



To: Kansas Health Stabilization Fund Legislative Oversight Committee

From: Kurt Scott, KAMMCO President & CEO

Date: November 15, 2022

Re: Report of the Kansas Health Care Provider Insurance Availability Plan (“Plan”) Servicing Carrier and Update on Health Care Professional Liability Market Conditions

Kansas Medical Mutual Insurance Company, Inc. (“KAMMCO”) is a Kansas domestic mutual insurance company formed in 1989 by the Kansas Medical Society to insure its members for medical professional liability and related lines of insurance. KAMMCO began insuring hospitals and other health care facilities in 1996 and is the preferred company of the Kansas Hospital Association and Leading Age of Kansas. KAMMCO insures roughly half of the healthcare providers in the State of Kansas. In addition, KAMMCO has served as the Servicing Carrier for the Plan since July 1, 1990.

In accordance with the provisions of K.S.A. 40-3413, the Plan serves as the “insurer of last resort” for defined healthcare providers who are required by statute to maintain professional liability insurance but are unable to obtain it in the regular market. The Plan currently insures 362 health providers (**Exhibit 1**). Exhibit 1 also serves as a reflection of the cyclical nature of the medical professional market over the years, as the market hardens or becomes more restrictive, healthcare providers gravitate to the Plan to find insurance. When market conditions soften or become less restrictive, healthcare providers leave the Plan and rejoin those insured by the regular market. The period from 2002-2010 demonstrates the effects of a hard market cycle, where underwriting requirements tighten, and prices move higher. The period beginning in 2021 may signal the beginning of a tightening cycle. Much of the recent rise of healthcare providers insured by the Plan come from market conditions for Adult Care Facilities, a likely result of conditions brought on by the COVID-19 pandemic.

History of Adult Care Facilities Insured by the Plan

<u>Year</u>	<u>Insured</u>
2019	8
2020	20
2021	49
2022	58

While the COVID-19 pandemic had an affect on healthcare delivery nationwide, in many ways it also accelerated trends which were already underway in healthcare and in the healthcare professional liability insurance market. After more than a decade of profitable underwriting results, the healthcare

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professional liability line of insurance has produced underwriting losses for the past five years. There are various factors contributing to the underwriting losses experienced by the insurance industry, including but not limited to increasing claim severity, an increase in the frequency of “mega verdicts”, withdrawal of reinsurance capacity with tightening terms and increasing rates for reinsurance programs, inadequacy of primary insurer rates due to a consolidating healthcare market creating greater competition for the remaining business opportunities, in addition to several state specific issues. In Kansas, the uncertainty surrounding the State’s cap on non-economic damages resulting from the Hilburn v. Enerpipe Limited Kansas Supreme Court opinion leaves insurance companies wondering whether the cap is still applicable in medical professional liability cases. This uncertainty also tends to hinder the ability to efficiently resolve malpractice claims in a fair and reasonable manner, as trial lawyers hope to achieve “mega verdicts” in Kansas trial courts. In short, there are many headwinds affecting the medical professional liability insurance environment in Kansas and countrywide.

Legislation passed by the Kansas Legislature over the past few sessions to provide a level of immunity to healthcare providers appear to have mitigated the effects of COVID-19 related liability issues. A limited number of COVID related claims have been made in Kansas and we are unaware of any claim payments on these claims at this date. Also, Senate Bill No. 78 of the 2021 Session of the Kansas Legislature, which increases the basic coverage from \$200,000 to \$500,000 per claim, appears to be working without any shocks to the insurance marketplace or loss of any insurers offering coverage.

These challenges to the healthcare environment, taken together with macro-economic conditions of inflation and rising interest rates, are resulting in rate increases being felt by Kansas healthcare providers across all lines of insurance. In an era of rising costs and lower reimbursements, healthcare providers across the country are under stress, especially considering their experiences during the COVID-19 pandemic. These conditions seem likely to create additional risks and liabilities, which will be felt by the industry and the Health Care Stabilization into the future.

