

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2380

By Committee on Insurance and Pensions

2-12

1 AN ACT concerning the healthcare stabilization fund; relating to
2 minimum professional liability insurance coverage requirements;
3 changing membership of the board of governors; **service of notice**
4 **thereon**; amending **K.S.A. 40-3409** and K.S.A. 2020 Supp. 40-3402,
5 40-3403, 40-3408, **40-3414** and 40-3424 and repealing the existing
6 sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2020 Supp. 40-3402 is hereby amended to
10 read as follows: 40-3402. (a) *Prior to January 1, 2022*, a policy of
11 professional liability insurance approved by the commissioner and issued
12 by an insurer duly authorized to transact business in this state in which the
13 limit of the insurer's liability is not less than \$200,000 per claim, subject to
14 not less than a \$600,000 annual aggregate for all claims made during the
15 policy period, shall be maintained in effect by each resident healthcare
16 provider as a condition of active licensure or other statutory authorization
17 to render professional service as a healthcare provider in this state, unless
18 such healthcare provider is a self-insurer. *For all new policies and policies*
19 *that renew on and after January 1, 2022*, a policy of professional liability
20 insurance approved by the commissioner and issued by an insurer duly
21 authorized to transact business in this state in which the limit of the
22 insurer's liability is not less than \$500,000 per claim, subject to not less
23 than a \$1,500,000 annual aggregate for all claims made during the policy
24 period, shall be maintained by each resident healthcare provider as a
25 condition of active licensure or other statutory authorization to render
26 professional service as a healthcare provider in this state, unless such
27 healthcare provider is a self-insurer. This provision shall not apply to
28 optometrists and pharmacists on ~~or~~ and after July 1, 1991 ~~nor~~, to physical
29 therapists on and after July 1, 1995 ~~nor~~, or to health maintenance
30 organizations on ~~or~~ and after July 1, 1997. Such policy shall provide as a
31 minimum coverage for claims made during the term of the policy ~~which~~
32 *that* were incurred during the term of such policy or during the prior term
33 of a similar policy. Any insurer offering such policy of professional
34 liability insurance to any healthcare provider may offer to such healthcare
35 provider a policy as prescribed in this section with deductible options.
36 Such deductible shall be within such policy limits.

1 (1) Each insurer providing basic coverage shall, within 30 days after
2 the effective date of any policy issued in accordance with this subsection,
3 notify the board of governors that such coverage is or will be in effect.
4 Such notification shall be on a form approved by the board of governors
5 and shall include information identifying the professional liability policy
6 issued or to be issued, the name and address of all healthcare providers
7 covered by the policy, the amount of the annual premium, the effective and
8 expiration dates of the coverage and such other information as the board of
9 governors shall require. A copy of the notice required by this subsection
10 shall be furnished to the named insured.

11 (2) In the event of termination of basic coverage by cancellation,
12 nonrenewal, expiration or otherwise by either the insurer or named
13 insured, notice of such termination shall be furnished by the insurer to the
14 board of governors, the state agency which licenses, registers or certifies
15 the named insured and the named insured. Such notice shall be provided
16 no less than 30 days prior to the effective date of any termination initiated
17 by the insurer or within 10 business days after the date coverage is
18 terminated at the request of the named insured and shall include the name
19 and address of the healthcare provider or providers for whom basic
20 coverage is terminated and the date basic coverage will cease to be in
21 effect. No basic coverage shall be terminated by cancellation or failure to
22 renew by the insurer unless such insurer provides a notice of termination
23 as required by this subsection.

24 (3) Any professional liability insurance policy issued, delivered or in
25 effect in this state on and after July 1, 1976, shall contain or be endorsed to
26 provide basic coverage as required by subsection (a) ~~of this section~~.
27 Notwithstanding any omitted or inconsistent language, any contract of
28 professional liability insurance shall be construed to obligate the insurer to
29 meet all the mandatory requirements and obligations of this act. The
30 liability of an insurer for claims made prior to July 1, 1984, shall not
31 exceed those limits of insurance provided by such policy prior to July 1,
32 1984.

33 (b) A nonresident healthcare provider shall not be licensed to actively
34 render professional service as a healthcare provider in this state unless
35 such healthcare provider maintains continuous coverage in effect as
36 prescribed by subsection (a), except such coverage may be provided by a
37 nonadmitted insurer who has filed the form required by subsection (b)(1).
38 This provision shall not apply to optometrists and pharmacists ~~on or~~ *and*
39 ~~after July 1, 1991 nor,~~ *or* to physical therapists on and after July 1, 1995.

40 (1) Every insurance company authorized to transact business in this
41 state, that is authorized to issue professional liability insurance in any
42 jurisdiction, shall file with the commissioner, as a condition of its
43 continued transaction of business within this state, a form prescribed by

1 the commissioner declaring that its professional liability insurance
2 policies, wherever issued, shall be deemed to provide at least the insurance
3 required by this subsection when the insured is rendering professional
4 services as a nonresident healthcare provider in this state. Any
5 nonadmitted insurer may file such a form.

6 (2) Every nonresident healthcare provider ~~who~~ *that* is required to
7 maintain basic coverage pursuant to this subsection shall pay the surcharge
8 levied by the board of governors pursuant to ~~subsection (a)~~ of K.S.A. 40-
9 3404(a), and amendments thereto, directly to the board of governors and
10 shall furnish to the board of governors the information required in
11 subsection (a)(1).

12 (c) Every healthcare provider that is a self-insurer, the university of
13 Kansas medical center for persons engaged in residency training, as
14 described in ~~subsection (r)(1)~~ of K.S.A. 40-3401(r)(1), and amendments
15 thereto, the employers of persons engaged in residency training, as
16 described in ~~subsection (r)(2)~~ of K.S.A. 40-3401(r)(2), and amendments
17 thereto, the private practice corporations or foundations and their full-time
18 physician faculty employed by the university of Kansas medical center or
19 a medical care facility or mental health center for self-insurers under
20 ~~subsection (e)~~ of K.S.A. 40-3414(e), and amendments thereto, shall pay
21 the surcharge levied by the board of governors pursuant to ~~subsection (a)~~
22 of K.S.A. 40-3404(a), and amendments thereto, directly to the board of
23 governors and shall furnish to the board of governors the information
24 required in ~~subsection~~ *subsections* (a)(1) and (a)(2).

25 (d) In lieu of a claims made policy otherwise required under this
26 section, a person engaged in residency training who is providing services
27 as a healthcare provider but, while providing such services, is not covered
28 by the self-insurance provisions of ~~subsection (d)~~ of K.S.A. 40-3414(d),
29 and amendments thereto, may obtain basic coverage under an occurrence
30 form policy, if such policy provides professional liability insurance
31 coverage and limits ~~which~~ *that* are substantially the same as the
32 professional liability insurance coverage and limits required by ~~subsection~~
33 ~~(a)~~ of K.S.A. 40-3402(a), and amendments thereto. Where such occurrence
34 form policy is in effect, the provisions of the healthcare provider insurance
35 availability act referring to claims made policies shall be construed to
36 mean occurrence form policies.

