

HOUSE BILL No. 2348

By Committee on Judiciary

2-14

1 AN ACT concerning the healthcare stabilization fund; relating to liability
2 of the fund; payments; limitations; healthcare provider coverage;
3 amending K.S.A. 65-28,124 and K.S.A. 2018 Supp. 40-3403, 40-
4 3403a, 40-3404, 40-3414 and 40-3424 and repealing the existing
5 sections.
6

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

8 Section 1. K.S.A. 2018 Supp. 40-3403 is hereby amended to read as
9 follows: 40-3403. (a) For the purpose of paying damages for personal
10 injury or death arising out of the rendering of or the failure to render
11 professional services by a healthcare provider, self-insurer or inactive
12 healthcare provider subsequent to the time that such healthcare provider or
13 self-insurer has qualified for coverage under the provisions of this act,
14 there is hereby established the healthcare stabilization fund. The fund shall
15 be held in trust in the state treasury and accounted for separately from
16 other state funds. The board of governors shall administer the fund or
17 contract for the administration of the fund with an insurance company
18 authorized to do business in this state.

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

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

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

28 (C) prepare and publish, on or before October 1 of each year, a report
29 for submission to the healthcare stabilization fund oversight committee
30 that includes a summary of the fund's activity during the preceding fiscal
31 year, including, but not limited to, the amount collected from surcharges,
32 the highest and lowest surcharges assessed, the amount paid from the fund,
33 the number of judgments paid from the fund, the number of settlements
34 paid from the fund and the fund balance at the end of the fiscal year; and

35 (D) have the authority to grant temporary exemptions from the
36 provisions of K.S.A. 40-3402 and 40-3404, and amendments thereto, to

1 healthcare providers who have exceptional circumstances and verify in
2 writing that the healthcare provider will not render professional services in
3 this state during the period of exemption. Whenever the board grants such
4 an exemption, the board shall notify the state agency that licenses the
5 exempted healthcare provider.

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

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

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

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

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

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

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

29 (3) When a vacancy occurs in the membership of the board of
30 governors created by this act, the commissioner shall appoint a successor
31 of like qualifications from a list of three nominees submitted to the
32 commissioner by the professional society or association prescribed by this
33 section for the category of healthcare provider required for the vacant
34 position on the board of governors. All appointments made shall be for a
35 term of office of four years, but no member shall be appointed for more
36 than two successive four-year terms. Each member shall serve until a
37 successor is appointed and qualified. Whenever a vacancy occurs in the
38 membership of the board of governors created by this act for any reason
39 other than the expiration of a member's term of office, the commissioner
40 shall appoint a successor of like qualifications to fill the unexpired term. In
41 each case of a vacancy occurring in the membership of the board of
42 governors, the commissioner shall notify the professional society or
43 association that represents the category of healthcare provider required for

1 the vacant position and request a list of three nominations of healthcare
2 providers from which to make the appointment.

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

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

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

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

25 (7) The commissioner shall:

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

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

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

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

38 (2) subject to the provisions of subsections ~~(f)~~ (e) and (m), any
39 amount due from a judgment or settlement that is in excess of the basic
40 coverage liability of all liable nonresident healthcare providers or
41 nonresident self-insurers for any such injury or death arising out of the
42 rendering or the failure to render professional services within this state but
43 in no event shall the fund be obligated for claims against nonresident

1 healthcare providers or nonresident self-insurers who have not complied
2 with this act or for claims against nonresident healthcare providers or
3 nonresident self-insurers that arose outside of this state;

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

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

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

22 (6) any amounts expended for reinsurance obtained to protect the best
23 interests of the fund purchased by the board of governors, which purchase
24 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
25 amendments thereto, but shall not be subject to the provisions of K.S.A.
26 75-4101, and amendments thereto;

27 (7) reasonable and necessary actuarial expenses incurred in
28 administering the act, including expenses for any actuarial studies
29 contracted for by the legislative coordinating council, and such
30 expenditures shall not be subject to the provisions of K.S.A. 75-3738
31 through 75-3744, and amendments thereto;

