

2020

BILL NO. ____

AN ACT concerning health and healthcare; relating to civil liability; decisions made during coronavirus emergency; the healthcare stabilization fund; relating to coverage requirements; changing membership on the board of governors; providing for the dissolution of the fund under certain circumstances; amending K.S.A. 40-3606 and K.S.A. 2019 Supp. 40-3402, 40-3403 and 40-3408 and repealing the existing sections.

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

New Section 1. (a) Notwithstanding any other provision of law, except as provided in subsection (c), a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any COVID-19 state of disaster emergency pursuant to K.S.A. 48-924, and amendments thereto.

(b) The provisions of this section shall apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency pursuant to K.S.A. 48-924, and amendments thereto, related to COVID-19.

(c) (1) The provisions of this section shall not apply to civil liability when it is established that the act, omission or healthcare decision constituted gross negligence or willful, wanton or reckless conduct.

(2) The provisions of this section shall not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld because of the COVID-19 public health emergency.

(d) For the purposes of this section, "healthcare provider" means a person or facility that is licensed, registered, certified or otherwise authorized by the state of Kansas to provide

healthcare services and shall include a sole proprietorship, partnership, limited liability company, corporation, association or other business entity, whether for-profit or not-for-profit.

Sec. 2. K.S.A. 2019 Supp. 40-3402 is hereby amended to read as follows: 40-3402. (a) Prior to January 1, 2021, a policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer. On and after January 1, 2021, a policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$500,000 per claim, subject to not less than a \$1,500,000 annual aggregate for all claims made during the policy period, shall be maintained by each resident healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer. This provision shall not apply to optometrists and pharmacists ~~on~~ and after July 1, 1991 ~~nor~~, to physical therapists on and after July 1, 1995 ~~nor~~, or to health maintenance organizations ~~on~~ and after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy ~~which~~ that were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any healthcare provider may offer to such healthcare provider a policy as prescribed in this section with deductible options.

Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage shall, within 30 days after the effective date of any policy issued in accordance with this subsection, notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be issued, the name and address of all healthcare providers covered by the policy, the amount of the annual premium, the effective and expiration dates of the coverage and such other information as the board of governors shall require. A copy of the notice required by this subsection shall be furnished to the named insured.

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

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after July 1, 1976, shall contain or be endorsed to provide basic coverage as required by subsection (a) ~~of this section~~. Notwithstanding any omitted or inconsistent language, any contract

of professional liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) A nonresident healthcare provider shall not be licensed to actively render professional service as a healthcare provider in this state unless such healthcare provider maintains continuous coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists ~~on~~ and after July 1, 1991 ~~nor~~ or to physical therapists on and after July 1, 1995.

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

(2) Every nonresident healthcare provider ~~who~~ that is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to ~~subsection (a) of~~ K.S.A. 40-3404(a), and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1).

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

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

(e) In lieu of a claims made policy otherwise required under this section, a nonresident healthcare provider employed pursuant to a locum tenens contract to provide services in this state as a healthcare provider may obtain basic coverage under an occurrence form policy, if such

policy provides professional liability insurance coverage and limits ~~which~~ that are substantially the same as the professional liability insurance coverage and limits required by K.S.A. 40-3402, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the healthcare provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

Sec. 3. K.S.A. 2019 Supp. 40-3403 is hereby amended to read as follows: 40-3403. (a) For the purpose of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a healthcare provider, self-insurer or inactive health care provider subsequent to the time that such healthcare provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the healthcare stabilization fund. The fund shall be held in trust in the state treasury and accounted for separately from other state funds. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

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

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

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

(C) prepare and publish, on or before October 1 of each year, a report for submission to

the healthcare stabilization fund oversight committee that includes a summary of the fund's activity during the preceding fiscal year, including, but not limited to, the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the fund balance at the end of the fiscal year;~~and~~

(D) have the authority to grant temporary exemptions from the provisions of K.S.A. 40-3402 and 40-3404, and amendments thereto, to healthcare providers who have exceptional circumstances and verify in writing that the healthcare provider will not render professional services in this state during the period of exemption. Whenever the board grants such an exemption, the board shall notify the state agency that licenses the exempted healthcare provider;
and

(E) in the event that K.S.A. 60-19a02, and amendments thereto, is declared unconstitutional by the supreme court in an action for personal injury or death arising out of rendering or failing to render professional services by a healthcare provider, cooperate fully with the commissioner of insurance in developing and executing a plan for a delinquency proceeding under the insurers supervision, rehabilitation and liquidation act and, if requested by the commissioner, consent to any action deemed by the commissioner to be in the best interests of the public, including any action under the insurers supervision, rehabilitation and liquidation act.