37 (e) In lieu of a claims made policy otherwise required under this
38 section, a nonresident healthcare provider employed pursuant to a locum
39 tenens contract to provide services in this state as a healthcare provider
40 may obtain basic coverage under an occurrence form policy, if such policy
41 provides professional liability insurance coverage and limits ~~which~~ *that* are
42 substantially the same as the professional liability insurance coverage and
43 limits required by K.S.A. 40-3402, and amendments thereto. Where such

1 occurrence form policy is in effect, the provisions of the healthcare
2 provider insurance availability act referring to claims made policies shall
3 be construed to mean occurrence form policies.

4 Sec. 2. K.S.A. 2020 Supp. 40-3403 is hereby amended to read as
5 follows: 40-3403. (a) For the purpose of paying damages for personal
6 injury or death arising out of the rendering of or the failure to render
7 professional services by a healthcare provider, self-insurer or inactive
8 health care provider subsequent to the time that such healthcare provider
9 or self-insurer has qualified for coverage under the provisions of this act,
10 there is hereby established the healthcare stabilization fund. The fund shall
11 be held in trust in the state treasury and accounted for separately from
12 other state funds. The board of governors shall administer the fund or
13 contract for the administration of the fund with an insurance company
14 authorized to do business in this state.

15 (b) (1) There is hereby created a board of governors that shall be
16 composed of such members and shall have such powers, duties and
17 functions as are prescribed by this act. The board of governors shall:

18 (A) Administer the fund and exercise and perform other powers,
19 duties and functions required of the board under the healthcare provider
20 insurance availability act;

21 (B) provide advice, information and testimony to the appropriate
22 licensing or disciplinary authority regarding the qualifications of a
23 healthcare provider;

24 (C) prepare and publish, on or before October 1 of each year, a report
25 for submission to the healthcare stabilization fund oversight committee
26 that includes a summary of the fund's activity during the preceding fiscal
27 year, including, but not limited to, the amount collected from surcharges,
28 the highest and lowest surcharges assessed, the amount paid from the fund,
29 the number of judgments paid from the fund, the number of settlements
30 paid from the fund and the fund balance at the end of the fiscal year; and

31 (D) have the authority to grant temporary exemptions from the
32 provisions of K.S.A. 40-3402 and 40-3404, and amendments thereto, to
33 healthcare providers who have exceptional circumstances and verify in
34 writing that the healthcare provider will not render professional services in
35 this state during the period of exemption. Whenever the board grants such
36 an exemption, the board shall notify the state agency that licenses the
37 exempted healthcare provider.

38 (2) The board shall consist of 11 persons appointed by the
39 commissioner of insurance, as provided by this subsection and as follows:

40 (A) Three members who are *on a list of nominees submitted to the*
41 *commissioner by the Kansas medical society, at least two of whom are*
42 *doctors of medicine who are licensed to practice medicine and surgery in*
43 ~~Kansas who are doctors of medicine and who are on a list of nominees~~

1 ~~submitted to the commissioner by the Kansas medical society;~~

2 (B) three members who are *on a list of nominees submitted to the*
3 *commissioner by the Kansas hospital association and who are*
4 *representatives of Kansas hospitals*~~and who are on a list of nominees~~
5 ~~submitted to the commissioner by the Kansas hospital association;~~

6 (C) two members *who are on a list of nominees submitted to the*
7 *commissioner by the Kansas association of osteopathic medicine, who are*
8 *licensed to practice medicine and surgery in Kansas and who are doctors*
9 *of osteopathic medicine*~~and who are on a list of nominees submitted to the~~
10 ~~commissioner by the Kansas association of osteopathic medicine;~~

11 (D) one member who is *on a list of nominees submitted to the*
12 *commissioner by the Kansas chiropractic association and who is licensed*
13 *to practice chiropractic in Kansas*~~and who is on a list of nominees~~
14 ~~submitted to the commissioner by the Kansas chiropractic association;~~

15 (E) one member who is *on a list of nominees submitted to the*
16 *commissioner by the Kansas association of nurse anesthetists and who is a*
17 *licensed professional nurse authorized to practice as a registered nurse*
18 *anesthetist*~~who is on a list of nominees submitted to the commissioner by~~
19 ~~the Kansas association of nurse anesthetists; and~~

20 (F) one member who is *on a list of nominees submitted to the*
21 *commissioner by statewide associations comprised of members who*
22 *represent adult care homes and who is a representative of adult care homes*
23 *who is on a list of nominees submitted to the commissioner by statewide*
24 *associations comprised of members who represent adult care homes.*

25 (3) When a vacancy occurs in the membership of the board of
26 governors created by this act, the commissioner shall appoint a successor
27 of like qualifications from a list of three nominees submitted to the
28 commissioner by the professional society or association prescribed by this
29 section for the category of healthcare provider required for the vacant
30 position on the board of governors. All appointments made shall be for a
31 term of office of four years, but no member shall be appointed for more
32 than two successive four-year terms. Each member shall serve until a
33 successor is appointed and qualified. Whenever a vacancy occurs in the
34 membership of the board of governors created by this act for any reason
35 other than the expiration of a member's term of office, the commissioner
36 shall appoint a successor of like qualifications to fill the unexpired term. In
37 each case of a vacancy occurring in the membership of the board of
38 governors, the commissioner shall notify the professional society or
39 association that represents the category of healthcare provider required for
40 the vacant position and request a list of three nominations of healthcare
41 providers from which to make the appointment.

42 (4) The board of governors shall organize in July of each year and
43 shall elect a chairperson and vice-chairperson from among its membership.

1 Meetings shall be called by the chairperson or by a written notice signed
2 by three members of the board.

3 (5) The board of governors, in addition to other duties imposed by
4 this act, shall study and evaluate the operation of the fund and make such
5 recommendations to the legislature as may be appropriate to ensure the
6 viability of the fund.

7 (6) (A) The board shall appoint an executive director who shall be in
8 the unclassified service under the Kansas civil service act and may employ
9 attorneys and other employees who shall also be in the unclassified service
10 under the Kansas civil service act. Such executive director, attorneys and
11 other employees shall receive compensation fixed by the board, in
12 accordance with appropriation acts of the legislature, not subject to
13 approval of the governor.

14 (B) The board may provide all office space, services, equipment,
15 materials and supplies, and all budgeting, personnel, purchasing and
16 related management functions required by the board in the exercise of the
17 powers, duties and functions imposed or authorized by the healthcare
18 provider insurance availability act or may enter into a contract with the
19 commissioner of insurance for the provision, by the commissioner, of all
20 or any part thereof.

