

HOUSE BILL No. 2380

By Committee on Insurance and Pensions

2-12

1 AN ACT concerning the healthcare stabilization fund; relating to
2 minimum professional liability insurance coverage requirements;
3 changing membership of the board of governors; amending K.S.A.
4 2020 Supp. 40-3402, 40-3403, 40-3408 and 40-3424 and repealing the
5 existing sections.
6

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

8 Section 1. K.S.A. 2020 Supp. 40-3402 is hereby amended to read as
9 follows: 40-3402. (a) *Prior to January 1, 2022*, a policy of professional
10 liability insurance approved by the commissioner and issued by an insurer
11 duly authorized to transact business in this state in which the limit of the
12 insurer's liability is not less than \$200,000 per claim, subject to not less
13 than a \$600,000 annual aggregate for all claims made during the policy
14 period, shall be maintained in effect by each resident healthcare provider
15 as a condition of active licensure or other statutory authorization to render
16 professional service as a healthcare provider in this state, unless such
17 healthcare provider is a self-insurer. *For all new policies and policies that*
18 *renew on and after January 1, 2022*, a policy of professional liability
19 insurance approved by the commissioner and issued by an insurer duly
20 authorized to transact business in this state in which the limit of the
21 insurer's liability is not less than \$500,000 per claim, subject to not less
22 than a \$1,500,000 annual aggregate for all claims made during the policy
23 period, shall be maintained by each resident healthcare provider as a
24 condition of active licensure or other statutory authorization to render
25 professional service as a healthcare provider in this state, unless such
26 healthcare provider is a self-insurer. This provision shall not apply to
27 optometrists and pharmacists ~~on or~~ and after July 1, 1991 ~~nor~~, to physical
28 therapists on and after July 1, 1995 ~~nor~~, or to health maintenance
29 organizations ~~on or~~ and after July 1, 1997. Such policy shall provide as a
30 minimum coverage for claims made during the term of the policy ~~which~~
31 *that* were incurred during the term of such policy or during the prior term
32 of a similar policy. Any insurer offering such policy of professional
33 liability insurance to any healthcare provider may offer to such healthcare
34 provider a policy as prescribed in this section with deductible options.
35 Such deductible shall be within such policy limits.

36 (1) Each insurer providing basic coverage shall, within 30 days after

1 the effective date of any policy issued in accordance with this subsection,
2 notify the board of governors that such coverage is or will be in effect.
3 Such notification shall be on a form approved by the board of governors
4 and shall include information identifying the professional liability policy
5 issued or to be issued, the name and address of all healthcare providers
6 covered by the policy, the amount of the annual premium, the effective and
7 expiration dates of the coverage and such other information as the board of
8 governors shall require. A copy of the notice required by this subsection
9 shall be furnished to the named insured.

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

23 (3) Any professional liability insurance policy issued, delivered or in
24 effect in this state on and after July 1, 1976, shall contain or be endorsed to
25 provide basic coverage as required by subsection (a) ~~of this section~~.
26 Notwithstanding any omitted or inconsistent language, any contract of
27 professional liability insurance shall be construed to obligate the insurer to
28 meet all the mandatory requirements and obligations of this act. The
29 liability of an insurer for claims made prior to July 1, 1984, shall not
30 exceed those limits of insurance provided by such policy prior to July 1,
31 1984.

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

39 (1) Every insurance company authorized to transact business in this
40 state, that is authorized to issue professional liability insurance in any
41 jurisdiction, shall file with the commissioner, as a condition of its
42 continued transaction of business within this state, a form prescribed by
43 the commissioner declaring that its professional liability insurance

1 policies, wherever issued, shall be deemed to provide at least the insurance
2 required by this subsection when the insured is rendering professional
3 services as a nonresident healthcare provider in this state. Any
4 nonadmitted insurer may file such a form.

5 (2) Every nonresident healthcare provider ~~who~~ *that* is required to
6 maintain basic coverage pursuant to this subsection shall pay the surcharge
7 levied by the board of governors pursuant to ~~subsection (a)~~ of K.S.A. 40-
8 3404(a), and amendments thereto, directly to the board of governors and
9 shall furnish to the board of governors the information required in
10 subsection (a)(1).

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

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

36 (e) In lieu of a claims made policy otherwise required under this
37 section, a nonresident healthcare provider employed pursuant to a locum
38 tenens contract to provide services in this state as a healthcare provider
39 may obtain basic coverage under an occurrence form policy, if such policy
40 provides professional liability insurance coverage and limits ~~which~~ *that* are
41 substantially the same as the professional liability insurance coverage and
42 limits required by K.S.A. 40-3402, and amendments thereto. Where such
43 occurrence form policy is in effect, the provisions of the healthcare

1 provider insurance availability act referring to claims made policies shall
2 be construed to mean occurrence form policies.

