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MEMORANDUM

To: Health Care Stabilization Fund Oversight Committee
From: Renae Jefferies, Assistant Revisor
Date: October 15, 2014
Subject: HB 2516

HB 2516 concerns health care provider liability insurance relating to mutual insurance companies organized to provide health care provider liability insurance and amends the health care provider insurance availability act (Act) which governs the operation of the Health Care Stabilization Fund (Fund). The bill makes continued Fund coverage for inactive health care providers (referred to as tail coverage) immediate upon cancellation or inactivation of a Kansas license and professional liability insurance and increases the level of tail coverage available. It makes tail coverage available for new professionals and facilities for prior acts; limits disclosure of Fund claims information to the public and makes technical amendments to the statutes.

Section 1 of the bill provides that for all claims made on or after July 1, 2014, the amount of Fund liability for a judgement or settlement against a resident or nonresident inactive health care provider shall be equal to the minimum professional liability insurance policy limits required pursuant to section 6 of the bill plus the level of coverage selected by the health care provider pursuant to subsection (l) of K. S. A. 40-3403 at the time of the incident giving rise to the claim.

Section 2 adds a new subsection (d) which provides that in addition to other requirements of the law, any plan or agreement for the sale, merger, consolidation or change of control of any company organized under the provisions of the Act shall not be effective unless such plan or agreement has been approved by resolution of the governing board of directors or board of trustees of the association which formed such company.

Section 5 of the bill amends definitions of the Act and adds a few new definitions.

“Health care provider” is amended to include as of January 1, 2015, physician assistants, nursing facilities, assistant living facilities, residential health care facilities and certain advanced practice registered nurses (certified in the role of nurse midwife) to the definition. It also clarifies what “health care provider” does not include and adds providers to the list of those excluded from the definition due to an inactive license or a federally active license that offers protection under the Federal Tort Claims Act.

Definitions for “Board and “Board of Directors are added to distinguish between two distinct boards and the appropriate new term replaces existing references to the two boards. It also provides a definition for “Locum tenens contract” which means a temporary agreement not to exceed 182 days per calendar year that employs a health care provider to actively render professional services in Kansas and “Professional services” which means patient care or other services authorized under the act governing licensure of a health care provider.

Section 6 deals with professional liability insurance coverage. It clarifies that the professional liability insurance and Fund coverage are a condition of licensure to practice in the state for health care providers. Further, the bill clarifies that Fund liability is based on the level of Fund coverage selected by a health care provider. The Fund is not liable for any claim not normally covered by a medical professional liability insurance policy.

Inactive health care providers are ensured of having Fund tail coverage equal to the amount of such provider’s primary insurance coverage plus the amount of Fund coverage selected and in effect at the time the event resulting in a claim of medical negligence occurred. Beginning July 1, 2014, the five year compliance period requirement prior to being eligible for tail coverage is removed. Now, any health care provider has tail coverage immediately upon canceling or inactivating a Kansas license and the provider’s professional liability insurance policy.

In lieu of a claims made policy otherwise required under K.S.A. 40-3402 (section 6 of the bill), a nonresident health care provider employed pursuant to a locum tenens contract to provide services in Kansas as a health care provider may obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits required by K.S.A. 40-3402.

Section 7 provides that the Board of Governors of the Fund is authorized to grant temporary exceptions from the professional liability insurance and Fund coverage under exceptional circumstances. It also makes a technical change in several places striking “director of

accounts and reports” and replacing those terms with “secretary of administration. Additionally, it provides that in “in the event of a claim against a health care provider for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, the liability of the fund shall be limited to the amount of coverage selected by the health care provider at the time of the incident giving rise to the claim.”

The membership of the Board of Governors is increased from 10 to 11. The eleventh member is to be a representative of adult care homes. All employees of the Fund employed by the Board are unclassified employees. Section 7 also requires that health care provider surcharge refunds are not to be issued until notice cancellation requirements are met. (See K.S.A. 40-3402).

Other changes in the bill require the Health Care Provider Insurance Availability Plan (Plan) to make available professional liability insurance coverage for prior acts. Such policies are required to have limits of coverage not to exceed \$1.0 million per claim(\$3.0 million annual aggregate liability for all claims made as a result of personal injury within the state on or before December 31, 2014. The tail coverage is available only to new professionals and facilities made part of the “health care provider” definition. Such providers must be in compliance with the coverage requirements on January 1, 2015.

Time allowed for insurers providing basic professional liability insurance coverage to notify the Board of Governors of such coverage for the purpose of hospital credentialing has been shortened. Insurers failing to report any written or oral claim or action for damages for malpractice to the appropriate state health care provider regulatory agency and the Board of Governors no longer face suspension, revocation, denial of renewal, or cancellation of the insurer’s certificate of authority to do business in Kansas or certificate of self-insurance. Instead the Board will level a civil fine against the insurer for such violation.

Membership of the Board of Director of each plan is reapportioned to replace one of three members who are representatives of foreign (out-of-state) insurers with the chairperson of the Board of Governors or the chairperson’s designee and to replace one of two members of the general public with an additional health care provider.