~~  
27 ~~director's~~ designee, and, with respect to claim payments, accompanied by:  
28 (1) A ~~certified~~ *file stamped* copy of a final judgment against a health care  
29 provider or inactive health care provider for which the fund is liable; or (2)  
30 a ~~certified~~ *file stamped* copy of a court approved settlement against a  
31 health care provider or inactive health care provider for which the fund is  
32 liable.

33 (b) For investment purposes amounts shall be paid from the fund  
34 upon vouchers approved by the chairperson of the pooled money  
35 investment board.

36 Sec. 12. K.S.A. 40-3408 is hereby amended to read as follows: 40-  
37 3408. (a) The insurer of a health care provider covered by the fund or self-  
38 insurer shall be liable only for the first \$200,000 of a claim for personal  
39 injury or death arising out of the rendering of or the failure to render  
40 professional services by such health care provider, subject to an annual  
41 aggregate of \$600,000 for all such claims against the health care provider.  
42 However, if any liability insurance in excess of such amounts is applicable  
43 to any claim or would be applicable in the absence of this act, any

1 payments from the fund shall be excess over such amounts paid, payable  
2 or that would have been payable in the absence of this act. ~~The liability of~~  
3 ~~an insurer for claims made prior to July 1, 1984, shall not exceed those~~  
4 ~~limits of insurance provided by such policy prior to July 1, 1984.~~

5 (b) If any inactive health care provider has liability insurance in effect  
6 which is applicable to any claim or would be applicable in the absence of  
7 this act, any payments from the fund shall be excess over such amounts  
8 paid, payable or that would have been payable in the absence of this act.

9 (c) Notwithstanding anything in article 34 of chapter 40 of the Kansas  
10 Statutes Annotated, *and amendments thereto*, to the contrary, an insurer  
11 that provides coverage to a health care provider may exclude from  
12 coverage any liability incurred by such provider:

13 (1) From the rendering of or the failure to render professional  
14 services by any other health care provider who is required by K.S.A. 40-  
15 3402, and amendments thereto, to maintain professional liability insurance  
16 in effect as a condition to rendering professional services as a health care  
17 provider in this state; or

18 (2) based upon or relating to the health care provider's sexual acts or  
19 activity, but in such cases the insurer may provide reasonable and  
20 necessary expenses for attorney fees incurred in defending against such  
21 claim. The insurer may recover all or a portion of such expenses for  
22 attorney fees if an adverse judgment is returned against the health care  
23 provider for damages resulting from the health care provider's sexual acts  
24 or activity.

25 (d) *The fund shall not be liable for payment of any claim excluded by*  
26 *an insurer pursuant to this section or any claim otherwise excluded from*  
27 *coverage under a health care provider's professional liability insurance.*

28 Sec. 13. K.S.A. 40-3411 is hereby amended to read as follows: 40-  
29 3411. (a) In any claim in which the insurer of a health care provider or  
30 inactive health care provider covered by the fund has agreed to settle its  
31 liability on a claim against its insured or when the self-insurer has agreed  
32 to settle liability on a claim and the claimant's demand is in an amount in  
33 excess of such settlement, to which the board of governors does not agree,  
34 or where the claim is against an inactive health care provider covered by  
35 the fund who does not have liability insurance in effect which is applicable  
36 to the claim and the claimant and board of governors cannot agree upon a  
37 settlement, an action must be commenced by the claimant against the  
38 health care provider or inactive health care provider in a court of  
39 appropriate jurisdiction for such damages as are reasonable in the  
40 premises. If an action is already pending against the health care provider  
41 or inactive health care provider, the pending action shall be conducted in  
42 all respects as if the insurer or self-insurer had not agreed to settle.