3 Sec. 2. K.S.A. 2020 Supp. 40-3403 is hereby amended to read as
4 follows: 40-3403. (a) For the purpose of paying damages for personal
5 injury or death arising out of the rendering of or the failure to render
6 professional services by a healthcare provider, self-insurer or inactive
7 health care provider subsequent to the time that such healthcare provider
8 or self-insurer has qualified for coverage under the provisions of this act,
9 there is hereby established the healthcare stabilization fund. The fund shall
10 be held in trust in the state treasury and accounted for separately from
11 other state funds. The board of governors shall administer the fund or
12 contract for the administration of the fund with an insurance company
13 authorized to do business in this state.

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

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

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

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

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

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

39 (A) Three members who are *on a list of nominees submitted to the*
40 *commissioner by the Kansas medical society, at least two of whom are*
41 *doctors of medicine who are licensed to practice medicine and surgery in*
42 *Kansas* ~~who are doctors of medicine and who are on a list of nominees~~
43 ~~submitted to the commissioner by the Kansas medical society;~~

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

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

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

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

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

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

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

1 by three members of the board.

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

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

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

20 (7) The commissioner shall:

21 (A) Provide technical and administrative assistance to the board of
22 governors with respect to administration of the fund upon request of the
23 board; *and*

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

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

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

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

42 (3) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,
43 any amount due from a judgment or settlement against a resident inactive

1 healthcare provider for any such injury or death arising out of the
2 rendering of or failure to render professional services;

3 (4) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,
4 any amount due from a judgment or settlement against a nonresident
5 inactive healthcare provider for any injury or death arising out of the
6 rendering or failure to render professional services within this state, but in
7 no event shall the fund be obligated for claims against *nonresident inactive*
8 *healthcare providers*:

9 (A) ~~Nonresident inactive healthcare providers~~ Who have not
10 complied with this act; or

11 (B) ~~nonresident inactive healthcare providers~~ for claims that arose
12 outside of this state, unless such healthcare provider was a resident
13 healthcare provider or resident self-insurer at the time such act occurred;

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

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

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

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

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

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

37 (11) subject to K.S.A. 40-3411(b), and amendments thereto,
38 reasonable and necessary expenses for attorney fees and other costs
39 incurred in defending a person engaged or who was engaged in residency
40 training or the private practice corporations or foundations and their full-
41 time physician faculty employed by the university of Kansas medical
42 center or any nonprofit corporation organized to administer the graduate
43 medical education programs of community hospitals or medical care

1 facilities affiliated with the university of Kansas school of medicine from
2 claims for personal injury or death arising out of the rendering of or the
3 failure to render professional services by such healthcare provider;

4 (12) ~~notwithstanding the provisions of subsection (m),~~ any amount
5 due from a judgment or settlement for an injury or death arising out of the
6 rendering of or failure to render professional services by a person engaged
7 or who was engaged in residency training or the private practice
8 corporations or foundations and their full-time physician faculty employed
9 by the university of Kansas medical center or any nonprofit corporation
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;

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

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

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

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

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

39 (d) All amounts for which the fund is liable pursuant to subsection (c)
40 shall be paid promptly and in full except that, if the amount for which the
41 fund is liable is ~~\$300,000~~ \$500,000 or more, it shall be paid by installment
42 payments of ~~\$300,000~~ \$500,000 or 10% of the amount of the judgment
43 including interest thereon, whichever is greater, per fiscal year, the first

1 installment to be paid within 60 days after the fund becomes liable and
2 each subsequent installment to be paid annually on the same date of the
3 year the first installment was paid, until the claim has been paid in full.

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

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

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

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

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

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

23 (h) A healthcare provider who is qualified for coverage under the
24 fund shall have no vicarious liability or responsibility for any injury or
25 death arising out of the rendering of or the failure to render professional
26 services inside or outside this state by any other healthcare provider who is
27 also qualified for coverage under the fund. The provisions of this
28 subsection shall apply to all claims filed on or after July 1, 1986.

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

1 healthcare provider and the reasons for the termination.

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

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

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

41 (4) The graduate medical education administration reserve fund is
42 hereby established in the state treasury. If the balance in such reserve fund
43 is less than \$40,000 on July 1 of any year, the nonprofit corporations

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

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

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

33 (7) The funds required to be transferred from the state general fund to
34 the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the
35 fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June
36 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of
37 administration shall maintain a record of the amounts certified by the
38 board of governors pursuant to paragraphs (1) and (2) for the fiscal years
39 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.
40 Beginning July 1, 2013, in addition to any other transfers required
41 pursuant to subsection (j), the state general fund transfers that are deferred
42 pursuant to this paragraph shall be transferred from the state general fund
43 to the healthcare stabilization fund in the following manner: On July 1,

1 2013, and annually thereafter through July 1, 2018, an amount equal to
2 20% of the total amount of state general fund transfers deferred pursuant
3 to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011,
4 June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this
5 paragraph shall not accrue interest thereon.