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

(A) Three members who are on a list of nominees submitted to the commissioner by the Kansas medical society, at least two of whom are doctors of medicine who are licensed to

practice medicine and surgery in Kansas ~~who are doctors of medicine and who are on a list of nominees submitted to the commissioner by the Kansas medical society;~~

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

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

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

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

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

(3) When a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three

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

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

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

(6) (A) The board shall appoint an executive director who shall be in the unclassified service under the Kansas civil service act and may employ attorneys and other employees who shall also be in the unclassified service under the Kansas civil service act. Such executive director, attorneys and other employees shall receive compensation fixed by the board, in accordance with appropriation acts of the legislature, not subject to approval of the governor.

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

(7) The commissioner shall:

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

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

(c) Except as otherwise provided by any other provision of this act, the fund shall be liable to pay:

(1) Any amount due from a judgment or settlement that is in excess of the basic coverage liability of all liable resident healthcare providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state;

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

providers or nonresident self-insurers that arose outside of this state;

(3) subject to the provisions of ~~subsections~~ subsection (f) ~~and (m)~~, any amount due from a judgment or settlement against a resident inactive healthcare provider for any such injury or death arising out of the rendering of or failure to render professional services;

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

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

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

(7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, and such expenditures shall not be subject to the provisions of K.S.A. 75-3738 through

75-3744, and amendments thereto;

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

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

(10) surcharge refunds payable when the notice of cancellation requirements of K.S.A. 40-3402, and amendments thereto, are met;

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

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

with the university of Kansas school of medicine;

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

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

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

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

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

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid

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

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

(f) In no event shall the fund be liable to pay in excess of the amounts specified in the option selected by an active or inactive healthcare provider pursuant to subsection (l) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such healthcare provider on or after July 1, 1989.

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

- (1) On and after July 1, 1976, if basic coverage is then in effect;
- (2) subsequent to July 1, 1976, at such time as basic coverage becomes effective; or
- (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414, and amendments thereto.

(h) A healthcare provider who is qualified for coverage under the fund shall have no

vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other healthcare provider who is also qualified for coverage under the fund. The provisions of this subsection shall apply to all claims filed on or after July 1, 1986.

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

(j) (1) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the secretary of administration the amount of such payment, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state general fund to the healthcare stabilization fund.

(2) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the secretary of administration the amount of such payment that is equal to the basic coverage liability of self-insurers, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state general fund to the healthcare stabilization fund.

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

foundation reserve fund to the healthcare stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(4) The graduate medical education administration reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than \$40,000 on July 1 of any year, the nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall remit the amount necessary to increase such balance to \$40,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine the secretary of administration shall transfer an amount equal to the amount paid from the graduate medical education administration reserve fund to the healthcare stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

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

(6) Transfers from the state general fund to the healthcare stabilization fund pursuant to this subsection shall not be subject to the provisions of K.S.A. 75-3722, and amendments thereto.

(7) The funds required to be transferred from the state general fund to the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of administration shall maintain a record of the amounts certified by the board of governors pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. Beginning July 1, 2013, in addition to any other transfers required pursuant to subsection (j), the state general fund transfers that are deferred pursuant to this paragraph shall be transferred from the state general fund to the healthcare stabilization fund in the following manner: On July 1, 2013, and annually thereafter through July 1, 2018, an amount equal to 20% of the total amount of state general fund transfers deferred pursuant to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this paragraph shall not accrue interest thereon.

(k) Notwithstanding any other provision of the healthcare provider insurance availability act, no psychiatric hospital licensed under K.S.A. 2019 Supp. 39-2001 et seq., and

amendments thereto, shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404, and amendments thereto, prior to January 1, 1988.