43 (b) Any such action against a health care provider covered by the



1 fund or inactive health care provider covered by the fund who has liability  
2 insurance in effect which is applicable to the claim shall be defended by  
3 the insurer or self-insurer in all respects as if the insurer or self-insurer had  
4 not agreed to settle its liability. Notwithstanding any other provision of  
5 law, the insurer or self-insurer shall be reimbursed from the fund for the  
6 costs of such defense incurred after the settlement agreement was reached,  
7 including a reasonable attorney's fee not to exceed the maximum hourly  
8 rate established by the board of governors. The board of governors is  
9 authorized to employ independent counsel in any such action against a  
10 health care provider or an inactive health care provider covered by the  
11 fund. If the primary carrier or self-insurer determines that the policy limits  
12 or the self-insured amount of basic coverage should be tendered to the  
13 fund in order to relieve itself of further costs of defense, it may do so in the  
14 manner specified by the board of governors. In the event of such a tender,  
15 the fund shall become responsible for the conduct of the defense. The  
16 board of governors may employ the attorney retained by the primary  
17 carrier or self-insurer or appoint other counsel to represent such health care  
18 provider. In any event, the board of governors shall pay attorneys' fees at a  
19 rate not to exceed the maximum hourly rate established by the board of  
20 governors. Under such circumstances, the fund shall have no liability for  
21 attorneys' fees to any attorney not so appointed.

22 (c) In any such action the health care provider or the inactive health  
23 care provider against whom claim is made shall be obligated to attend  
24 hearings and trials, as necessary, and to give evidence.

25 ~~(d) The costs of the action shall be assessed against the fund if the~~  
26 ~~recovery is in excess of the amount offered by the board of governors to~~  
27 ~~settle the case and against the claimant if the recovery is less than such~~  
28 ~~amount.~~

29 Sec. 14. K.S.A. 40-3412 is hereby amended to read as follows: 40-  
30 3412. (a) Any action for personal injury or death arising out of the  
31 rendering of or the failure to render professional services by any health  
32 care provider or inactive health care provider shall be maintained against  
33 such health care provider or inactive health care provider. No claimant  
34 shall have any right of action directly against the fund. No claimant shall  
35 have any right of action under this act directly against an insurer.

36 (b) Evidence that a portion of any verdict would be payable from  
37 insurance or the fund shall be inadmissible in any such action.

38 (c) Nothing ~~herein~~ *in this act* shall be construed to impose any  
39 liability in the fund in excess of that specifically provided for ~~herein~~ *in this*  
40 *act* for negligent failure to settle a claim or for failure to settle a claim in  
41 good faith.

42 (d) The fund shall have no obligations whatsoever for payment for  
43 punitive damages.

1 (e) The fund shall not be liable to pay amounts due from a judgment  
2 against an inactive health care provider arising from the rendering of  
3 professional services as a health care provider contrary to the provisions of  
4 this act.

5 (f) Any action for damages or for approval of a settlement as set forth  
6 in K.S.A. 40-3409, 40-3410 or 40-3411, *and amendments thereto*, shall be  
7 brought in a court of appropriate jurisdiction and venue.

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

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

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

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

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

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

36 (b) *For every such plan or plans, there shall be a governing board*  
37 *which shall meet at least annually to review and prescribe operating rules.*  
38 *Such board of directors shall consist of nine members to be appointed, for*  
39 *terms of four years, by the commissioner as follows:*

40 (1) *Two members shall be representatives of foreign insurers;*

41 (2) *two members shall be representatives of domestic insurers;*

42 (3) *two members shall be health care providers;*

43 (4) *one member shall be a licensed insurance agent actively engaged*

1 *in the solicitation of casualty insurance;*

2 (5) *one member shall be the chairperson of the board of governors or*  
3 *the chairperson's designee; and*

4 (6) *one member shall be a representative of the general public.*

5 (c) The commissioner and board of ~~governors~~ *directors* shall review  
6 the plan as soon as reasonably possible after filing in order to determine  
7 whether it meets the requirements set forth in subsection (a). As soon as  
8 reasonably possible after the plan has been filed the commissioner,  
9 consistent with the recommendations of the board of ~~governors~~ *directors*,  
10 shall in writing approve or disapprove the plan. Any plan shall be deemed  
11 approved unless disapproved within 30 days. Subsequent to the waiting  
12 period the commissioner may disapprove any plan on the ground that it  
13 does not meet the requirements set forth in subsection (a), but only after a  
14 hearing held upon not less than 10 days' written notice to every insurer and  
15 rating organization affected specifying in what respect the commissioner  
16 finds that such plan fails to meet such requirements, and stating when  
17 within a reasonable period thereafter such plan shall be deemed no longer  
18 effective. Such order shall not affect any assignment made or policy  
19 issued or made prior to the expiration of the period set forth in the order.  
20 Amendments to such plan or plans shall be prepared, and filed and  
21 reviewed in the same manner as herein provided with respect to the  
22 original plan or plans.

