

Health Care Stabilization Fund Oversight Committee

October 15, 2014

Members:

Good morning, I am Cindy Luxem, President and CEO of the Kansas Health Care Association and Kansas Center for Assisted Living, a trade association with a membership of nursing homes, assisted living, residential health care, home plus, and nursing facilities for mental health. Thank you for the opportunity to testify.

We are here today to report that we are on track to be fully implemented by January 11, 2015.

Today's health care facilities treat individuals, many of whom would have been cared for in hospital intensive care units just a few years ago. These services require the skills of highly trained administrators, nurses, physical therapists, and social workers who are all under the direction of a medical doctor, providing such service as intravenous fluids and medications, tracheostomy care, and advanced wound care. Besides this, these facilities receive oversight by trained surveyors from both the federal and state governmental units.

All of these facilities are a vital component in the health care structure for the communities they serve especially in this era of controlling health care costs. These facilities provide health care services to the clients and residents who are often aged and frail and have their "roots" established in the communities in which they live. Further, these facilities provide an employment base and are often the largest employer in many of our rural communities.

Kansas House Bill No. 2516 effective 7/1/2014 renewed the Healthcare Stabilization Fund (HCSF) authorization along with a few changes and clarifications effective 1/1/2015.

The most important change to KHCA members is that a health care provider is now defined as "*...a medical care facility licensed by the state of Kansas*".¹

Passage of the bill cements the applicability of a \$250,000 cap on non-economic damages to senior care liability claims. The Kansas Supreme Court decision Miller vs. Johnson upheld the \$250,000 cap as constitutional and the decision referenced the unique quid pro quo relationship with statutorily defined healthcare providers. The implication is that if you were not a defined healthcare provider under the HCSF, you would not have the benefit of the pain and suffering cap. Now, licensed senior living facilities are protected by the cap.

Participation in the HCSF is now mandatory for licensed senior living facilities: skilled nursing, assisted living and residential health.

As of 1/1/2015, the facility must purchase general and professional liability insurance with the professional liability limits at \$200,000 per occurrence and \$600,000 per aggregate. This primary professional liability insurance policy must be purchased from either a carrier admitted in Kansas or a risk retention group licensed to do business in Kansas. Surplus lines carriers do not qualify.

Challenges will be a part of establishing the new statute. The intent being the benefit of not only the provider but also the consumer. Both associations have been educating and working with providers to understand the new law.

Thank you again.