6 (k) Notwithstanding any other provision of the healthcare provider
7 insurance availability act, no psychiatric hospital licensed under K.S.A.
8 2020 Supp. 39-2001 et seq., and amendments thereto, shall be assessed a
9 premium surcharge or be entitled to coverage under the fund if such
10 hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404,
11 and amendments thereto, prior to January 1, 1988.

12 (l) On or after July 1, 1989, *and prior to January 1, 2022*, every
13 healthcare provider shall make an election to be covered by one of the
14 following options provided in ~~this subsection~~ *paragraph (1)* that shall limit
15 the liability of the fund with respect to judgments or settlements relating to
16 injury or death arising out of the rendering of or failure to render
17 professional services on or after July 1, 1989. *On and after January 1,*
18 *2022, every healthcare provider shall make an election to be covered by*
19 *one of the following options provided in paragraph (2) that shall limit the*
20 *liability of the fund with respect to judgments or settlements relating to*
21 *injury or death arising out of the rendering of or failure to render*
22 *professional services on or after January 1, 2022.* Such election shall be
23 made at the time the healthcare provider renews the basic coverage ~~in~~
24 ~~effect on July 1, 1989~~, or, if basic coverage is not in effect, such election
25 shall be made at the time such coverage is acquired pursuant to K.S.A. 40-
26 3402, and amendments thereto. Notice of the election shall be provided by
27 the insurer providing the basic coverage in the manner and form prescribed
28 by the board of governors and shall continue to be effective from year to
29 year unless modified by a subsequent election made prior to the
30 anniversary date of the policy. The healthcare provider may at any
31 subsequent election reduce the dollar amount of the coverage for the next
32 and subsequent fiscal years, but may not increase the same, unless
33 specifically authorized by the board of governors. Any election of fund
34 coverage limits, whenever made, shall be with respect to judgments or
35 settlements relating to injury or death arising out of the rendering of or
36 failure to render professional services on or after the effective date of such
37 election of fund coverage limits. Such election shall be made for persons
38 engaged in residency training and persons engaged in other postgraduate
39 training programs approved by the state board of healing arts at medical
40 care facilities or mental health centers in this state by the agency or
41 institution paying the surcharge levied under K.S.A. 40-3404, and
42 amendments thereto, for such persons. The election of fund coverage
43 limits for a nonprofit corporation organized to administer the graduate

1 medical education programs of community hospitals or medical care
2 facilities affiliated with the university of Kansas school of medicine shall
3 be deemed to be effective at the highest option. Such options shall be as
4 follows:

5 (1) (A) *OPTION 1.* The fund shall not be liable to pay in excess of
6 \$100,000 pursuant to any one judgment or settlement for any party against
7 such healthcare provider, subject to an aggregate limitation for all
8 judgments or settlements arising from all claims made in the fiscal year in
9 an amount of \$300,000 for such provider.

10 ~~(2)(B)~~ *OPTION 2.* The fund shall not be liable to pay in excess of
11 \$300,000 pursuant to any one judgment or settlement for any party against
12 such healthcare provider, subject to an aggregate limitation for all
13 judgments or settlements arising from all claims made in the fiscal year in
14 an amount of \$900,000 for such provider.

15 ~~(3)(C)~~ *OPTION 3.* The fund shall not be liable to pay in excess of
16 \$800,000 pursuant to any one judgment or settlement for any party against
17 such healthcare provider, subject to an aggregate limitation for all
18 judgments or settlements arising from all claims made in the fiscal year in
19 an amount of \$2,400,000 for such healthcare provider.