21 (7) The commissioner shall:

22 (A) Provide technical and administrative assistance to the board of
23 governors with respect to administration of the fund upon request of the
24 board; *and*

25 (B) provide such expertise as the board may reasonably request with
26 respect to evaluation of claims or potential claims.

27 (c) Except as otherwise provided by any other provision of this act,
28 the fund shall be liable to pay:

29 (1) Any amount due from a judgment or settlement that is in excess
30 of the basic coverage liability of all liable resident healthcare providers or
31 resident self-insurers for any personal injury or death arising out of the
32 rendering of or the failure to render professional services within or without
33 this state;

34 (2) subject to the provisions of ~~subsections subsection (f) and (m)~~,
35 any amount due from a judgment or settlement that is in excess of the
36 basic coverage liability of all liable nonresident healthcare providers or
37 nonresident self-insurers for any such injury or death arising out of the
38 rendering or the failure to render professional services within this state but
39 in no event shall the fund be obligated for claims against nonresident
40 healthcare providers or nonresident self-insurers who have not complied
41 with this act or for claims against nonresident healthcare providers or
42 nonresident self-insurers that arose outside of this state;

43 (3) subject to the provisions of ~~subsections subsection (f) and (m)~~,

1 any amount due from a judgment or settlement against a resident inactive
2 healthcare provider for any such injury or death arising out of the
3 rendering of or failure to render professional services;

4 (4) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,
5 any amount due from a judgment or settlement against a nonresident
6 inactive healthcare provider for any injury or death arising out of the
7 rendering or failure to render professional services within this state, but in
8 no event shall the fund be obligated for claims against *nonresident inactive*
9 *healthcare providers*;

10 (A) ~~Nonresident inactive healthcare providers~~—Who have not
11 complied with this act; or

12 (B) ~~nonresident inactive healthcare providers~~ for claims that arose
13 outside of this state, unless such healthcare provider was a resident
14 healthcare provider or resident self-insurer at the time such act occurred;

15 (5) subject to K.S.A. 40-3411(b), and amendments thereto, reasonable
16 and necessary expenses for attorney fees, depositions, expert witnesses and
17 other costs incurred in defending the fund against claims, and such
18 expenditures shall not be subject to the provisions of K.S.A. 75-3738
19 through 75-3744, and amendments thereto;

20 (6) any amounts expended for reinsurance obtained to protect the best
21 interests of the fund purchased by the board of governors, which purchase
22 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
23 amendments thereto, but shall not be subject to the provisions of K.S.A.
24 75-4101, and amendments thereto;

25 (7) reasonable and necessary actuarial expenses incurred in
26 administering the act, including expenses for any actuarial studies
27 contracted for by the legislative coordinating council, and such
28 expenditures shall not be subject to the provisions of K.S.A. 75-3738
29 through 75-3744, and amendments thereto;

30 (8) periodically to the plan or plans, any amount due pursuant to
31 K.S.A. 40-3413(a)(3), and amendments thereto;

32 (9) reasonable and necessary expenses incurred by the board of
33 governors in the administration of the fund or in the performance of other
34 powers, duties or functions of the board under the healthcare provider
35 insurance availability act;

36 (10) surcharge refunds payable when the notice of cancellation
37 requirements of K.S.A. 40-3402, and amendments thereto, are met;

38 (11) subject to K.S.A. 40-3411(b), and amendments thereto,
39 reasonable and necessary expenses for attorney fees and other costs
40 incurred in defending a person engaged or who was engaged in residency
41 training or the private practice corporations or foundations and their full-
42 time physician faculty employed by the university of Kansas medical
43 center or any nonprofit corporation organized to administer the graduate

1 medical education programs of community hospitals or medical care
2 facilities affiliated with the university of Kansas school of medicine from
3 claims for personal injury or death arising out of the rendering of or the
4 failure to render professional services by such healthcare provider;

5 (12) ~~notwithstanding the provisions of subsection (m),~~ any amount
6 due from a judgment or settlement for an injury or death arising out of the
7 rendering of or failure to render professional services by a person engaged
8 or who was engaged in residency training or the private practice
9 corporations or foundations and their full-time physician faculty employed
10 by the university of Kansas medical center or any nonprofit corporation
11 organized to administer the graduate medical education programs of
12 community hospitals or medical care facilities affiliated with the university
13 of Kansas school of medicine;

14 (13) subject to the provisions of K.S.A. 65-429, and amendments
15 thereto, reasonable and necessary expenses for the development and
16 promotion of risk management education programs and for the medical
17 care facility licensure and risk management survey functions carried out
18 under K.S.A. 65-429, and amendments thereto;

19 (14) ~~notwithstanding the provisions of subsection (m),~~ any amount,
20 but not less than the required basic coverage limits, owed pursuant to a
21 judgment or settlement for any injury or death arising out of the rendering
22 of or failure to render professional services by a person, other than a
23 person described in paragraph (12), who was engaged in a postgraduate
24 program of residency training approved by the state board of healing arts
25 but who, at the time the claim was made, was no longer engaged in such
26 residency program;

27 (15) subject to K.S.A. 40-3411(b), and amendments thereto,
28 reasonable and necessary expenses for attorney fees and other costs
29 incurred in defending a person described in paragraph (14);

30 (16) expenses incurred by the commissioner in the performance of
31 duties and functions imposed upon the commissioner by the healthcare
32 provider insurance availability act, and expenses incurred by the
33 commissioner in the performance of duties and functions under contracts
34 entered into between the board and the commissioner as authorized by this
35 section; and

36 (17) periodically to the state general fund reimbursements of amounts
37 paid to members of the healthcare stabilization fund oversight committee
38 for compensation, travel expenses and subsistence expenses pursuant to
39 K.S.A. 40-3403b(e), and amendments thereto.

40 (d) All amounts for which the fund is liable pursuant to subsection (c)
41 shall be paid promptly and in full except that, if the amount for which the
42 fund is liable is ~~is~~ ~~\$300,000~~ \$500,000 or more, it shall be paid by installment
43 payments of ~~\$300,000~~ \$500,000 or 10% of the amount of the judgment

1 including interest thereon, whichever is greater, per fiscal year, the first
2 installment to be paid within 60 days after the fund becomes liable and
3 each subsequent installment to be paid annually on the same date of the
4 year the first installment was paid, until the claim has been paid in full.

5 (e) In no event shall the fund be liable to pay in excess of \$3,000,000
6 pursuant to any one judgment or settlement against any one healthcare
7 provider relating to any injury or death arising out of the rendering of or
8 the failure to render professional services on and after July 1, 1984, and
9 before July 1, 1989, subject to an aggregate limitation for all judgments or
10 settlements arising from all claims made in any one fiscal year in the
11 amount of \$6,000,000 for each healthcare provider.