23 (c) (d) If no plan meeting the standards set forth in subsection (a) is  
24 submitted to the commissioner and board of ~~governors~~ *directors* within 60  
25 calendar days from the effective date of this act or within the period stated  
26 in any order disapproving an existing plan, the commissioner with the  
27 assistance of the board of ~~governors~~ *directors* shall after a hearing, if  
28 necessary to carry out the purpose of this act, prepare and promulgate a  
29 plan meeting such requirements.

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

39 ~~(e) For every such plan or plans, there shall be a governing board~~  
40 ~~which shall meet at least annually to review and prescribe operating rules.~~  
41 ~~Such board shall consist of nine members to be appointed by the~~  
42 ~~commissioner as follows: Three members shall be representatives of~~  
43 ~~foreign insurers, two members shall be representatives of domestic~~

1 ~~insurers, two members shall be representatives of the general public, one~~  
2 ~~member shall be a licensed insurance agent actively engaged in the~~  
3 ~~solicitation of casualty insurance and one member shall be a health care~~  
4 ~~provider. The members shall be appointed for a term of two years.~~

5 (f) An insurer participating in the plan approved by the commissioner  
6 may pay a commission with respect to insurance written under the plan to  
7 an insurance agent licensed for any other insurer participating in the plan  
8 or to any insurer participating in the plan. Such commission shall be  
9 reasonably equivalent to the usual customary commission paid on similar  
10 types of policies issued in the voluntary market.

11 Sec. 16. K.S.A. 2013 Supp. 40-3414 is hereby amended to read as  
12 follows: 40-3414. (a) Any health care provider, or any health care system  
13 organized and existing under the laws of this state which owns and  
14 operates two or more medical care facilities licensed by the ~~department of~~  
15 ~~health and environment~~ *state of Kansas*, whose aggregate annual insurance  
16 premium is or would be \$100,000 or more for basic coverage calculated in  
17 accordance with rating procedures approved by the commissioner pursuant  
18 to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer  
19 by obtaining a certificate of self-insurance from the board of governors.  
20 Upon application of any such health care provider or health care system,  
21 on a form prescribed by the board of governors, the board of governors  
22 may issue a certificate of self-insurance if the board of governors is  
23 satisfied that the applicant is possessed and will continue to be possessed  
24 of ability to pay any judgment for which liability exists equal to the  
25 amount of basic coverage required of a health care provider obtained  
26 against such applicant arising from the applicant's rendering of  
27 professional services as a health care provider. In making such  
28 determination the board of governors shall consider (1) the financial  
29 condition of the applicant, (2) the procedures adopted and followed by the  
30 applicant to process and handle claims and potential claims, (3) the  
31 amount and liquidity of assets reserved for the settlement of claims or  
32 potential claims and (4) any other relevant factors. The certificate of self-  
33 insurance may contain reasonable conditions prescribed by the board of  
34 governors. Upon notice and a hearing in accordance with the provisions of  
35 the Kansas administrative procedure act, the board of governors may  
36 cancel a certificate of self-insurance upon reasonable grounds therefor.  
37 Failure to pay any judgment for which the self-insurer is liable arising  
38 from the self-insurer's rendering of professional services as a health care  
39 provider, the failure to comply with any provision of this act or the failure  
40 to comply with any conditions contained in the certificate of self-insurance  
41 shall be reasonable grounds for the cancellation of such certificate of self-  
42 insurance. The provisions of this subsection shall not apply to the Kansas  
43 soldiers' home, the Kansas veterans' home or to any person who is a self-

1 insurer pursuant to subsection (d) or (e).

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

5 (c) The Kansas soldiers' home and the Kansas veterans' home shall be  
6 self-insurers and shall pay the applicable surcharge set forth in subsection  
7 (c) of K.S.A. 40-3402, and amendments thereto.

