

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 101**

As Amended by House Committee on Insurance

**Brief\***

SB 101 would amend the Health Care Provider Insurance Availability Act (HCPIAA) to clarify exemptions from the defined term “health care provider,” add a definition for “health care facility,” and allow certain health care systems to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance.

The bill would clarify exemptions from the term “health care provider” under the HCPIAA to designate certain health care providers who would not be subject to a requirement to purchase basic professional liability insurance coverage or pay surcharges as required with such coverage. The bill would specify “health care provider” does not include persons holding an exempt license from the State Board of Nursing and would clarify language in the exclusion provision for Advanced Practice Registered Nurses (APRNs) and Physician Assistants (PAs) who are employed in or on active duty in the federal government or who provide professional services as a charitable health care provider and would extend this exclusion from the definition to nurse anesthetists.

The bill also would amend the HCPIAA to allow health care systems that own or operate more than one medical care facility or more than one health care facility to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance from the Health Care Stabilization Fund Board of Governors. The bill would define the term “health care facility” to mean a nursing facility, an assisted living

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

facility, or residential health care facility as such terms are defined in the Adult Care Home Licensure Act.

Under current law, the self-insurance provisions of the HCPIAA apply to a health care provider, or system owning or operating two or more medical care facilities, the Kansas Soldiers' Home, the Kansas Veterans' Home, persons engaged in certain post-graduate training, and persons engaged in residency training.

## **Background**

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Health Care Stabilization Fund Board of Governors. In the Senate Committee, the Executive Director of the Board of Governors indicated the bill contained technical clarifications of exemptions from the definition of "health care provider" under the HCPIAA. Exemption from this definition would allow those designated health care providers to avoid professional liability insurance requirements, as well as the surcharge requirements associated with Health Care Stabilization Fund coverage. The Executive Director stated the Board of Governors has granted over 30 temporary exemptions to health care providers since enactment of the 2014 law; some of these exemptions were granted to APRNs and PAs who will eventually require permanent exemptions as long as they are covered under the federal Tort Claims Act or the Kansas Tort Claims Act.

The Senate Committee amendment inserts nurse anesthetists into an existing list of health care providers who are not included in the definition of "health care provider" under the HCPIAA. The amendment was requested by the Executive Director of the Health Care Stabilization Fund Board of Governors who indicated 2014 HB 2516 (law) exempted federally-employed nurse midwives, but failed to exempt nurse anesthetists who work for the military or a federal agency.

In the House Committee on Insurance, the same proponent testified and was the only conferee.

The House Committee on Insurance amendment inserts provisions relating to authorization of certain facilities to obtain self-insurance coverage under the HCPIAA (SB 117, as recommended by the Senate Committee on Financial Institutions and Insurance) into SB 101, as amended by the Senate Committee on Financial Institutions and Insurance.

The fiscal note prepared by the Division of the Budget on SB 101, as introduced, states the Kansas Insurance Department and Health Care Stabilization Fund Board of Governors both indicate enactment of the bill would have no fiscal effect on agency funds. Fiscal information pertaining to the provisions inserted by the House Committee amendment follow in the background information for SB 117.

### **SB 117**

SB 117 was introduced by the Senate Committee on Financial Institutions at the request of the Kansas Health Care Association. In the Senate Committee, a representative of Midwest Health, Inc. stated adult long-term care facilities are requesting the opportunity to apply for self-insurance just as other defined health care providers are allowed under the law. The representative highlighted an increased focus on risk management and the management of liability claims and the increased premiums associated with being unable to self-insure under the Health Care Stabilization Fund for its Kansas facilities. In order to comply with 2014 law (HB 2516), the representative indicated Midwest Health had to form its own licensed insurance company in Kansas in order to provide the coverage it would have been able to self-insure under the Health Care Stabilization Fund. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living indicated its members are coming into compliance with the new law and requested the same

consideration be given to other facilities currently allowed to self-insure.

The Executive Director of the Health Care Stabilization Fund Board of Governors submitted neutral testimony outlining how the agency reviews applications for self-insurance and information on certificates of self-insurance granted by the Board of Governors, as of January 1, 2015. The Executive Director of the Kansas Medical Society submitted neutral testimony, with stated concerns regarding self-insurance. The testimony notes self-insurers must demonstrate the ability to meet their financial obligation to pay claims; in the event they become insolvent or are unable to pay claims, the Health Care Stabilization Fund would likely be liable to cover any outstanding judgments or settlements against the insolvent self-insurer. Insolvency by a self-insurer would then raise liability costs for the other providers statewide, should the Health Care Stabilization Fund pay for such claims. There was no opposition testimony at the bill hearing.

In the House Committee on Insurance, the same proponents testified. As noted previously, the House Committee added the contents of SB 117, as recommended by the Senate Committee on Financial Institutions and Insurance, to SB 101, as amended by the Senate Committee on Financial Institutions and Insurance.

The revised fiscal note for SB 117 prepared by the Division of the Budget states the Health Care Stabilization Fund Board of Governors estimates enactment of the bill would require additional expenditures totaling \$40,980, all from the Health Care Stabilization Fund. Of this amount, \$34,332 would be for salaries and wages for a 0.50 FTE Compliance Officer and \$6,648 would be for other operating expenditures, including rent, communication expenses, and office equipment. The agency estimates the bill has the potential for 104 applications or renewals each year, with each application or renewal requiring approximately ten hours of review time. The additional expenditures for the Health

Care Stabilization Fund would eventually, the fiscal note states, be collected from health care providers that pay premium surcharges to the Fund. At present, there are 312 nursing facilities and 208 assisted living and residential health care facilities licensed by the Kansas Department for Aging and Disability Services.

The fiscal note details the staff review time associated with evaluating health care facilities applying for a certificate of self-insurance. This review for eligibility would include an evaluation of claim-handling procedures, actuarial analysis of liabilities, fiscal solvency, and the proper establishment of a trust for payment of settlements and judgments. In addition, any successful applicant that would be granted a certificate of self-insurance would be required to resubmit the same information annually in order to renew the certificate of self-insurance.

Enactment of the bill may create potential for insurance premium savings for health care facilities that would be approved for a certificate of self-insurance; however, the amount of potential savings cannot be estimated. The Kansas Department of Insurance indicates the bill would have no fiscal effect on the agency. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.