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

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

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

40 (11) subject to K.S.A. 40-3411(b), and amendments thereto,
41 reasonable and necessary expenses for attorney fees and other costs
42 incurred in defending a person engaged or who was engaged in residency
43 training or the private practice corporations or foundations and their full-

1 time physician faculty employed by the university of Kansas medical
2 center or any nonprofit corporation 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 from
5 claims for personal injury or death arising out of the rendering of or the
6 failure to render professional services by such healthcare provider;

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

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

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

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

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

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

42 (d) All amounts for which the fund is liable pursuant to subsection (c)
43 shall be paid promptly and in full except that, if the amount for which the

1 fund is liable is ~~\$300,000~~ \$600,000 or more, it shall be paid by installment
2 payments of ~~\$300,000~~ \$600,000 or 10% of the amount of the judgment
3 including interest thereon, whichever is greater, per fiscal year, the first
4 installment to be paid within ~~60~~ 30 days after the fund becomes liable and
5 each subsequent installment to be paid annually on the same date of the
6 year the first installment was paid, until the claim has been paid in full.

7 (e) (1) In no event shall the fund be liable to pay in excess of
8 \$3,000,000 pursuant to any one judgment or settlement against any one
9 healthcare provider relating to any injury or death arising out of the
10 rendering of or the failure to render professional services on and after July
11 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all
12 judgments or settlements arising from all claims made in any one fiscal
13 year in the amount of \$6,000,000 for each healthcare provider.

14 ~~(f)~~(2) In no event shall the fund be liable to pay in excess of the
15 amounts specified in the option selected by an active or inactive healthcare
16 provider pursuant to subsection ~~(j)~~ (k) for judgments or settlements
17 relating to injury or death arising out of the rendering of or failure to
18 render professional services by such healthcare provider on ~~or~~ and after
19 July 1, 1989, and before July 1, 2019.

20 (3) *In no event shall the fund be liable to pay in excess of the*
21 *amounts specified in subsection (l) for judgments or settlements relating to*
22 *injury or death arising out of the rendering of or failure to render*
23 *professional services by such healthcare provider on and after July 1,*
24 *2019.*

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

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

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

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

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

38 ~~(i)~~(h) Notwithstanding the provisions of K.S.A. 40-3402, and
39 amendments thereto, if the board of governors determines due to the
40 number of claims filed against a healthcare provider or the outcome of
41 those claims that an individual healthcare provider presents a material risk
42 of significant future liability to the fund, the board of governors is
43 authorized by a vote of a majority of the members thereof, after notice and

1 an opportunity for hearing in accordance with the provisions of the Kansas
2 administrative procedure act, to terminate the liability of the fund for all
3 claims against the healthcare provider for damages for death or personal
4 injury arising out of the rendering of or the failure to render professional
5 services after the date of termination. The date of termination shall be 30
6 days after the date of the determination by the board of governors. The
7 board of governors, upon termination of the liability of the fund under this
8 subsection, shall notify the licensing or other disciplinary board having
9 jurisdiction over the healthcare provider involved of the name of the
10 healthcare provider and the reasons for the termination.

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

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

26 (3) The university of Kansas medical center private practice
27 foundation reserve fund is hereby established in the state treasury. If the
28 balance in such reserve fund is less than \$500,000 on July 1 of any year,
29 the private practice corporations or foundations referred to in K.S.A. 40-
30 3402(c), and amendments thereto, shall remit the amount necessary to
31 increase such balance to \$500,000 to the state treasurer for credit to such
32 reserve fund as soon after such July 1 date as is practicable. Upon receipt
33 of each such remittance, the state treasurer shall credit the same to such
34 reserve fund. When compliance with the foregoing provisions of this
35 paragraph have been achieved on or after July 1 of any year in which the
36 same are applicable, the state treasurer shall certify to the board of
37 governors that such reserve fund has been funded for the year in the
38 manner required by law. Moneys in such reserve fund may be invested or
39 reinvested in accordance with the provisions of K.S.A. 40-3406, and
40 amendments thereto, and any income or interest earned by such
41 investments shall be credited to such reserve fund. Upon payment of
42 moneys from the healthcare stabilization fund pursuant to subsection (c)
43 (11) or (c)(12) with respect to any private practice corporation or

1 foundation or any of its full-time physician faculty employed by the
2 university of Kansas, the secretary of administration shall transfer an
3 amount equal to the amount paid from the university of Kansas medical
4 center private practice foundation reserve fund to the healthcare
5 stabilization fund or, if the balance in such reserve fund is less than the
6 amount so paid, an amount equal to the balance in such reserve fund.

