

**40-2121. Same; member assessments; credit for loss assessments against premium and privilege tax liability.** (a) Following the close of each fiscal year, the administering carrier shall determine the net premiums, the plan expenses of administration and the incurred losses for the year. Any net loss of the plan determined after taking into account amounts transferred pursuant to subsection (h) of K.S.A. 79-4804, and amendments thereto, investment income and other appropriate gains and losses shall be assessed by the board to all members of the association in proportion to their respective shares of total health insurance premiums received in this state during the calendar year coinciding with or ending during the fiscal year of the association or any other equitable basis as may be provided in the plan of operation. For health maintenance organization members and insurance arrangements, the proportionate share of losses shall be determined through application of an equitable formula based upon claims paid on the value of services provided. In sharing losses, the board may abate or defer in whole or in part the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. Health insurance benefits paid by an insurance arrangement that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments. Net gains, if any, shall be held at interest to offset future losses or allocated to reduce future premiums. In addition to any annual assessment at the close of the fiscal year of the plan authorized by this subsection, the board may provide for interim assessments of the members of the association, subject to the approval of the commissioner, as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the plan and the operating and administrative expenses of the plan.

(b) In addition to any assessment authorized by subsection (a), the board may assess the members of the association for any initial costs associated with developing and implementing the plan to the extent such costs exceed the funds transferred to the uninsurable health insurance plan fund pursuant to K.S.A. 40-2125, and amendments thereto. Such assessment shall be allocated among the members of the association in the manner prescribed by subsection (a) of this section or any other equitable formula established by the board. Assessments under this subsection shall not be subject to the credit against premium tax under subsection (c).

(c) For taxable years commencing after December 31, 1995, and prior to January 1, 1998, 80% of any assessment made against a member of the association pursuant to subsection (a) of this section may be claimed by such member as a credit against such member's premium or privilege tax liability imposed by K.S.A. 12-2624, 40-252 or 40-3213, and amendments thereto, for the taxable year in which such assessment is paid. For the tax year commencing after December 31, 1997, 70% of any assessment made against a member of the association pursuant to subsection (a) of this section may be claimed by such member as a credit against such member's premium tax liability imposed by K.S.A. 12-2624, 40-252 or 40-3213, and amendments thereto, for the taxable year in which such assessment is paid.

For the tax year commencing after December 31, 1998, 65% of any assessment made against a member of the association pursuant to subsection (a) of this section may be claimed by such member as a credit against such member's premium tax liability imposed by K.S.A. 12-2624, 40-252 or 40-3213, and amendments thereto, for the taxable year in which such assessment is paid.

For the tax year commencing after December 31, 1999, 60% of any assessment made against a member of the association pursuant to subsection (a) of this section may be claimed by such member as a credit against such member's premium tax liability imposed by K.S.A. 12-2624, 40-252 or 40-3213, and amendments thereto, for the taxable year in which such assessment is paid.

(d) In addition to the assessments otherwise authorized herein, the board shall assess all issuers of medicare supplement policies covering persons within this state to the extent necessary to assure that the excess losses, if any, are distributed among such issuers of medicare supplement policies in a ratio equal to the percentage market share in Kansas of each such issuer for medicare supplement policies covering persons eligible for medicare by reason of age. The association shall also assess to such issuers of medicare supplement policies the costs the association incurs in operating the reinsurance program, making assessments, and collecting and distributing moneys, which shall be assessed pro rata to such issuers based on the market share of such issuers of medicare supplement policies covering persons eligible for medicare by reason of age. Such assessment shall occur not later than July 1 of each year, based on such excess losses and such market shares for the immediately preceding calendar year. Issuers of medicare supplement policies shall remit the amount so assessed to the association within the time frames established by the board for payment of assessment otherwise authorized herein. The association shall pay to any issuer of medicare supplement policies entitled thereto such amount as is necessary to result in the equalization among all issuers of medicare supplement policies in Kansas of excess losses in a proportion equivalent to the percentage market share in Kansas of each issuer of medicare supplement policies covering persons eligible for medicare by reason of age. The amount of such assessments received by an insurer shall not be accounted for as premium income nor shall such amounts be subject to premium tax. The amount of such assessments shall not be available for use in premium tax credits provided for under subsection (c) of K.S.A. 40-2122, and amendments thereto. The association shall have the ability to enforce assessments through its board.

**History:** L. 1992, ch. 209, § 5; L. 1996, ch. 98, § 2; L. 1997, ch. 190, § 9; L. 1999, ch. 106, § 3; L. 2000, ch. 34, § 1; July 1.