12 (f) In no event shall the fund be liable to pay in excess of the amounts
13 specified in the option selected by an active or inactive healthcare provider
14 pursuant to subsection (l) for judgments or settlements relating to injury or
15 death arising out of the rendering of or failure to render professional
16 services by such healthcare provider on or after July 1, 1989.

17 (g) A healthcare provider shall be deemed to have qualified for
18 coverage under the fund:

19 (1) On and after July 1, 1976, if basic coverage is then in effect;

20 (2) subsequent to July 1, 1976, at such time as basic coverage
21 becomes effective; or

22 (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414, and
23 amendments thereto.

24 (h) A healthcare provider who is qualified for coverage under the
25 fund shall have no vicarious liability or responsibility for any injury or
26 death arising out of the rendering of or the failure to render professional
27 services inside or outside this state by any other healthcare provider who is
28 also qualified for coverage under the fund. The provisions of this
29 subsection shall apply to all claims filed on or after July 1, 1986.

30 (i) Notwithstanding the provisions of K.S.A. 40-3402, and
31 amendments thereto, if the board of governors determines due to the
32 number of claims filed against a healthcare provider or the outcome of
33 those claims that an individual healthcare provider presents a material risk
34 of significant future liability to the fund, the board of governors is
35 authorized by a vote of a majority of the members thereof, after notice and
36 an opportunity for hearing in accordance with the provisions of the Kansas
37 administrative procedure act, to terminate the liability of the fund for all
38 claims against the healthcare provider for damages for death or personal
39 injury arising out of the rendering of or the failure to render professional
40 services after the date of termination. The date of termination shall be 30
41 days after the date of the determination by the board of governors. The
42 board of governors, upon termination of the liability of the fund under this
43 subsection, shall notify the licensing or other disciplinary board having

1 jurisdiction over the healthcare provider involved of the name of the
2 healthcare provider and the reasons for the termination.

3 (j) (1) Subject to the provisions of paragraph (7), upon the payment of
4 moneys from the healthcare stabilization fund pursuant to subsection (c)
5 (11), the board of governors shall certify to the secretary of administration
6 the amount of such payment, and the secretary of administration shall
7 transfer an amount equal to the amount certified, reduced by any amount
8 transferred pursuant to paragraph (3) or (4), from the state general fund to
9 the healthcare stabilization fund.

10 (2) Subject to the provisions of paragraph (7), upon the payment of
11 moneys from the healthcare stabilization fund pursuant to subsection (c)
12 (12), the board of governors shall certify to the secretary of administration
13 the amount of such payment that is equal to the basic coverage liability of
14 self-insurers, and the secretary of administration shall transfer an amount
15 equal to the amount certified, reduced by any amount transferred pursuant
16 to paragraph (3) or (4), from the state general fund to the healthcare
17 stabilization fund.

18 (3) The university of Kansas medical center private practice
19 foundation reserve fund is hereby established in the state treasury. If the
20 balance in such reserve fund is less than \$500,000 on July 1 of any year,
21 the private practice corporations or foundations referred to in K.S.A. 40-
22 3402(c), and amendments thereto, shall remit the amount necessary to
23 increase such balance to \$500,000 to the state treasurer for credit to such
24 reserve fund as soon after such July 1 date as is practicable. Upon receipt
25 of each such remittance, the state treasurer shall credit the same to such
26 reserve fund. When compliance with the foregoing provisions of this
27 paragraph have been achieved on or after July 1 of any year in which the
28 same are applicable, the state treasurer shall certify to the board of
29 governors that such reserve fund has been funded for the year in the
30 manner required by law. Moneys in such reserve fund may be invested or
31 reinvested in accordance with the provisions of K.S.A. 40-3406, and
32 amendments thereto, and any income or interest earned by such
33 investments shall be credited to such reserve fund. Upon payment of
34 moneys from the healthcare stabilization fund pursuant to subsection (c)
35 (11) or (c)(12) with respect to any private practice corporation or
36 foundation or any of its full-time physician faculty employed by the
37 university of Kansas, the secretary of administration shall transfer an
38 amount equal to the amount paid from the university of Kansas medical
39 center private practice foundation reserve fund to the healthcare
40 stabilization fund or, if the balance in such reserve fund is less than the
41 amount so paid, an amount equal to the balance in such reserve fund.

42 (4) The graduate medical education administration reserve fund is
43 hereby established in the state treasury. If the balance in such reserve fund

1 is less than \$40,000 on July 1 of any year, the nonprofit corporations
2 organized to administer the graduate medical education programs of
3 community hospitals or medical care facilities affiliated with the university
4 of Kansas school of medicine shall remit the amount necessary to increase
5 such balance to \$40,000 to the state treasurer for credit to such reserve
6 fund as soon after such July 1 date as is practicable. Upon receipt of each
7 such remittance, the state treasurer shall credit the same to such reserve
8 fund. When compliance with the foregoing provisions of this paragraph
9 have been achieved on or after July 1 of any year in which the same are
10 applicable, the state treasurer shall certify to the board of governors that
11 such reserve fund has been funded for the year in the manner required by
12 law. Moneys in such reserve fund may be invested or reinvested in
13 accordance with the provisions of K.S.A. 40-3406, and amendments
14 thereto, and any income or interest earned by such investments shall be
15 credited to such reserve fund. Upon payment of moneys from the
16 healthcare stabilization fund pursuant to subsection (c)(11) or (c)(12) with
17 respect to any nonprofit corporations organized to administer the graduate
18 medical education programs of community hospitals or medical care
19 facilities affiliated with the university of Kansas school of medicine the
20 secretary of administration shall transfer an amount equal to the amount
21 paid from the graduate medical education administration reserve fund to
22 the healthcare stabilization fund or, if the balance in such reserve fund is
23 less than the amount so paid, an amount equal to the balance in such
24 reserve fund.

25 (5) Upon payment of moneys from the healthcare stabilization fund
26 pursuant to subsection (c)(14) or (c)(15), the board of governors shall
27 certify to the secretary of administration the amount of such payment, and
28 the secretary of administration shall transfer an amount equal to the
29 amount certified from the state general fund to the healthcare stabilization
30 fund.

31 (6) Transfers from the state general fund to the healthcare
32 stabilization fund pursuant to this subsection shall not be subject to the
33 provisions of K.S.A. 75-3722, and amendments thereto.

