40-3116.   Assigned claims plan; availability of personal injury protection benefits under plan; subrogation; persons excluded; powers of commissioner; participation by insurers and self-insurers required; violations, penalties. (a) Insurers and self-insurers are hereby directed to organize and maintain an assigned claims plan to provide that any person, who suffers injury in this state may obtain personal injury protection benefits through such plan if:

(1)   Personal injury protection benefits are not available to the injured person, except that personal injury protection benefits shall not be deemed unavailable to any person suffering injury while such person was the operator of a motorcycle or motor-driven cycle, for which the owner thereof has rejected personal injury protection benefits pursuant to subsection (f) of K.S.A. 40-3107, and amendments thereto;

(2)   Motor vehicle liability insurance or self-insurance applicable to the injury cannot be identified;

(3)   Personal injury protection benefits applicable to the injury are inadequate to provide the contracted-for benefits because of financial inability of an insurer or self-insurer to fulfill its obligation; however, benefits available through the assigned claims plan shall be excess over any benefits paid or payable through the Kansas insurance guaranty association. If the personal injury protection benefits are not paid by the Kansas insurance guaranty association within the limitation of time specified in this act, such benefits shall be paid by the assigned claims plan. Payments made by the assigned claims plan pursuant to this section shall constitute covered claims under K.S.A. 40-2901 et seq., and amendments thereto.

(b)   If a claim qualifies for assignment under this section, the assigned claims plan or any insurer or self-insurer to whom the claim is assigned shall be subrogated to all of the rights of the claimant against any insurer or self-insurer, its successor in interest or substitute, legally obligated to provide personal injury protection benefits to the claimant, for any of such benefits provided by the assignment.

(c)   A person shall not be entitled to personal injury protection benefits through the assigned claims plan with respect to injury which such person has sustained if, at the time of such injury, such person was the owner of a motor vehicle for which a policy of motor vehicle liability insurance is required under this act and such person failed to have such policy in effect.

(d)   The assigned claims plan shall be governed by such rules and regulations as are necessary for its operation and for the assessment of costs, which shall be approved by the commissioner. Any claim brought through said plan shall be assigned to an insurer or self-insurer, in accordance with the approved regulations of operation, and such insurer or self-insurer, after the assignment, shall have the same rights and obligations it would have if, prior to such assignment, it had issued a motor vehicle liability insurance policy providing personal injury protection benefits applicable to the loss or expenses incurred or was a self-insurer providing such benefits. Any party accepting benefits hereunder shall have such rights and obligations as such person would have if a motor vehicle liability insurance policy providing personal injury protection benefits were issued to such person.

(e)   No insurer shall write any motor vehicle liability insurance policy in this state unless the insurer participates in the assigned claims plan organized pursuant to this section, nor shall any person qualify as a self-insurer pursuant to subsection (f) of K.S.A. 40-3104, and amendments thereto, unless such person agrees to participate in such assigned claims plan. Any insurer or self-insurer required to participate in the assigned claims plan who violates this subsection shall be assessed a civil penalty of not more than $5,000 for each policy issued or self-insurance certificate obtained in violation thereof.

History: L. 1974, ch. 193, § 16; L. 1987, ch. 173, § 6; Jan. 1, 1988.