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

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

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

42 (7) The funds required to be transferred from the state general fund to
43 the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the

1 fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June
2 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of
3 administration shall maintain a record of the amounts certified by the
4 board of governors pursuant to paragraphs (1) and (2) for the fiscal years
5 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.
6 Beginning July 1, 2013, in addition to any other transfers required
7 pursuant to subsection ~~(j)~~ (i), the state general fund transfers that are
8 deferred pursuant to this paragraph shall be transferred from the state
9 general fund to the healthcare stabilization fund in the following manner:
10 On July 1, 2013, and annually thereafter through July 1, 2018, an amount
11 equal to 20% of the total amount of state general fund transfers deferred
12 pursuant to this paragraph for the fiscal years ending June 30, 2010, June
13 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred
14 pursuant to this paragraph shall not accrue interest thereon.

15 ~~(j)~~ (i) Notwithstanding any other provision of the healthcare provider
16 insurance availability act, no psychiatric hospital licensed under K.S.A.
17 2018 Supp. 39-2001 et seq., and amendments thereto, shall be assessed a
18 premium surcharge or be entitled to coverage under the fund if such
19 hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404,
20 and amendments thereto, prior to January 1, 1988.

21 ~~(k)~~ (k) On ~~or~~ and after July 1, 1989, and before July 1, 2019, every
22 healthcare provider shall make an election to be covered by one of the
23 following options provided in this subsection that shall limit the liability of
24 the fund with respect to judgments or settlements relating to injury or
25 death arising out of the rendering of or failure to render professional
26 services on ~~or~~ and after July 1, 1989, and before July 1, 2019. Such
27 election shall be made at the time the healthcare provider renews the basic
28 coverage in effect on and after July 1, 1989, and before July 1, 2019, or, if
29 basic coverage is not in effect, such election shall be made at the time such
30 coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto.
31 Notice of the election shall be provided by the insurer providing the basic
32 coverage in the manner and form prescribed by the board of governors and
33 shall continue to be effective from year-to-year unless modified by a
34 subsequent election made prior to the anniversary date of the policy. The
35 healthcare provider may at any subsequent election reduce the dollar
36 amount of the coverage for the next and subsequent fiscal years, but may
37 not increase the same, unless specifically authorized by the board of
38 governors. Any election of fund coverage limits, whenever made, shall be
39 with respect to judgments or settlements relating to injury or death arising
40 out of the rendering of or failure to render professional services on ~~or~~ and
41 after the effective date of such election of fund coverage limits. Such
42 election shall be made for persons engaged in residency training and
43 persons engaged in other postgraduate training programs approved by the

1 state board of healing arts at medical care facilities or mental health
2 centers in this state by the agency or institution paying the surcharge levied
3 under K.S.A. 40-3404, and amendments thereto, for such persons. The
4 election of fund coverage limits for a nonprofit corporation organized to
5 administer the graduate medical education programs of community
6 hospitals or medical care facilities affiliated with the university of Kansas
7 school of medicine shall be deemed to be effective at the highest option.
8 Such options shall be as follows:

9 (1) *OPTION 1.* The fund shall not be liable to pay in excess of
10 \$100,000 pursuant to any one judgment or settlement for any party against
11 such healthcare provider, subject to an aggregate limitation for all
12 judgments or settlements arising from all claims made in the fiscal year in
13 an amount of \$300,000 for such provider.