34 (7) The funds required to be transferred from the state general fund to
35 the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the
36 fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June
37 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of
38 administration shall maintain a record of the amounts certified by the
39 board of governors pursuant to paragraphs (1) and (2) for the fiscal years
40 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.
41 Beginning July 1, 2013, in addition to any other transfers required
42 pursuant to subsection (j), the state general fund transfers that are deferred
43 pursuant to this paragraph shall be transferred from the state general fund

1 to the healthcare stabilization fund in the following manner: On July 1,
2 2013, and annually thereafter through July 1, 2018, an amount equal to
3 20% of the total amount of state general fund transfers deferred pursuant
4 to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011,
5 June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this
6 paragraph shall not accrue interest thereon.

7 (k) Notwithstanding any other provision of the healthcare provider
8 insurance availability act, no psychiatric hospital licensed under K.S.A.
9 2020 Supp. 39-2001 et seq., and amendments thereto, shall be assessed a
10 premium surcharge or be entitled to coverage under the fund if such
11 hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404,
12 and amendments thereto, prior to January 1, 1988.

13 (l) **(1)** On or after July 1, 1989, *and prior to January 1, 2022*, every
14 healthcare provider shall make an election to be covered by one of the
15 following options provided in ~~this subsection paragraph (1)~~
16 **subparagraph (A)** that shall limit the liability of the fund with respect to
17 judgments or settlements relating to injury or death arising out of the
18 rendering of or failure to render professional services on or after July 1,
19 1989. *On and after January 1, 2022, every healthcare provider shall make*
20 *an election to be covered by one of the following options provided in*
21 ~~paragraph (2)~~ **subparagraph (B)** *that shall limit the liability of the fund*
22 *with respect to judgments or settlements relating to injury or death arising*
23 *out of the rendering of or failure to render professional services on or*
24 *after January 1, 2022.* Such election shall be made at the time the
25 healthcare provider renews the basic coverage ~~in effect on July 1, 1989~~, or,
26 if basic coverage is not in effect, such election shall be made at the time
27 such coverage is acquired pursuant to K.S.A. 40-3402, and amendments
28 thereto. **A medical care facility or a healthcare facility deemed**
29 **qualified as a self-insurer under K.S.A. 40-3414(a), and amendments**
30 **thereto, may opt out of the requirements set forth in subparagraph (B)**
31 **if such medical care facility or healthcare facility substantially meets**
32 **the minimum coverage requirements of this section through coverage**
33 **provided by the captive insurance company of such medical care**
34 **facility or healthcare facility.** Notice of the election shall be provided by
35 the insurer providing the basic coverage in the manner and form prescribed
36 by the board of governors and shall continue to be effective from year to
37 year unless modified by a subsequent election made prior to the
38 anniversary date of the policy. The healthcare provider may at any
39 subsequent election reduce the dollar amount of the coverage for the next
40 and subsequent fiscal years, but may not increase the same, unless
41 specifically authorized by the board of governors. Any election of fund
42 coverage limits, whenever made, shall be with respect to judgments or
43 settlements relating to injury or death arising out of the rendering of or

1 failure to render professional services on or after the effective date of such
2 election of fund coverage limits. Such election shall be made for persons
3 engaged in residency training and persons engaged in other postgraduate
4 training programs approved by the state board of healing arts at medical
5 care facilities or mental health centers in this state by the agency or
6 institution paying the surcharge levied under K.S.A. 40-3404, and
7 amendments thereto, for such persons. The election of fund coverage
8 limits for a nonprofit corporation organized to administer the graduate
9 medical education programs of community hospitals or medical care
10 facilities affiliated with the university of Kansas school of medicine shall
11 be deemed to be effective at the highest option. Such options shall be as
12 follows:

13 ~~(A)~~ **(i) OPTION 1.** The fund shall not be liable to pay in excess of
14 \$100,000 pursuant to any one judgment or settlement for any party against
15 such healthcare provider, subject to an aggregate limitation for all
16 judgments or settlements arising from all claims made in the fiscal year in
17 an amount of \$300,000 for such provider.

18 ~~(B)~~ **(ii) OPTION 2.** The fund shall not be liable to pay in excess of
19 \$300,000 pursuant to any one judgment or settlement for any party against
20 such healthcare provider, subject to an aggregate limitation for all
21 judgments or settlements arising from all claims made in the fiscal year in
22 an amount of \$900,000 for such provider.

23 ~~(C)~~ **(iii) OPTION 3.** The fund shall not be liable to pay in excess of
24 \$800,000 pursuant to any one judgment or settlement for any party against
25 such healthcare provider, subject to an aggregate limitation for all
26 judgments or settlements arising from all claims made in the fiscal year in
27 an amount of \$2,400,000 for such healthcare provider.

28 ~~(A)~~ **(i) OPTION 1.** *The fund shall not be liable to pay in excess*
29 *of \$500,000 pursuant to any one judgment or settlement for any party*
30 *against such healthcare provider, subject to an aggregate limitation for all*
31 *judgments or settlements arising from all claims made in the fiscal year in*
32 *an amount of \$1,500,000 for such healthcare provider.*

33 ~~(B)~~ **(ii) OPTION 2.** *The fund shall not be liable to pay in excess of*
34 *\$1,500,000 pursuant to any one judgment or settlement for any party*
35 *against such healthcare provider, subject to an aggregate limitation for all*
36 *judgments or settlements arising from all claims made in the fiscal year in*
37 *an amount of \$4,500,000 for such healthcare provider.*

38 **(2) The board of governors shall have the authority to adjust the**
39 **amounts provided in subparagraph (B) as the board deems necessary**
40 **to effectuate the provisions of the healthcare provider insurance**
41 **availability act, except that the minimum coverage for a healthcare**
42 **provider shall not be less than \$1,000,000 per claim and \$3,000,000 in**
43 **the aggregate.**

1 (m) ~~The fund shall not be liable for any amounts due from a judgment~~
2 ~~or settlement against resident or nonresident inactive healthcare providers~~
3 ~~who first qualify as an inactive healthcare provider on or after July 1,~~
4 ~~1989, unless such healthcare provider has been in compliance with K.S.A.~~
5 ~~40-3402, and amendments thereto, for a period of not less than five years.~~
6 ~~If a healthcare provider has not been in compliance for five years, such~~
7 ~~healthcare provider may make application and payment for the coverage~~
8 ~~for the period while they are nonresident healthcare providers, nonresident~~
9 ~~self-insurers or resident or nonresident inactive healthcare providers to the~~
10 ~~fund. Such payment shall be made within 30 days after the healthcare~~
11 ~~provider ceases being an active healthcare provider and shall be made in~~
12 ~~an amount determined by the board of governors to be sufficient to fund~~
13 ~~anticipated claims based upon reasonably prudent actuarial principles. The~~
14 ~~provisions of this subsection shall not be applicable to any healthcare~~
15 ~~provider that becomes inactive through death or retirement, or through~~
16 ~~disability or circumstances beyond such healthcare provider's control, if~~
17 ~~such healthcare provider notifies the board of governors and receives~~
18 ~~approval for an exemption from the provisions of this subsection. Any~~
19 ~~period spent in a postgraduate program of residency training approved by~~
20 ~~the state board of healing arts shall not be included in computation of time~~
21 ~~spent in compliance with the provisions of K.S.A. 40-3402, and~~
22 ~~amendments thereto. The provisions of this subsection shall expire on July~~
23 ~~1, 2014.~~