(1) On or after July 1, 1989, and prior to January 1, 2021, every healthcare provider shall make an election to be covered by one of the following options provided in ~~this subsection paragraph (1)~~ that shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989, and prior to January 1, 2021. On and after January 1, 2021, every healthcare provider shall make an election to be covered by one of the following options provided in paragraph (2) that shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after January 1, 2021. Such election shall be made at the time the healthcare provider renews the basic coverage ~~in effect on July 1, 1989~~, or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The healthcare provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Any election of fund coverage limits, whenever made, shall be with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render

professional services on or after the effective date of such election of fund coverage limits. Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. The election of fund coverage limits for a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to be effective at the highest option. Such options shall be as follows:

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

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

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

(2) (A) OPTION 1. The fund shall not be liable to pay in excess of \$500,000 pursuant

to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$1,500,000 for such healthcare provider.

(B) OPTION 2. The fund shall not be liable to pay in excess of \$1,500,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$4,500,000 for such healthcare provider.

~~(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive healthcare providers who first qualify as an inactive healthcare provider on or after July 1, 1989, unless such healthcare provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a healthcare provider has not been in compliance for five years, such healthcare provider may make application and payment for the coverage for the period while they are nonresident healthcare providers, nonresident self-insurers or resident or nonresident inactive healthcare providers to the fund. Such payment shall be made within 30 days after the healthcare provider ceases being an active healthcare provider and shall be made in an amount determined by the board of governors to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any healthcare provider that becomes inactive through death or retirement, or through disability or circumstances beyond such healthcare provider's control, if such healthcare provider notifies the board of governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the~~

~~state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto. The provisions of this subsection shall expire on July 1, 2014.~~

~~(n)~~—In the event of a claim against a healthcare provider for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, the liability of the fund shall be limited to the amount of coverage selected by the healthcare provider at the time of the incident giving rise to the claim.

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

(o) In the event that K.S.A. 60-19a02, and amendments thereto, is declared unconstitutional by the supreme court ruling in an action for personal injury or death arising out of the rendering of or failure to render professional services by a healthcare provider, the provisions of K.S.A. 40-3402, and amendments thereto, and any other provision of law mandating that healthcare providers maintain a policy of professional liability insurance and pay a surcharge to the fund in accordance with this act shall expire on the July 1 of the year following the year of such supreme court ruling. In such event, the fund shall be deemed to be an insurer in accordance with chapter 40 of the Kansas Statutes Annotated, and amendments thereto, and shall

be subject to any actions deemed by the commissioner of insurance to be in the best interests of the public, including a delinquency proceeding within the meaning of the insurers supervision, rehabilitation and liquidation act.

Sec. 4. K.S.A. 2019 Supp. 40-3408 is hereby amended to read as follows: 40-3408. (a) Prior to January 1, 2021, the insurer of a healthcare provider covered by the fund or self-insurer shall be liable only for the first \$200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, subject to an annual aggregate of not less than \$600,000 for all such claims against the healthcare provider. On and after January 1, 2021, the insurer of a healthcare provider covered by the fund or self-insurer shall be liable only for the first \$500,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, subject to an annual aggregate of \$1,500,000 for all such claims against the healthcare provider ~~However,~~ If any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

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

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

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

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

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

(e) Notwithstanding any provision of article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, an insurer that provides coverage to a healthcare provider may exclude from coverage:

(1) Any liability incurred by such healthcare provider as a result of professional services rendered as a charitable healthcare provider; or

(2) any liability incurred by such healthcare provider that is covered under the federal tort claims act pursuant to chapter 171 of title 28 of the United States code.

Sec. 5. K.S.A. 40-3606 is hereby amended to read as follows: 40-3606. This act shall apply to all insurance companies, fraternal benefit societies, health maintenance organizations, reciprocal insurance exchanges, mutual nonprofit hospital and medical service corporations,

captive insurance companies, group funded pools except municipal group funded pools governed by K.S.A. 12-2616 through 12-2629, and amendments thereto, the healthcare stabilization fund established under K.S.A. 40-3403, and amendments thereto, prepaid service plans operating under article 19a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, regardless of whether such entities are authorized to do business in this state, and such entities ~~which~~ that are in the process of organization.

Sec. 6. K.S.A. 40-3606 and K.S.A. 2019 Supp. 40-3402, 40-3403 and 40-3408 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.