

**40-3408. Liability of insurer or self-insurer for injury or death arising out of act or omission of health care provider, limitation; fund coverage excess over liability insurance coverage; permissive exclusions from coverage.** (a) The insurer of a health care provider covered by the fund or self-insurer shall be liable only for the first \$200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, subject to an annual aggregate of \$600,000 for all such claims against the health care provider. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

(b) If any inactive health care provider has liability insurance in effect which is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

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

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

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

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

**History:** L. 1976, ch. 231, § 8; L. 1984, ch. 238, § 5; L. 1986, ch. 229, § 30; L. 1990, ch. 174, § 3; L. 1997, ch. 134, § 4; L. 2014, ch. 56, § 12; July 1.