24 (n) ~~In the event of a claim against a healthcare provider for personal~~
25 ~~injury or death arising out of the rendering of or the failure to render~~
26 ~~professional services by such healthcare provider, the liability of the fund~~
27 ~~shall be limited to the amount of coverage selected by the healthcare~~
28 ~~provider at the time of the incident giving rise to the claim.~~

29 ~~(n)~~(n) Notwithstanding anything in article 34 of chapter 40 of the
30 Kansas Statutes Annotated, and amendments thereto, to the contrary, the
31 fund shall in no event be liable for any claims against any healthcare
32 provider based upon or relating to the healthcare provider's sexual acts or
33 activity, but in such cases the fund may pay reasonable and necessary
34 expenses for attorney fees incurred in defending the fund against such
35 claim. The fund may recover all or a portion of such expenses for attorney
36 fees if an adverse judgment is returned against the healthcare provider for
37 damages resulting from the healthcare provider's sexual acts or activity.

38 Sec. 3. K.S.A. 2020 Supp. 40-3408 is hereby amended to read as
39 follows: 40-3408. (a) ~~The insurer of a healthcare provider covered by the~~
40 ~~fund or self-insurer shall be liable only for the first \$200,000 of a claim for~~
41 ~~personal injury or death arising out of the rendering of or the failure to~~
42 ~~render professional services by such healthcare provider, subject to an~~
43 ~~annual aggregate of \$600,000 for all such claims against the healthcare~~

1 ~~provider~~ For a claim for personal injury or death arising out of the
2 rendering of or the failure to render professional services by a healthcare
3 provider, the insurer of a healthcare provider covered by the fund or self-
4 insurer shall be liable only for the amount of basic coverage in effect on
5 the date of the incident giving rise to the claim, subject to an annual
6 aggregate amount of not less than three times the primary amount for all
7 such claims against the healthcare provider. ~~However,~~ If any liability
8 insurance in excess of such amounts is applicable to any claim or would be
9 applicable in the absence of this act, any payments from the fund shall be
10 excess over such amounts paid, payable or that would have been payable
11 in the absence of this act.

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

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

20 (1) From the rendering of or the failure to render professional
21 services by any other healthcare provider who is required by K.S.A. 40-
22 3402, and amendments thereto, to maintain professional liability insurance
23 in effect as a condition to rendering professional services as a healthcare
24 provider in this state; or

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

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

35 (e) Notwithstanding any provision of article 34 of chapter 40 of the
36 Kansas Statutes Annotated, and amendments thereto, to the contrary, an
37 insurer that provides coverage to a healthcare provider may exclude from
38 coverage:

39 (1) Any liability incurred by such healthcare provider as a result of
40 professional services rendered as a charitable healthcare provider; or

41 (2) any liability incurred by such healthcare provider that is covered
42 under the federal tort claims act pursuant to chapter 171 of title 28 of the
43 United States code.

1 **Sec. 4. K.S.A. 40-3409 is hereby amended to read as follows: 40-**
2 **3409. (a) (1) In any action filed in this state for personal injury or**
3 **death arising out of the rendering of or the failure to render**
4 **professional services by any ~~health-care~~ *healthcare* provider covered by**
5 **the fund or any inactive ~~health-care~~ *healthcare* provider covered by the**
6 **fund, the plaintiff shall serve a copy of the petition upon the board of**
7 **governors by registered mail, *certified mail, priority mail, commercial***
8 ***delivery service or first class mail* within ~~10~~ 30 calendar days from filing**
9 **the same, and if such service is not made the fund shall not be liable**
10 **for any amount due from a judgment or a settlement nor, in such case,**
11 **shall the ~~health-care~~ *healthcare* provider or the provider's insurer or the**
12 **inactive ~~health-care~~ *healthcare* provider or the provider's insurer be**
13 **liable for such amount that, if such service had been made, would have**
14 **been paid by the fund; (2) in any action filed outside of this state for**
15 **personal injury or death arising out of the rendering of or the failure**
16 **to render professional services by any ~~health-care~~ *healthcare* provider**
17 **or any inactive ~~health-care~~ *healthcare* provider covered by the fund, the**
18 **inactive ~~health-care~~ *healthcare* provider, the self-insurer or the insurer**
19 **of a ~~health-care~~ *healthcare* provider or an inactive ~~health-care~~ *healthcare***
20 **provider shall notify the board of governors, as soon as it is reasonably**
21 **practicable, that such summons or petition has been filed. If the**
22 **petition names as a defendant in the action a ~~health-care~~ *healthcare***
23 **provider who is licensed, registered or certified by the state board of**
24 **healing arts, the board of governors shall forward a copy of the**
25 **petition to the state board of healing arts.**

26 **(b) Such action shall be defended by the insurer or the self-**
27 **insurer, but if the board of governors believes it to be in the best**
28 **interests of the fund, the board of governors may employ independent**
29 **counsel to represent the interests of the fund. The cost of employing**
30 **such counsel shall be paid from the fund. The board of governors is**
31 **authorized to employ independent counsel in any such action against**
32 **an inactive ~~health-care~~ *healthcare* provider covered by the fund.**

33 **(c) The attorneys of record and the board of governors shall**
34 **submit to the state board of healing arts expert witness reports which**
35 **have been made available to the opposing parties in the case and, upon**
36 **the request of the state board of healing arts, any depositions,**
37 **interrogatories, admissions or other relevant information concerning**
38 **the case which has been made available to the opposing parties in the**
39 **case shall also be submitted. The board of governors shall not be**
40 **required to furnish information not in the possession of the board of**
41 **governors. Any report or other information made available to the state**
42 **board of healing arts in accordance with this subsection shall be**
43 **subject to K.S.A. 65-2898a and amendments thereto. Reasonable**

1 expenses incurred in reproducing such reports or other information
2 shall be paid by the state board of healing arts.