14 (2) *OPTION 2.* The fund shall not be liable to pay in excess of
15 \$300,000 pursuant to any one judgment or settlement for any party against
16 such healthcare provider, subject to an aggregate limitation for all
17 judgments or settlements arising from all claims made in the fiscal year in
18 an amount of \$900,000 for such provider.

19 (3) *OPTION 3.* The fund shall not be liable to pay in excess of
20 \$800,000 pursuant to any one judgment or settlement for any party against
21 such healthcare provider, subject to an aggregate limitation for all
22 judgments or settlements arising from all claims made in the fiscal year in
23 an amount of \$2,400,000 for such healthcare provider.

24 *(l) On and after July 1, 2019, every healthcare provider shall be*
25 *covered as provided in this subsection to limit the liability of the fund with*
26 *respect to judgments or settlements relating to injury or death arising out*
27 *of the rendering of or failure to render professional services on and after*
28 *July 1, 2019. Such coverage shall be required at the time the healthcare*
29 *provider renews the basic coverage in effect on July 1, 2019, or, if basic*
30 *coverage is not in effect, at the time such coverage is acquired pursuant to*
31 *K.S.A. 40-3402, and amendments thereto. Notice of coverage shall be*
32 *provided by the insurer providing the basic coverage in the manner and*
33 *form prescribed by the board of governors and shall continue to be*
34 *effective from year-to-year. The fund coverage limits, whenever acquired,*
35 *shall be with respect to judgments or settlements relating to injury or*
36 *death arising out of the rendering of or failure to render professional*
37 *services on and after the effective date such fund coverage limits are*
38 *acquired. Coverage shall be acquired for persons engaged in residency*
39 *training and persons engaged in other postgraduate training programs*
40 *approved by the state board of healing arts at medical care facilities or*
41 *mental health centers in this state by the agency or institution paying the*
42 *surcharge levied under K.S.A. 40-3404, and amendments thereto, for such*
43 *persons. The fund shall not be liable to pay in excess of \$1,800,000*

1 *pursuant to any one judgment or settlement for any party against such*
2 *healthcare provider; subject to an aggregate limitation for all judgments*
3 *or settlements arising from all claims made in the fiscal year in an amount*
4 *of \$5,400,000 for such healthcare provider.*

5 (m) The fund shall not be liable for any amounts due from a judgment
6 or settlement against resident or nonresident inactive healthcare providers
7 who first qualify as an inactive healthcare provider on ~~or~~ and after July 1,
8 1989, unless such healthcare provider has been in compliance with K.S.A.
9 40-3402, and amendments thereto, for a period of not less than five years.
10 If a healthcare provider has not been in compliance for five years, such
11 healthcare provider may make application and payment for the coverage
12 for the period while they are nonresident healthcare providers, nonresident
13 self-insurers or resident or nonresident inactive healthcare providers to the
14 fund. Such payment shall be made within 30 days after the healthcare
15 provider ceases being an active healthcare provider and shall be made in
16 an amount determined by the board of governors to be sufficient to fund
17 anticipated claims based upon reasonably prudent actuarial principles. The
18 provisions of this subsection shall not be applicable to any healthcare
19 provider that becomes inactive through death or retirement, or through
20 disability or circumstances beyond such healthcare provider's control, if
21 such healthcare provider notifies the board of governors and receives
22 approval for an exemption from the provisions of this subsection. Any
23 period spent in a postgraduate program of residency training approved by
24 the state board of healing arts shall not be included in computation of time
25 spent in compliance with the provisions of K.S.A. 40-3402, and
26 amendments thereto. The provisions of this subsection shall expire on July
27 1, 2014.

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

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

42 Sec. 2. K.S.A. 2018 Supp. 40-3403a is hereby amended to read as
43 follows: 40-3403a. Any healthcare provider whose fund coverage has been

1 terminated under ~~subsection (i)~~ of K.S.A. 40-3403(h), and amendments
2 thereto, shall, as a condition of licensure, maintain continuous professional
3 liability insurance coverage equivalent to that provided by the fund and
4 shall submit to the board of governors satisfactory proof of such coverage,
5 as required by the board.

