




Clark Shultz, Executive Director

- 
- ▶ The Health Care Stabilization Fund (the Fund) was created by the Kansas Legislature in 1976 as an essential part of the Health Care Provider Insurance Availability Act.
 - ▶ The Fund provides excess professional liability coverage for health care providers as defined by K.S.A. 40-3401(f).
 - ▶ An 11-member Board of Governors has statutory oversight over the Fund.

Overview of the Health Care Provider Insurance Availability Act

In addition to creating the Health Care Stabilization Fund, the Health Care Provider Insurance Availability Act establishes statutory requirements pertaining to professional liability coverage for health care providers. For example, the Availability Act:

- ▶ Requires that basic professional liability insurance covers those professional services authorized by laws governing licensure of a Kansas health care provider.
- ▶ Requires that basic professional liability insurance provides coverage with minimum limits of \$500,000 per claim subject to not less than a \$1,500,000 annual aggregate limit for each individual health care provider.
- ▶ Requires that health care providers purchase their basic professional liability insurance from a company that is authorized by the Insurance Commissioner to sell insurance in Kansas. If for some reason a health care provider cannot obtain commercial professional liability insurance from a company admitted to do business in Kansas, the Availability Act creates a joint underwriting association for that purpose.

- ▶ Requires that all basic professional liability insurance policies cover all claims made during the policy period. The policy must cover all professional liability claims made during the term of the policy regardless of the date of the incident giving rise to the claim.
- ▶ Provides HCSF coverage for eligible Kansas resident health care providers applicable to their professional services wherever those services are rendered. Eligible non-resident health care providers are afforded Fund coverage only for professional services rendered in the state of Kansas.
- ▶ Creates special State self-insurance programs to provide the basic coverage for the full-time faculty members, foundations and individuals engaged in the residency training programs at the University of Kansas Medical Center and certain affiliated programs, and for certain non-profit corporations organized to administer graduate medical education programs.
- ▶ Provides continued coverage for prior acts when a health care provider becomes inactive. In addition, this “tail coverage” is improved beginning July 1, 2014 such that the coverage is equal to both the minimum required basic insurance coverage plus the level of Fund coverage that was in effect at the time of the incident resulting in a claim. This also applies to health care provider facilities that are no longer licensed to operate in Kansas.

Defined Health Care Providers

- ▶ The Fund provides excess professional liability coverage for defined health care providers only. The phrase “health care provider,” as defined in [K.S.A. 40-3401\(f\)](#), includes the following:
 - Medical Doctors and Doctors of Osteopathy who are licensed or hold a temporary permit issued by the Kansas Board of Healing Arts,
 - Persons engaged in a postgraduate training program which is approved by the Kansas Board of Healing Arts,
 - Physician Assistants,
 - Chiropractors,
 - Podiatrists,
 - Dentists who have been certified by the Kansas Board of Healing Arts to administer anesthetics,
 - Nurse Anesthetists,
 - Nurse Midwives,
 - Medical Care Facilities (special hospitals, general hospitals, ambulatory surgical centers, and recuperation centers),
 - Health Care Facilities (nursing facilities, assisted living facilities, and residential health care facilities),
 - Mental Health Clinics or Centers,
 - Psychiatric Hospitals (selected facilities only),
 - Kansas Professional Corporations or Partnerships created by defined health care providers,
 - Kansas Limited Liability Companies organized for the purpose of rendering professional services by its members who are defined health care providers,
 - Kansas not-for-profit corporations organized for the purpose of rendering professional services by persons who are defined health care providers, and
 - A nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine.

What coverage is provided by the Fund?

- ▶ Defined health care providers are required to obtain a base policy from an insurer of not less than \$500,000 per claim, subject to not less than a \$1,500,000 annual aggregate. Kansas statute also requires defined health care providers to obtain coverage from the Health Care Stabilization Fund in the amount of \$500,000 single judgment or settlement, subject to a \$1,500,000 aggregate limitation. Also note:
- ▶ Active providers or inactive providers (eligible for Fund tail coverage) are provided coverage for claims arising from services rendered while the provider was in compliance with The Fund.
- ▶ Kansas resident health care providers who are in compliance with The Fund are provided coverage for services rendered inside and/or outside the state of Kansas.
- ▶ Non-resident health care providers in compliance with the Fund are provided coverage for services rendered in Kansas.
- ▶ The Fund coverage limit is based upon when the incident occurred, not when the claim was made or the suit was filed.

Kansas Residents Health Care Providers

- ▶ Health care providers who are legal residents of Kansas and have an active Kansas license, as well as health care providers that are licensed facilities located in Kansas, are required to maintain the minimum basic professional liability coverage as a condition of active licensure. In addition, they are required to participate in the Fund. The primary insurance carrier collects the provider's payment for the professional liability insurance coverage and remits the premium surcharge to the Fund without any reductions for commissions, collection or processing expenses.
- ▶ The primary insurer is responsible for calculating the provider's premium surcharge based on the Fund coverage limit selected by the provider, the rating classification code of the provider and the number of years the provider has been in compliance with the Fund.
- ▶ Approximately 25 commercial insurance companies and risk retention groups offer medical professional liability coverage in Kansas. Some of these insurers offer coverage only to a specific profession or specialty. If coverage is not available through a primary carrier, the provider can apply for coverage offered by the Health Care Provider Insurance Availability Plan. Providers should contact their agent for information regarding the Plan.

