



To: House Insurance and Pensions Committee

From: Rachelle Colombo
Executive Director

Date: February 22, 2021

Subject: HB 2380; Concerning the Health Care Stabilization Fund

The Kansas Medical Society appreciates the opportunity to submit the following comments in support of HB 2380, which amends Health Care Provider Insurance Availability Act, found at KSA 40-3401 *et seq.* We would first like to provide some background and context to this bill.

Since 1976, Kansas has had a unique arrangement regarding professional liability (medical malpractice) insurance for physicians, hospitals and several other categories of health care providers. In response to a nearly complete collapse of the private insurance markets caused by a growing medical malpractice crisis in the 1970's, the legislature enacted the Health Care Provider Insurance Availability Act, which is a structure that combines insurance coverage from commercial markets with a state-operated but privately funded insurance facility called the Health Care Stabilization Fund (the Fund). Health care providers are required to purchase liability insurance from this structure in order to render professional services in Kansas. The insurance purchased by health care providers through this mechanism thus has two components: "basic insurance" which is purchased from the commercial market, and "excess insurance", which is purchased from the Fund. The Fund is financed almost entirely by insurance premiums paid by covered health care providers, except for faculty and resident physicians at the KU School of Medicine, whose insurance costs are paid by the state of Kansas.

The Fund serves two very important purposes – providing an assured source of liability insurance for health care providers, and ensuring that there is a source of recovery for patients who are injured as a result of medical malpractice. This system has worked exceedingly well for over four decades, and it has provided tremendous stability and benefit to patients, health care providers and the state of Kansas.

Most of the amendments contained in HB 2830 are minor updates or technical in nature. We have worked closely with the Kansas Insurance Department as well as the Health Care Stabilization Fund on drafting this legislation. The principal thrust of the bill is intended to address two areas that need attention to reflect current needs as well as anticipated insurance market conditions in the coming years. The two main changes

addressed in the bill are found in Section 2, on pages 12 – 13, and are summarized as follows:

- **minimum coverage requirement** - effective with all policies issued after January 1, 2022, the new minimum insurance limits required of healthcare providers would increase from the current \$300,000 per claim to \$1 million per claim. It would accomplish this by increasing both the so-called “basic coverage” (the insurance provided by private insurers) from the current \$200,000 per claim to \$500,000 per claim, and also increasing the Fund’s “excess” coverage minimum from the current \$100,000 per claim to \$500,000 per claim. The last time the basic coverage and Fund coverage limits were addressed by the legislature was over thirty years ago (1984 SB 507 and 1989 HB 2501). In addition to this much-needed updating of the relationship between the basic and excess insurance coverage limits, the proposed change also addresses a concern that has been noted by our Supreme Court, that the minimum statutory coverage requirement has not been adjusted in over three decades.
- **excess coverage limits** - the bill also allows the Fund to offer a higher limit of excess coverage than that which it is able to do today. Again, much has changed in the insurance markets over the past three decades, and particularly in the “excess limits” or reinsurance markets. One of the driving forces for the establishment of the HCSF in the 1970’s was the inability of physicians, hospitals and other health care providers to obtain adequate coverage limits from the excess or reinsurance markets. We are seeing a concerning trend developing again today, with reinsurance markets significantly contracting and severely limiting their underwriting of these higher insurance limit policies. Over the past year the two largest providers of excess limits reinsurance have announced their plans to exit the medical malpractice line of business, which is very troubling news for the health care community.

By allowing the Fund to sell a higher layer of coverage to those providers who would like to purchase \$2 million in coverage rather than \$1 million in total insurance, we can ensure the availability of such coverage. Today, about 95% of the health care providers covered by the Fund select the coverage option which gives them \$1 million in coverage, making the two lower coverage options currently offered, for all practical purposes, obsolete. The amendments in this bill will eliminate those two largely unused coverage options, and make available just two options going forward, one for a total package of \$1 million, and a second option that provides a total package of \$2 million for those providers who desire it.

There are other amendments included in the bill that are largely technical, and which implement the changes discussed above relating to the basic coverage required, and the new optional Fund coverage limits proposed. Those changes appear for the most part in Section 2, on pages 12 -13, as noted above; and in Section 3, page 14; and in Section 4, on pages 15 -16. Also in Section 2, on pages 13 -14, another technical amendment deletes language that expired in 2014.

Two other amendments that aren't technical in nature, but are not controversial, appear also in Section 2. The first is found on pages 4 – 5, and it amends provisions related to the HCSF Board of Governors, the eleven-member governing body responsible for the operation of the HCSF, which is appointed by the Insurance Commissioner. The only substantive change included in this proposed amendment allows KMS the flexibility to include one non-physician representative in its list of nominees that it provides to the Commissioner from time to time when there is a vacancy.

The other change is found on page 8, in subsection (d). This change was requested by the HCSF, and it affects the limitation on periodic or installment payments that the Fund makes in the case of judgments or settlements. This amendment would merely increase the current payment limitation from \$300,000 to \$500,000, which we believe is consistent with the changes made to the coverage requirements elsewhere in the bill.

Over the past two years we have worked closely with all of the stakeholders in drafting this bill, and we are not aware of any opponents to it. We have included suggested changes from the Insurance Department, the Health Care Stabilization Fund, and even the Kansas Trial Lawyers Association. These amendments will help update the basic insurance coverage requirements in the law, and allow the Fund to offer a higher limit of excess insurance to providers who may desire it. We urge your support of HB 2380. Thank you.