6 Sec. 3. K.S.A. 2018 Supp. 40-3404 is hereby amended to read as
7 follows: 40-3404. (a) Except for any healthcare provider whose
8 participation in the fund has been terminated pursuant to ~~subsection (i)~~ of
9 K.S.A. 40-3403(h), and amendments thereto, the board of governors shall
10 levy an annual premium surcharge on each healthcare provider who has
11 obtained basic coverage and upon each self-insurer for each year. This
12 provision shall not apply to optometrists and pharmacists on ~~or~~ and after
13 July 1, 1991, nor to physical therapists on ~~or~~ and after July 1, 1995, nor to
14 health maintenance organizations on and after July 1, 1997. Such premium
15 surcharge shall be an amount based upon a rating classification system
16 established by the board of governors which is reasonable, adequate and
17 not unfairly discriminating. The annual premium surcharge upon the
18 university of Kansas medical center for persons engaged in residency
19 training, as described in ~~paragraph (1) of subsection (r)~~ of K.S.A. 40-
20 3401(r)(1), and amendments thereto, shall be based on an assumed
21 aggregate premium of \$600,000. The annual premium surcharge upon the
22 employers of persons engaged in residency training, as described in
23 ~~paragraph (2) of subsection (r)~~ of K.S.A. 40-3401(r)(2), and amendments
24 thereto, shall be based on an assumed aggregate premium of \$400,000.
25 The surcharge on such \$400,000 amount shall be apportioned among the
26 employers of persons engaged in residency training, as described in
27 ~~paragraph (2) of subsection (r)~~ of K.S.A. 40-3401(r)(2), and amendments
28 thereto, based on the number of residents employed as of July 1 of each
29 year. The annual premium surcharge upon any nonprofit corporation
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 be based upon an assumed aggregate
33 premium of \$10,000. The surcharge on such assumed aggregate premium
34 shall be apportioned among all such nonprofit corporations.

35 (b) In the case of a resident healthcare provider who is not a self-
36 insurer, the premium surcharge shall be collected in addition to the annual
37 premium for the basic coverage by the insurer and shall not be subject to
38 the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and
39 amendments thereto. The amount of the premium surcharge shall be
40 shown separately on the policy or an endorsement thereto and shall be
41 specifically identified as such. Such premium surcharge shall be due and
42 payable by the insurer to the board of governors within 30 days after the
43 annual premium for the basic coverage is received by the insurer. Within

1 15 days immediately following the effective date of this act, the board of
2 governors shall send to each insurer information necessary for their
3 compliance with this subsection. The certificate of authority of any insurer
4 who fails to comply with the provisions of this subsection shall be
5 suspended pursuant to K.S.A. 40-222, and amendments thereto, until such
6 insurer shall pay the annual premium surcharge due and payable to the
7 board of governors. In the case of a nonresident healthcare provider or a
8 self-insurer, the premium surcharge shall be paid upon submitting
9 documentation of compliance with K.S.A. 40-3402, and amendments
10 thereto.

11 (c) In setting the amount of such surcharge, the board of governors
12 may require any healthcare provider who has paid a surcharge for less than
13 24 months to pay a higher surcharge than other healthcare providers.