20 (2) (A) *OPTION 1.* *The fund shall not be liable to pay in excess of*
21 *\$500,000 pursuant to any one judgment or settlement for any party*
22 *against such healthcare provider; subject to an aggregate limitation for all*
23 *judgments or settlements arising from all claims made in the fiscal year in*
24 *an amount of \$1,500,000 for such healthcare provider.*

25 (B) *OPTION 2.* *The fund shall not be liable to pay in excess of*
26 *\$1,500,000 pursuant to any one judgment or settlement for any party*
27 *against such healthcare provider; subject to an aggregate limitation for all*
28 *judgments or settlements arising from all claims made in the fiscal year in*
29 *an amount of \$4,500,000 for such healthcare provider.*

30 ~~(m) The fund shall not be liable for any amounts due from a judgment~~
31 ~~or settlement against resident or nonresident inactive healthcare providers~~
32 ~~who first qualify as an inactive healthcare provider on or after July 1,~~
33 ~~1989, unless such healthcare provider has been in compliance with K.S.A.~~
34 ~~40-3402, and amendments thereto, for a period of not less than five years.~~
35 ~~If a healthcare provider has not been in compliance for five years, such~~
36 ~~healthcare provider may make application and payment for the coverage~~
37 ~~for the period while they are nonresident healthcare providers, nonresident~~
38 ~~self-insurers or resident or nonresident inactive healthcare providers to the~~
39 ~~fund. Such payment shall be made within 30 days after the healthcare~~
40 ~~provider ceases being an active healthcare provider and shall be made in~~
41 ~~an amount determined by the board of governors to be sufficient to fund~~
42 ~~anticipated claims based upon reasonably prudent actuarial principles. The~~
43 ~~provisions of this subsection shall not be applicable to any healthcare~~

1 provider that becomes inactive through death or retirement, or through
2 disability or circumstances beyond such healthcare provider's control, if
3 such healthcare provider notifies the board of governors and receives
4 approval for an exemption from the provisions of this subsection. Any
5 period spent in a postgraduate program of residency training approved by
6 the state board of healing arts shall not be included in computation of time
7 spent in compliance with the provisions of K.S.A. 40-3402, and
8 amendments thereto. The provisions of this subsection shall expire on July
9 1, 2014.

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

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

24 Sec. 3. K.S.A. 2020 Supp. 40-3408 is hereby amended to read as
25 follows: 40-3408. (a) ~~The insurer of a healthcare provider covered by the~~
26 ~~fund or self-insurer shall be liable only for the first \$200,000 of a claim for~~
27 ~~personal injury or death arising out of the rendering of or the failure to~~
28 ~~render professional services by such healthcare provider, subject to an~~
29 ~~annual aggregate of \$600,000 for all such claims against the healthcare~~
30 ~~provider. For a claim for personal injury or death arising out of the~~
31 ~~rendering of or the failure to render professional services by a healthcare~~
32 ~~provider, the insurer of a healthcare provider covered by the fund or self-~~
33 ~~insurer shall be liable only for the amount of basic coverage in effect on~~
34 ~~the date of the incident giving rise to the claim, subject to an annual~~
35 ~~aggregate amount of not less than three times the primary amount for all~~
36 ~~such claims against the healthcare provider. However, If any liability~~
37 ~~insurance in excess of such amounts is applicable to any claim or would be~~
38 ~~applicable in the absence of this act, any payments from the fund shall be~~
39 ~~excess over such amounts paid, payable or that would have been payable~~
40 ~~in the absence of this act.~~

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

1 paid, payable or that would have been payable in the absence of this act.

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

6 (1) From the rendering of or the failure to render professional
7 services by any other healthcare provider who is required by K.S.A. 40-
8 3402, and amendments thereto, to maintain professional liability insurance
9 in effect as a condition to rendering professional services as a healthcare
10 provider in this state; or

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

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

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

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

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

30 Sec. 4. K.S.A. 2020 Supp. 40-3424 is hereby amended to read as
31 follows: 40-3424. (a) For all claims made on and after July 1, 2014, the
32 amount of fund liability for a judgment or settlement against a resident or
33 nonresident inactive healthcare provider shall be equal to the minimum
34 professional liability insurance policy limits required pursuant to K.S.A.
35 40-3402, and amendments thereto, *and in effect on the date of the incident*
36 *giving rise to a claim*, plus the level of coverage selected by the healthcare
37 provider pursuant to K.S.A. 40-3403(l), and amendments thereto, at the
38 time of the incident giving rise to a claim. The aggregate fund liability for
39 all judgments and settlements arising from all claims made in any fiscal
40 year against a resident or nonresident inactive healthcare provider shall not
41 exceed \$3,000,000 in any fiscal year.

42 (b) ~~This section shall be part of and supplemental to the healthcare~~
43 ~~provider insurance availability act~~ *For all claims made for incidents*

1 *occurring on or after January 1, 2022, the aggregate fund liability for all*
2 *judgments and settlements made in any fiscal year against a resident or*
3 *nonresident inactive healthcare provider shall not exceed three times the*
4 *coverage amount in subsection (a).*

5 Sec. 5. K.S.A. 2020 Supp. 40-3402, 40-3403, 40-3408 and 40-3424
6 are hereby repealed.

7 Sec. 6. This act shall take effect and be in force from and after its
8 publication in the statute book.