8 (d) Persons engaged in residency training as provided in subsections  
9 (r)(1) and (2) of K.S.A. 40-3401, and amendments thereto, shall be self-  
10 insured by the state of Kansas for occurrences arising during such training,  
11 and such person shall be deemed a self-insurer for the purposes of the  
12 health care provider insurance availability act. Such self-insurance shall  
13 be applicable to a person engaged in residency training only when such  
14 person is engaged in medical activities which do not include  
15 extracurricular, extra-institutional medical service for which such person  
16 receives extra compensation and which have not been approved as  
17 provided in subsections (r)(1) and (2) of K.S.A. 40-3401, and amendments  
18 thereto.

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

40 (2) In making such determination the board of governors shall  
41 consider: (A) the financial condition of the medical care facility or mental  
42 health center; ; (B) the procedures adopted by the medical care facility or  
43 mental health center to process and handle claims and potential claims; ;

1 (C) the amount and liquidity of assets reserved for the settlement of claims  
2 or potential claims by the medical care facility or mental health center; and  
3 (D) any other factors the board of governors deems relevant. The board of  
4 governors may specify such conditions for the approval of an application  
5 as the board of governors deems necessary. Upon approval of an  
6 application, the board of governors shall issue a certificate of self-  
7 insurance to each person engaged in such postgraduate training program at  
8 the medical care facility or mental health center who is self-insured by  
9 such medical care facility or mental health center.

10 (3) Upon notice and a hearing in accordance with the provisions of  
11 the Kansas administrative procedure act, the board of governors may  
12 cancel, upon reasonable grounds therefor, a certificate of self-insurance  
13 issued pursuant to this subsection (e) or the authority of a medical care  
14 facility or mental health center to self-insure persons engaged in such  
15 postgraduate training programs at the medical care facility or mental  
16 health center. Failure of a person engaged in such postgraduate training  
17 program to comply with the terms and conditions of eligibility to be self-  
18 insured by the medical care facility or mental health center, the failure of a  
19 medical care facility or mental health center to pay any judgment for  
20 which such medical care facility or mental health center is liable as self-  
21 insurer of such person, the failure to comply with any provisions of the  
22 health care provider insurance availability act or the failure to comply with  
23 any conditions for approval of the application or any conditions contained  
24 in the certificate of self-insurance shall be reasonable grounds for  
25 cancellation of such certificate of self-insurance or the authority of a  
26 medical care facility or mental health center to self-insure such persons.

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

31 (5) As used in this subsection (e), "medical care facility" does not  
32 include the university of Kansas medical center or those community  
33 hospitals or medical care facilities described in subsection (r)(2) of K.S.A.  
34 40-3401, and amendments thereto.

35 (f) For the purposes of subsection (a), "health care provider" may  
36 include each health care provider in any group of health care providers  
37 who practice as a group to provide physician services only for a health  
38 maintenance organization, any professional corporations, partnerships or  
39 not-for-profit corporations formed by such group and the health  
40 maintenance organization itself. The premiums for each such provider,  
41 health maintenance organization and group corporation or partnership may  
42 be aggregated for the purpose of being eligible for and subject to the  
43 statutory requirements for self-insurance as set forth in this section.

1 (g) The provisions of subsections (a) and (f), relating to health care  
2 systems, shall not affect the responsibility of individual health care  
3 providers as defined in subsection (f) of K.S.A. 40-3401, and amendments  
4 thereto, or organizations whose premiums are aggregated for purposes of  
5 being eligible for self-insurance from individually meeting the  
6 requirements imposed by K.S.A. 40-3402, and amendments thereto, with  
7 respect to the ability to respond to injury or damages to the extent  
8 specified therein and K.S.A. 40-3404, and amendments thereto, with  
9 respect to the payment of the health care stabilization fund surcharge.

