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## 2017 LEGISLATIVE AMENDMENTS — HCPIAA

**HB 2118** amends and creates law supplemental to the Health Care Provider Insurance Availability Act (HCPIAA) and also amends the Nurse Practice Act to address requirements and exclusions from coverage pertaining to the liability of the Health Care Stabilization Fund (HCSF) and charitable health care providers and certain exempt licensees of the Board of Nursing. [Note: An enrolled copy of the bill is included in the Committee Resources folder.]

### Health Care Provider Insurance Availability Act—Amendments

#### *HCSF Liability—Exclusions from Coverage of Certain Claims*

The bill enacts law to state the HCSF would not be liable for any claim against a health care provider if the health care provider's liability for the incident giving rise to the claim is:

- The result of professional services rendered as a charitable health care provider;  
or
- Covered under the Federal Tort Claims Act (FTCA).

This new law is made part of and supplemental to the HCPIAA.

#### *Definitions*

The bill expands the definition of “full-time faculty employed by the University of Kansas Medical Center [KUMC]” to permit a person licensed to practice medicine and surgery who holds a full-time appointment at KUMC to be employed part-time by the U.S. Department of Veterans Affairs if such employment is approved by the executive vice-chancellor of the KUMC.

The bill also creates a definition for the term “charitable health care provider,” which is the same meaning as in the Kansas Tort Claims Act.

#### *Required Professional Liability Insurance—Exclusions*

The bill permits insurance carriers providing professional liability insurance coverage to exclude liabilities incurred by such providers as a result of professional services rendered as a charitable health care provider or in the event the provider is covered under the FTCA.

### *Inactive Health Care Providers—Tail Coverage*

The bill establishes an annual maximum amount of \$3 million for the aggregate fund liability for judgments and settlements arising from claims made in a fiscal year against a resident or nonresident inactive health care provider.

### ***Nurse Practice Act—Amendments***

The bill expands a licensure provision applying to advanced practice registered nurses (APRNs) holding exempt licenses to permit an APRN who has been granted such license also to be exempt from the requirements to carry professional liability insurance and participate in HCSF coverage under the HCPIAA. The bill also permits the Board of Nursing to issue an inactive license to any APRN as defined in the Board of Nursing's rules and regulations who applies for such license, pays the required fee for an initial license or renewal of the license, and who is not regularly engaged in advanced practice registered nursing in Kansas. The inactive licensee will not be required to meet continuing education requirements and will be prohibited from engaging in the practice of advanced practice registered nursing in Kansas. The bill also creates requirements, including continuing education requirements to be established in rules and regulations, for an APRN with an inactive license who seeks to become licensed to regularly engage in advanced practice registered nursing in Kansas.

### **Background**

HB 2118 was introduced by the House Committee on Insurance at the request of the Health Care Stabilization Fund Board of Governors (Board). In the House Committee hearing, the Executive Director of the Board described circumstances for certain health care providers that could result in the duplication of professional liability insurance coverage under either the Kansas Tort Claims Act or the FTCA. The bill would clarify the liability exposure of the health care provider and the applicable coverage for any claim that could arise and would permit insurance companies to make adjustments accordingly. The Executive Director of the Health Ministries Clinic (a federally qualified health center) indicated the bill addresses regulatory language that has the effect of restricting the ability of providers to fully serve their communities as these regulations do not allow insurers in Kansas to offer partial coverage (e.g., gap coverage) that would exclude services being rendered under the provider's FTCA policy. As a result, clinics and similar providers must look at all-inclusive policies which, in addition to being unnecessary and expensive, are prohibited under the terms of the FTCA which does not allow dual coverage.

Written-only testimony submitted by the Executive Administrator of the Board of Nursing indicated the Board of Nursing reviewed the proposed changes for inactive licensure for APRNs and voted to support the bill. Additional written-only proponent testimony was submitted by the Executive Director and the Board President of the Kansas Association for the Medically Underserved and the Kansas Medical Society.

According to the fiscal note prepared by the Division of the Budget, enactment of the bill would have no fiscal effect on state revenues or expenditures.