3 **Sec. 5. K.S.A. 2020 Supp. 40-3414 is hereby amended to read as**
4 **follows: 40-3414. (a) (1) Any ~~health-care~~ healthcare provider or any**
5 **~~health-care~~ healthcare system organized and existing under the laws of**
6 **this state which owns and operates more than one medical care facility**
7 **or more than one ~~health-care~~ healthcare facility, as defined in K.S.A. 40-**
8 **3401, and amendments thereto, licensed by the state of Kansas, whose**
9 **aggregate annual insurance premium is or would be ~~\$100,000-~~**
10 **~~\$150,000~~ or more for basic coverage calculated in accordance with**
11 **rating procedures approved by the commissioner pursuant to K.S.A.**
12 **40-3413, and amendments thereto, may qualify as a self-insurer by**
13 **obtaining a certificate of self-insurance from the board of governors.**
14 **Upon application of any such ~~health-care~~ healthcare provider or ~~health-~~**
15 **~~care~~ healthcare system, on a form prescribed by the board of**
16 **governors, the board of governors may issue a certificate of self-**
17 **insurance if the board of governors is satisfied that the applicant ~~is~~**
18 **possessed ~~possesses~~ and will continue to ~~be possessed of~~ possess the**
19 **ability to pay any judgment for which liability exists equal to the**
20 **amount of basic coverage required of a ~~health-care~~ healthcare provider**
21 **obtained against such applicant arising from the applicant's rendering**
22 **of professional services as a ~~health-care~~ healthcare provider.**

23 (2) In making such determination the board of governors shall
24 consider:

- 25 ~~(+)~~(A) The financial condition of the applicant;
26 ~~(2)~~(B) the procedures adopted and followed by the applicant to
27 process and handle claims and potential claims;
28 ~~(3)~~(C) the amount and liquidity of assets reserved for the
29 settlement of claims or potential claims; and
30 ~~(4)~~(D) any other ~~relevant~~ factors the board deems relevant.

31 (3) Any applicant for self-insurance that owns and operates more
32 than one medical care facility or more than one healthcare facility shall be
33 deemed qualified by the board of governors if such applicant is insured by
34 a captive insurance company, as defined in K.S.A. 40-4301, and
35 amendments thereto, or under the laws of the state of domicile of any such
36 captive insurance company.

37 (4) The certificate of self-insurance may contain reasonable
38 conditions prescribed by the board of governors. Upon notice and a
39 hearing in accordance with the provisions of the Kansas
40 administrative procedure act, the board of governors may cancel a
41 certificate of self-insurance upon reasonable grounds therefor. Failure
42 to pay any judgment for which the self-insurer is liable arising from
43 the self-insurer's rendering of professional services as a ~~health-care~~

1 *healthcare* provider, the failure to comply with any provision of this act
2 or the failure to comply with any conditions contained in the
3 certificate of self-insurance shall be reasonable grounds for the
4 cancellation of such certificate of self-insurance. The provisions of this
5 subsection shall not apply to the Kansas soldiers' home, the Kansas
6 veterans' home or to any ~~person~~ *individual* who is a self-insurer
7 pursuant to subsection (d) or (e).

8 (b) Any such ~~health care~~ *healthcare* provider or ~~health care~~
9 *healthcare* system that holds a certificate of self-insurance shall pay the
10 applicable surcharge set forth in K.S.A. 40-3402(c), and amendments
11 thereto.

12 (c) The Kansas soldiers' home and the Kansas veterans' home
13 shall be self-insurers and shall pay the applicable surcharge set forth
14 in K.S.A. 40-3402(c), and amendments thereto.

15 (d) ~~Persons~~*Individuals* engaged in residency training as provided
16 in K.S.A. 40-3401(r)(1) and (2), and amendments thereto, shall be self-
17 insured by the state of Kansas for occurrences arising during such
18 training, and such ~~person~~ *individual* shall be deemed a self-insurer for
19 the purposes of the ~~health care~~ *healthcare* provider insurance
20 availability act. Such self-insurance shall be applicable to a ~~person~~ *an*
21 *individual* engaged in residency training only when such ~~person~~
22 *individual* is engaged in medical activities which do not include
23 extracurricular, extra-institutional medical service for which such
24 ~~person~~ *individual* receives extra compensation and which have not been
25 approved as provided in K.S.A. 40-3401(r)(1) and (2), and
26 amendments thereto.

27 (e) (1) ~~A person~~*An individual* engaged in a postgraduate training
28 program approved by the state board of healing arts at a medical care
29 facility or mental health center in this state may be self-insured by
30 such medical care facility or mental health center in accordance with
31 this subsection ~~(e)~~ and in accordance with such terms and conditions
32 of eligibility therefor as may be specified by the medical care facility
33 or mental health center and approved by the board of governors. ~~A~~
34 ~~person~~*An individual* self-insured under this subsection ~~(e)~~ by a medical
35 care facility or mental health center shall be deemed a self-insurer for
36 purposes of the ~~health care~~ *healthcare* provider insurance availability
37 act. Upon application by a medical care facility or mental health
38 center, on a form prescribed by the board of governors, the board of
39 governors may authorize such medical care facility or mental health
40 center to self-insure ~~persons~~ *individuals* engaged in postgraduate
41 training programs approved by the state board of healing arts at such
42 medical care facility or mental health center if the board of governors
43 is satisfied that the medical care facility or mental health center is

1 possessed and will continue to be possessed of ability to pay any
2 judgment for which liability exists equal to the amount of basic
3 coverage required of a ~~health-care~~ *healthcare* provider obtained against
4 ~~a person~~ *an individual* engaged in such a postgraduate training
5 program and arising from such ~~person's~~ *individual's* rendering of or
6 failure to render professional services as a ~~health-care~~ *healthcare*
7 provider.

8 (2) In making such determination the board of governors shall
9 consider:

10 (A) The financial condition of the medical care facility or mental
11 health center;

12 (B) the procedures adopted by the medical care facility or mental
13 health center to process and handle claims and potential claims;

14 (C) the amount and liquidity of assets reserved for the settlement
15 of claims or potential claims by the medical care facility or mental
16 health center; and

17 (D) any other factors the board of governors deems relevant.

18 The board of governors may specify such conditions for the
19 approval of an application as the board of governors deems necessary.
20 Upon approval of an application, the board of governors shall issue a
21 certificate of self-insurance to each ~~person~~ *individual* engaged in such
22 postgraduate training program at the medical care facility or mental
23 health center who is self-insured by such medical care facility or
24 mental health center.

25 (3) Upon notice and a hearing in accordance with the provisions
26 of the Kansas administrative procedure act, the board of governors
27 may cancel, upon reasonable grounds therefor, a certificate of self-
28 insurance issued pursuant to this subsection ~~(e)~~ or the authority of a
29 medical care facility or mental health center to self-insure ~~persons~~
30 *individuals* engaged in such postgraduate training programs at the
31 medical care facility or mental health center. Failure of ~~a person~~ *an*
32 *individual* engaged in such postgraduate training program to comply
33 with the terms and conditions of eligibility to be self-insured by the
34 medical care facility or mental health center, the failure of a medical
35 care facility or mental health center to pay any judgment for which
36 such medical care facility or mental health center is liable as self-
37 insurer of such ~~person~~ *individual*, the failure to comply with any
38 provisions of the ~~health-care~~ *healthcare* provider insurance availability
39 act or the failure to comply with any conditions for approval of the
40 application or any conditions contained in the certificate of self-
41 insurance shall be reasonable grounds for cancellation of such
42 certificate of self-insurance or the authority of a medical care facility
43 or mental health center to self-insure such ~~persons~~ *individuals*.

