

## **Health Care Provider Liability Insurance and Amendments to the Health Care Provider Insurance Availability Act; HB 2516**

**HB 2516** amends provisions relating to the operation of mutual insurance companies organized to provide health care provider liability insurance and also amends the Health Care Provider Insurance Availability Act (Act), which governs the operation of the Health Care Stabilization Fund (HCSF). Further, the bill makes continued HCSF coverage for inactive health care providers (commonly 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; makes tail coverage available for new professionals and facilities for prior acts; limits disclosure of HCSF claims information to the public; and makes technical amendments.

Specific changes are described below.

### ***Health Care Provider Liability Insurance Companies***

The bill makes the following changes affecting mutual insurance companies organized to provide health care provider liability insurance:

- Requires approval from the sponsoring organization of the mutual insurance company before the company can undergo a change of control, sale, or merger; and
- Expands the types of insurance products that can be sold to include all insurance policies statutorily authorized for sale by mutual insurance companies other than life insurance.

### ***Health Care Provider Insurance Availability Act***

#### ***Definitions***

The following changes and additions are made to definitions in the Act:

- “Health care provider” is amended to:
  - Include, as of January 1, 2015, physician assistants, nursing facilities, assisted living facilities, residential health care facilities, and certain advance practice registered nurses (certified in the role of nurse midwife);
  - Clarify what “health care provider” does not include; and
  - Add 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 boards; and
- “*Locum tenens* contract” and “professional services” are defined.

Throughout the bill, references to named state agencies are replaced with references to the state of Kansas. References to the Director of Accounts and Reports, a position no longer in existence due to agency reorganization, are replaced with references to the Secretary of Administration or the State of Kansas.

#### *Disclosure of Information*

The bill amends prior HCSF payment requirements to specify that payments from the HCSF for attorney fees, expert witness fees, and other claims costs are not subject to the public inspection requirements held in the Kansas Open Records Act (KSA 45-218). Further, the bill provides that this confidentiality provision expires on July 1, 2019, unless the Legislature reviews and reenacts it.

#### *Liability Insurance Coverage*

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

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

The bill clarifies that any non-resident health care provider who maintains an active Kansas license is required to maintain continuous professional liability coverage. Clarification is made as to when a non-resident health care provider is required to pay the premium surcharge. An exemption is made for non-resident health care providers who provide services under a temporary agreement in the state to require occurrence coverage rather than claims made coverage.

The bill provides that health care provider surcharge refunds are not to be issued until notice of cancellation requirements are met.

The Board of Governors of the HCSF is authorized to grant temporary exemptions from the professional liability insurance and HCSF coverage under exceptional circumstances.

### *New Health Care Providers—Tail Coverage, Transition Period*

The bill also requires the Health Care Provider Insurance Availability Plan (Availability 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 or death arising out of the rendering of or the failure to render professional services within the state on or before December 31, 2014. The tail coverage is available only to the new professionals and facilities made part of the definition of “health care provider” who are in compliance with the coverage requirements specified in KSA 40-3402 on January 1, 2015. The premiums for this coverage are to be based upon reasonably prudent actuarial principles. The tail coverage provisions for new health care providers expire on January 1, 2016. (The Availability Plan is a joint underwriting association created under the Act to provide commercial insurance coverage for health care providers unable to purchase coverage.)

### *Insurer Responsibilities*

The 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 is shortened.

Insurers failing to report any written or oral claim or action for damages for medical 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 the state or certificate of self-insurance. Instead, if a civil fine is assessed by the Board of Governors for such violation, the reason for and the amount of the civil fine are reported to the Insurance Commissioner.

### *Board of Directors*

Membership to the Board of Directors 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.

### *Board of Governors*

The bill increases membership to the Board of Governors (by new definition known as the “Board”) of the HCSF from 10 to 11 members by adding a representative of adult care facilities. All employees of the HCSF who are employed by the Board are made unclassified employees.