14 Sec. 4. K.S.A. 2018 Supp. 40-3414 is hereby amended to read as
15 follows: 40-3414. (a) Any healthcare provider or any healthcare system
16 organized and existing under the laws of this state which owns and
17 operates more than one medical care facility or more than one healthcare
18 facility, as defined in K.S.A. 40-3401, and amendments thereto, licensed
19 by the state of Kansas, whose aggregate annual insurance premium is or
20 would be \$100,000 or more for basic coverage calculated in accordance
21 with rating procedures approved by the commissioner pursuant to K.S.A.
22 40-3413, and amendments thereto, may qualify as a self-insurer by
23 obtaining a certificate of self-insurance from the board of governors. Upon
24 application of any such healthcare provider or healthcare system, on a
25 form prescribed by the board of governors, the board of governors may
26 issue a certificate of self-insurance if the board of governors is satisfied
27 that the applicant is possessed and will continue to be possessed of ability
28 to pay any judgment for which liability exists equal to the amount of basic
29 coverage required of a healthcare provider obtained against such applicant
30 arising from the applicant's rendering of professional services as a
31 healthcare provider. In making such determination the board of governors
32 shall consider: (1) The financial condition of the applicant; (2) the
33 procedures adopted and followed by the applicant to process and handle
34 claims and potential claims; (3) the amount and liquidity of assets reserved
35 for the settlement of claims or potential claims; and (4) any other relevant
36 factors. The certificate of self-insurance may contain reasonable conditions
37 prescribed by the board of governors. Upon notice and a hearing in
38 accordance with the provisions of the Kansas administrative procedure act,
39 the board of governors may cancel a certificate of self-insurance upon
40 reasonable grounds therefor. Failure to pay any judgment for which the
41 self-insurer is liable arising from the self-insurer's rendering of
42 professional services as a healthcare provider, the failure to comply with
43 any provision of this act or the failure to comply with any conditions

1 contained in the certificate of self-insurance shall be reasonable grounds
2 for the cancellation of such certificate of self-insurance. The provisions of
3 this subsection shall not apply to the Kansas soldiers' home, the Kansas
4 veterans' home or to any person who is a self-insurer pursuant to
5 subsection (d) or (e).

6 (b) Any such healthcare provider or healthcare system that holds a
7 certificate of self-insurance shall pay the applicable surcharge set forth in
8 K.S.A. 40-3402(c), and amendments thereto.

9 (c) The Kansas soldiers' home and the Kansas veterans' home shall be
10 self-insurers and shall pay the applicable surcharge set forth in K.S.A. 40-
11 3402(c), and amendments thereto.

12 (d) Persons engaged in residency training as provided in K.S.A. 40-
13 3401(r)(1) and (2), and amendments thereto, shall be self-insured by the
14 state of Kansas for occurrences arising during such training, and such
15 person shall be deemed a self-insurer for the purposes of the healthcare
16 provider insurance availability act. Such self-insurance shall be applicable
17 to a person engaged in residency training only when such person is
18 engaged in medical activities which do not include extracurricular, extra-
19 institutional medical service for which such person receives extra
20 compensation and which have not been approved as provided in K.S.A.
21 40-3401(r)(1) and (2), and amendments thereto.

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

43 (2) In making such determination the board of governors shall

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

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

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

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

38 (f) For the purposes of subsection (a), "healthcare provider" may
39 include each healthcare provider in any group of healthcare providers who
40 practice as a group to provide physician services only for a health
41 maintenance organization, any professional corporations, partnerships or
42 not-for-profit corporations formed by such group and the health
43 maintenance organization itself. The premiums for each such provider,

1 health maintenance organization and group corporation or partnership may
2 be aggregated for the purpose of being eligible for and subject to the
3 statutory requirements for self-insurance as set forth in this section.

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

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

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

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

1 (3) Subject to the provisions of paragraph (4), for the purposes of the
2 healthcare provider insurance availability act, the election of fund
3 coverage limits for each nonprofit corporation organized to administer the
4 graduate medical education programs of community hospitals or medical
5 care facilities affiliated with the university of Kansas school of medicine
6 shall be deemed to have been effective at the highest option, as provided in
7 K.S.A. 40-3403(+) (k), and amendments thereto, ~~from~~ on and after July 1,
8 1997, *and before July 1, 2019, and at the limit provided in K.S.A. 40-*
9 *3403(l), and amendments thereto, on and after July 1, 2019.*

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

17 Sec. 5. K.S.A. 2018 Supp. 40-3424 is hereby amended to read as
18 follows: 40-3424. (a) For all claims made on and after July 1, 2014, *and*
19 *before July 1, 2019*, the amount of fund liability for a judgment or
20 settlement against a resident or nonresident inactive healthcare provider
21 shall be equal to the minimum professional liability insurance policy limits
22 required pursuant to K.S.A. 40-3402, and amendments thereto, plus the
23 level of coverage selected by the healthcare provider pursuant to K.S.A.
24 40-3403(+) (k), and amendments thereto, at the time of the incident giving
25 rise to a claim. The aggregate fund liability for all judgments and
26 settlements arising from all claims made in any fiscal year against a
27 resident or nonresident inactive healthcare provider shall not exceed
28 \$3,000,000 in any fiscal year.