Kansas Residents Practicing Out of State

- ▶ Health care providers who reside in Kansas and have an active Kansas license, but practice exclusively in another state are still required to comply with the Fund. A resident health care provider who does not wish to maintain Fund compliance or pay the surcharge should contact the appropriate licensing agency to discuss inactivating or discontinuing his or her Kansas professional license. A license may be converted to inactive status or another licensure category that is exempt from the Fund law.
- ▶ Kansas resident health care providers who have an active license to practice in Missouri or are otherwise authorized to render professional services in Missouri are required to pay an additional surcharge to the Fund. If the health care provider does not actually practice in Missouri, he or she may convert their license to inactive until such time that he or she decides to resume practice in Missouri.

Non-resident Health Care Providers

- ▶ Health care providers who do not reside in Kansas but have an active license to practice in Kansas are subject to the basic professional liability coverage requirements (minimum of \$500,000 per claim with \$1,500,000 annual aggregate limits) plus a Fund surcharge that is based upon the percentage ratio of their Kansas practice. This is a statutory requirement and is a condition of licensure. If a licensee is no longer actively practicing in Kansas, he or she must convert their license to inactive in order to avoid the basic insurance and HCSF surcharge required by Kansas law.
- ▶ Unlike Kansas resident health care providers, nonresident health care providers who have an active license to practice in Kansas must initiate compliance with the Fund law by completing the HCSF Non-Resident Certification Form. The surcharge payment is submitted to the Fund with the completed Non-Resident Certification Form and a copy of a current Certificate of Insurance from the primary insurance carrier. A "Non- Resident Certification" form may be downloaded from the forms page at <https://hcsf.kansas.gov>

Tail Coverage

- ▶ Continuation of professional liability coverage under the Health Care Provider Insurance Availability Act (HCPIAA) is statutory. The law provides for continued coverage if a claim is made that is attributable to professional services rendered when the health care provider was in compliance with the HCPIAA and the health care provider has cancelled his / her basic insurance coverage because they are no longer rendering professional services.
- ▶ This continued professional liability coverage or “tail coverage” provides coverage for future claims or suits made against an inactive health care provider for professional services rendered while the health care provider was active. The amount of Fund tail coverage available for a claim or suit is the amount of Fund coverage in effect on the date of the incident giving rise to the claim plus the minimum primary limits. For example, if you initially selected the \$800,000 per claim level of HCSF coverage and maintained it, when you discontinue your Kansas practice you will have \$1.0 million per claim tail coverage via the Health Care Stabilization Fund. There is no additional premium or surcharge required.
- ▶ The Health Care Stabilization Fund Board of Governors will verify eligibility for Fund tail coverage. The Kansas Board of Healing Arts and the Kansas Board of Nursing have statutory authority to issue inactive or exempt licenses. Licensees with inactive or exempt licenses are not required to comply with the HCPIAA. Inactive or exempt licenses may be converted back to active status if the health care provider decides he or she wishes to resume rendering professional services in the State of Kansas. If the inactive or exempt license is not renewed, the license will be cancelled and the HCSF tail coverage will continue.

- ▶ For health care providers who were residents of Kansas while active, the Fund provides continued coverage for professional services rendered inside or outside the state of Kansas. If suit is filed in Kansas the plaintiff is required by law to serve the Fund with a copy of the petition. If you receive notice of a claim filed in a state other than Kansas, it is important for you to notify the Fund immediately. It is strongly recommended that you immediately forward to the Fund any notices of claims or suits arising out of your professional practice.
- ▶ Health care providers who did not reside in Kansas while active are afforded the Fund's continuing coverage only for professional services rendered in the state of Kansas. Non-residents are encouraged to immediately forward notices of claims or suits arising out of their professional practice in Kansas.
- ▶ We encourage you to retain past insurance records for future reference should any professional liability claim or suit be made against you. If a suit should arise, you may also desire to notify the insurance company that provided your primary professional liability insurance while you were actively engaged in rendering professional services as a health care provider. If your primary carrier was notified of a claim prior to the expiration of the policy, they may have coverage for the suit. This is particularly important in light of the provisions of the Fund law stating that the Fund will be excess of any other applicable professional liability insurance.

Health Care Provider Insurance Availability Plan (The Plan)

- ▶ The Legislature created the Health Care Provider Insurance Availability Plan (the Plan) to assure that all Kansas health care providers will always have access to the basic professional liability insurance coverage required under the Act. The Plan is independent from the Health Care Stabilization Fund.
- ▶ The Plan is operated by a servicing carrier that is similar to a third party administrator. To assure that the Plan does not become competitive with commercial insurance companies, the Plan adopts premium rates that are higher than commercial premium rates. Furthermore, the Plan normally requires two declination letters from admitted insurance companies before it will insure a health care provider

Thank you for allowing me
to speak with you all
today.