10 (h) Each private practice corporation or foundation and their full-time  
11 physician faculty employed by the university of Kansas medical center and  
12 each nonprofit corporation organized to administer the graduate medical  
13 education programs of community hospitals or medical care facilities  
14 affiliated with the university of Kansas school of medicine shall be  
15 deemed a self-insurer for the purposes of the health care provider  
16 insurance availability act. The private practice corporation or foundation  
17 of which the full-time physician faculty is a member and each nonprofit  
18 corporation organized to administer the graduate medical education  
19 programs of community hospitals or medical care facilities affiliated with  
20 the university of Kansas school of medicine shall pay the applicable  
21 surcharge set forth in subsection (a) of K.S.A. 40-3404, and amendments  
22 thereto, on behalf of the private practice corporation or foundation and  
23 their full-time physician faculty employed by the university of Kansas  
24 medical center or on behalf of a nonprofit corporation organized to  
25 administer the graduate medical education programs of community  
26 hospitals or medical care facilities affiliated with the university of Kansas  
27 school of medicine.

28 (i) (1) Subject to the provisions of paragraph (4), for the purposes of  
29 the health care provider insurance availability act, each nonprofit  
30 corporation organized to administer the graduate medical education  
31 programs of community hospitals or medical care facilities affiliated with  
32 the university of Kansas school of medicine shall be deemed to have been  
33 a health care provider as defined in K.S.A. 40-3401, and amendments  
34 thereto, from and after July 1, 1997.

35 (2) Subject to the provisions of paragraph (4), for the purposes of the  
36 health care provider insurance availability act, each nonprofit corporation  
37 organized to administer the graduate medical education programs of  
38 community hospitals or medical care facilities affiliated with the university  
39 of Kansas school of medicine shall be deemed to have been a self insurer  
40 within the meaning of subsection (h) of this section, and amendments  
41 thereto, from and after July 1, 1997.

42 (3) Subject to the provisions of paragraph (4), for the purposes of the  
43 health care provider insurance availability act, the election of fund

1 coverage limits for each nonprofit corporation organized to administer the  
2 graduate medical education programs of community hospitals or medical  
3 care facilities affiliated with the university of Kansas school of medicine  
4 shall be deemed to have been effective at the highest option, as provided in  
5 subsection (l) of K.S.A. 40-3403, and amendments thereto, from and after  
6 July 1, 1997.

7 (4) No nonprofit corporation organized to administer the graduate  
8 medical education programs of community hospitals or medical care  
9 facilities affiliated with the university of Kansas school of medicine shall  
10 be required to pay to the fund any annual premium surcharge for any  
11 period prior to the effective date of this act. Any annual premium  
12 surcharge for the period commencing on the effective date of this act and  
13 ending on June 30, 2001, shall be prorated.

14 Sec. 17. K.S.A. 40-3416 is hereby amended to read as follows: 40-  
15 3416. When the board of governors is informed or reasonably suspects that  
16 a health care provider ~~is rendering~~ *licensed to render* professional services  
17 *is* in violation of K.S.A. 40-3402, and amendments thereto, such board  
18 shall report the suspected violation to the state agency which licenses,  
19 registers or certifies such health care provider. Upon receipt of such report  
20 or other evidence of a violation of K.S.A. 40-3402, and amendments  
21 thereto, the state agency shall make such investigation as it deems  
22 necessary and take such other official action as deemed appropriate. If a  
23 violation is found to exist, the state agency shall promptly notify the  
24 attorney general of this state. Upon such notice the attorney general or  
25 county attorney of the proper county shall, in the name of the state,  
26 institute and maintain an action to enjoin the health care provider from  
27 rendering professional services in this state in the district court of the  
28 district in which such health care provider is rendering professional  
29 services.

30 Sec. 18. K.S.A. 40-3419 is hereby amended to read as follows: 40-  
31 3419. K.S.A. 40-3401 ~~to 40-3419, inclusive et seq., and amendments~~  
32 ~~thereto~~, shall be known and may be cited as the health care provider  
33 insurance availability act.