29 (b) *For all claims made on and after July 1, 2019, the amount of fund*
30 *liability for a judgment or settlement against a resident or nonresident*
31 *inactive healthcare provider shall be equal to the minimum professional*
32 *liability insurance policy limits required pursuant to K.S.A. 40-3402, and*
33 *amendments thereto, plus the level of coverage required pursuant to K.S.A.*
34 *40-3403(l), and amendments thereto, at the time of the incident giving rise*
35 *to a claim. The aggregate fund liability for all judgments and settlements*
36 *arising from all claims made in any fiscal year against a resident or*
37 *nonresident inactive healthcare provider shall not exceed \$3,000,000 in*
38 *any fiscal year.*

39 (c) This section shall be a part of and supplemental to the healthcare
40 provider insurance availability act.

41 Sec. 6. K.S.A. 65-28,124 is hereby amended to read as follows: 65-
42 28,124. (a) There is hereby created a designation of visiting clinical
43 professor license which may be issued by the board to a person who is

1 qualified for a license for the practice of medicine and surgery on an active
2 basis under the Kansas healing arts act. The application for a visiting
3 clinical professor license shall be made to the board upon forms approved
4 by the board and shall be accompanied with a statement from the chief
5 administrative officer of the university of Kansas school of medicine at the
6 university of Kansas medical center stating that the person is under
7 contract with the university of Kansas medical center or one of the
8 affiliated private practice foundations of the university of Kansas medical
9 center to provide patient care and clinical teaching at the university of
10 Kansas medical center or at one of the affiliated private practice
11 foundations at the university of Kansas medical center and that the
12 information on the application has been verified to be correct. Application
13 for a visiting clinical professor license and for any renewal or
14 reinstatement thereof shall be also accompanied by proof that the person
15 has the professional liability insurance that would be required if the person
16 were defined as a healthcare provider by ~~subsection (f) of K.S.A. 40-~~
17 ~~3401(f)~~, and amendments thereto, in an amount of not less than the basic
18 coverage specified under ~~subsection (a) of K.S.A. 40-3402(a)~~, and
19 amendments thereto, plus an amount of not less than the amount specified
20 under ~~OPTION 3 of subsection (l) of K.S.A. 40-3403(l)~~, and amendments
21 thereto, and by an affidavit that the person will maintain this professional
22 liability insurance during the time that the visiting clinical professor
23 license is valid. A visiting clinical professor license shall be valid only for
24 the practice of medicine and surgery at the university of Kansas medical
25 center or at one of the affiliated private practice foundations at the
26 university of Kansas medical center. Physicians who are defined as full
27 time physician faculty employed by the university of Kansas medical
28 center under ~~subsection (s) of K.S.A. 40-3401(s)~~, and amendments thereto,
29 are not eligible for a visiting clinical professor license.

30 (b) The provisions of ~~subsections (a), (d) and (e) of K.S.A. 65-~~
31 ~~2809(a), (d) and (e)~~, and amendments thereto, relating to expiration and
32 renewal of a license, and the provisions of ~~subsection (b) of K.S.A. 65-~~
33 ~~2809(b)~~, and amendments thereto, relating to continuing education
34 requirements, shall be applicable to a visiting clinical professor license
35 issued under this section.

36 (c) This section shall be a part of and supplemental to the Kansas
37 healing arts act.

38 Sec. 7. K.S.A. 65-28,124 and K.S.A. 2018 Supp. 40-3403, 40-3403a,
39 40-3404, 40-3414 and 40-3424 are hereby repealed.

40 Sec. 8. This act shall take effect and be in force from and after its
41 publication in the statute book.