1 **(4) A medical care facility or mental health center authorized to**
2 **self-insure ~~persons~~ *individuals* engaged in such postgraduate training**
3 **programs shall pay the applicable surcharge set forth in K.S.A. 40-**
4 **3402(c), and amendments thereto, on behalf of such ~~persons~~-**
5 ***individuals*.**

6 **(5) As used in this subsection ~~(e)~~, "medical care facility" does not**
7 **include the university of Kansas medical center or those community**
8 **hospitals or medical care facilities described in K.S.A. 40-3401(r)(2),**
9 **and amendments thereto.**

10 **(f) For the purposes of subsection (a), "~~health-care~~*healthcare***
11 **provider" may include each health care provider in any group of**
12 **~~health-care~~ *healthcare* providers who practice as a group to provide**
13 **physician services only for a health maintenance organization, any**
14 **professional corporations, partnerships or not-for-profit corporations**
15 **formed by such group and the health maintenance organization itself.**
16 **The premiums for each such provider, health maintenance**
17 **organization and group corporation or partnership may be**
18 **aggregated for the purpose of being eligible for and subject to the**
19 **statutory requirements for self-insurance as set forth in this section.**

20 **(g) The provisions of subsections (a) and (f), relating to ~~health-care~~**
21 ***healthcare* systems, shall not affect the responsibility of individual**
22 **~~health-care~~ *healthcare* providers as defined in K.S.A. 40-3401(f), and**
23 **amendments thereto, or organizations whose premiums are**
24 **aggregated for purposes of being eligible for self-insurance from**
25 **individually meeting the requirements imposed by K.S.A. 40-3402,**
26 **and amendments thereto, with respect to the ability to respond to**
27 **injury or damages to the extent specified therein and K.S.A. 40-3404,**
28 **and amendments thereto, with respect to the payment of the ~~health-~~**
29 **~~care~~ *healthcare* stabilization fund surcharge.**

30 **(h) Each private practice corporation or foundation and their**
31 **full-time physician faculty employed by the university of Kansas**
32 **medical center and each nonprofit corporation organized to**
33 **administer the graduate medical education programs of community**
34 **hospitals or medical care facilities affiliated with the university of**
35 **Kansas school of medicine shall be deemed a self-insurer for the**
36 **purposes of the ~~health-care~~ *healthcare* provider insurance availability**
37 **act. The private practice corporation or foundation of which the full-**
38 **time physician faculty is a member and each nonprofit corporation**
39 **organized to administer the graduate medical education programs of**
40 **community hospitals or medical care facilities affiliated with the**
41 **university of Kansas school of medicine shall pay the applicable**
42 **surcharge set forth in K.S.A. 40-3404(a), and amendments thereto, on**
43 **behalf of the private practice corporation or foundation and their full-**

1 time physician faculty employed by the university of Kansas medical
2 center or on behalf of a nonprofit corporation organized to administer
3 the graduate medical education programs of community hospitals or
4 medical care facilities affiliated with the university of Kansas school of
5 medicine.

6 (i) (1) Subject to the provisions of paragraph (4), for the purposes
7 of the ~~health-care~~ *healthcare* provider insurance availability act, each
8 nonprofit corporation organized to administer the graduate medical
9 education programs of community hospitals or medical care facilities
10 affiliated with the university of Kansas school of medicine shall be
11 deemed to have been a ~~health-care~~ *healthcare* provider as defined in
12 K.S.A. 40-3401, and amendments thereto, from and after July 1, 1997.

13 (2) Subject to the provisions of paragraph (4), for the purposes of
14 the ~~health-care~~ *healthcare* provider insurance availability act, each
15 nonprofit corporation organized to administer the graduate medical
16 education programs of community hospitals or medical care facilities
17 affiliated with the university of Kansas school of medicine shall be
18 deemed to have been a self-insurer within the meaning of subsection
19 (h), and amendments thereto, from and after July 1, 1997.

20 (3) Subject to the provisions of paragraph (4), for the purposes of
21 the ~~health-care~~ *healthcare* provider insurance availability act, the
22 election of fund coverage limits for each nonprofit corporation
23 organized to administer the graduate medical education programs of
24 community hospitals or medical care facilities affiliated with the
25 university of Kansas school of medicine shall be deemed to have been
26 effective at the highest option, as provided in K.S.A. 40-3403(l), and
27 amendments thereto, from and after July 1, 1997.

28 (4) No nonprofit corporation organized to administer the
29 graduate medical education programs of community hospitals or
30 medical care facilities affiliated with the university of Kansas school of
31 medicine shall be required to pay to the fund any annual premium
32 surcharge for any period prior to the effective date of this act. Any
33 annual premium surcharge for the period commencing on the effective
34 date of this act and ending on June 30, 2001, shall be prorated.

35 Sec. ~~4~~. 6. K.S.A. 2020 Supp. 40-3424 is hereby amended to read as
36 follows: 40-3424. (a) For all claims made on and after July 1, 2014, the
37 amount of fund liability for a judgment or settlement against a resident or
38 nonresident inactive healthcare provider shall be equal to the minimum
39 professional liability insurance policy limits required pursuant to K.S.A.
40 40-3402, and amendments thereto, *and in effect on the date of the incident*
41 *giving rise to a claim*, plus the level of coverage selected by the healthcare
42 provider pursuant to K.S.A. 40-3403(l), and amendments thereto, at the
43 time of the incident giving rise to a claim.

1 **(b)** The aggregate fund liability for all judgments and settlements
2 arising from all claims made in any fiscal year against a resident or
3 nonresident inactive healthcare provider shall not exceed \$3,000,000 in
4 any fiscal year.

5 ~~(b) This section shall be part of and supplemental to the healthcare~~
6 ~~provider insurance availability act~~ *For all claims made for incidents*
7 *occurring on or after January 1, 2022, the aggregate fund liability for all*
8 *judgments and settlements made in any fiscal year against a resident or*
9 *nonresident inactive healthcare provider shall not exceed three times the*
10 *coverage amount in subsection (a).*

11 ~~Sec. 5. 7. K.S.A. 40-3409 and~~ K.S.A. 2020 Supp. 40-3402, 40-3403,
12 40-3408, ~~40-3414~~ and 40-3424 are hereby repealed.

13 ~~Sec. 6. 8.~~ This act shall take effect and be in force from and after its
14 publication in the statute book.