34 Sec. 19. K.S.A. 2013 Supp. 40-3421 is hereby amended to read as  
35 follows: 40-3421. (a) Any insurer providing professional liability  
36 insurance coverage to a health care provider, as defined by K.S.A. 40-  
37 3401, and amendments thereto, who is licensed in Kansas shall report to  
38 the appropriate state health care provider regulatory agency and the board  
39 of governors on forms prescribed by the board of governors any written or  
40 oral claim or action for damages for medical malpractice. The report shall  
41 be filed no later than 30 days following the insurer's receipt of notice of  
42 the claim or action and shall contain:

43 (1) The name, address, area of practice or specialty, policy coverage



1 and policy number of the insured; and

2 (2) the date of the occurrence giving rise to the claim, the date the  
3 occurrence was reported to the insurer, and the date legal action, if any,  
4 was initiated.

5 (b) Upon request of an agency to which a report is made under  
6 subsection (a), the insurer making the report shall provide to the agency no  
7 later than 30 days following receipt of the request or receipt of the  
8 information, whichever is later:

9 (1) The names of all defendants involved in the claim; and

10 (2) a summary of the occurrence, including the name of the institution  
11 at which the incident occurred, the final diagnosis for which treatment was  
12 sought or rendered, the patient's actual condition, the incident, treatment or  
13 diagnosis giving rise to the claim and a description of the principal injury  
14 giving rise to the claim.

15 (c) Reports required to be filed pursuant to this section shall be  
16 confidential and shall not be admissible in any civil or criminal action or in  
17 any administrative proceeding other than a disciplinary proceeding of a  
18 health care provider involved in the reported occurrence.

19 (d) Any insurer which fails to report any information as required by  
20 this section shall be subject, after proper notice and an opportunity to be  
21 heard, to:

22 (†) a civil fine assessed by the board of governors in an amount not  
23 exceeding \$1,000 for each day after the thirty-day period for reporting that  
24 the information is not reported; and

25 ~~(2) suspension, revocation, denial of renewal or cancellation of the~~  
26 ~~insurer's certificate of authority to do business in this state or certificate of~~  
27 ~~self-insurance. In the event that a civil fine is assessed pursuant to this~~  
28 ~~subsection, the reason for and the amount of such fine shall be reported to~~  
29 ~~the commissioner. The board of governors shall remit any moneys~~  
30 ~~collected from fines assessed pursuant to this subsection to the state~~  
31 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~  
32 ~~amendments thereto. Upon receipt of each such remittance, the state~~  
33 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~  
34 ~~of the state general fund.~~

35 (e) Any insurer which, in good faith, reports or provides any  
36 information pursuant to this act shall not be liable in a civil action for  
37 damages or other relief arising from the reporting or providing of such  
38 information.

39 (f) As used in this section, "insurer" means insurer or self-insurer, as  
40 defined by K.S.A. 40-3401, and amendments thereto, or joint underwriting  
41 association operating pursuant to K.S.A. 40-3413, and amendments  
42 thereto.

43 (g) The requirements of this section shall not be applicable with

1 respect to any occurrence on or after July 1, 1991, giving rise to any claim  
2 or action against any optometrist or pharmacist.

3 (h) The requirements of this section shall not be applicable with  
4 respect to any occurrence on or after July 1, 1995, giving rise to any claim  
5 or action against any physical therapist.

6 Sec. 20. K.S.A. 40-3422 is hereby amended to read as follows: 40-  
7 3422. In any medical malpractice liability action, as defined by K.S.A. 60-  
8 3401, and amendments thereto, the proceedings shall be stayed on appeal  
9 by the filing of a supersedeas bond in the ~~full~~ amount of the judgment  
10 ~~against the health care provider for which the fund is liable. Such~~  
11 *supersedas bond shall be signed by the chairperson of the board of*  
12 *governors, or the chairperson's designee, as administrator of the health*  
13 *care stabilization fund without surety or other security.*

14 Sec. 21. K.S.A. 40-12a02, 40-12a06, 40-12a09, 40-3402, 40-3403a,  
15 40-3403b, 40-3407, 40-3408, 40-3411, 40-3412, 40-3413, 40-3416, 40-  
16 3419 and 40-3422 and K.S.A. 2013 Supp. 40-3401, 40-3403, 40-3404, 40-  
17 3414 and 40-3421 are hereby repealed.

18 Sec. 22. This act shall take effect and be in force from and after its  
19 publication in the statute book.