



November 16, 2021

To: Health Care Stabilization Fund Oversight Committee

From: Melissa Renick, Assistant Director for Research

Re: 2021 House Sub. for SB 78

This memorandum provides a summary of amendments to the Health Care Provider Insurance Availability Act (HCPIAA) contained in a larger insurance-subject bill passed by the 2021 Legislature. Those changes address the professional liability insurance coverage options for defined health care providers, liability of the Health Care Stabilization Fund agency (HCSF), and the membership of the Health Care Stabilization Fund Board of Governors (Board).

During the 2020 annual meeting of this committee, similar legislation (2020 SB 493) was described and discussed. During the 2021 Session, legislation was introduced in both chambers at the request of the Kansas Medical Society (HB 2380 by House Committee on Insurance and Pensions and SB 290 by Senate Committee on Ways and Means). The 2021 legislative proposals did not include provisions from 2020 SB 493 pertaining to the dissolution of the fund overseen by the HCSF (Fund) if certain circumstances exist. HB 2380 as it passed the House (amended by House Committee) was included in the insurance conference committee report for House Sub. for SB 78. The House and Senate each adopted the conference committee report on May 7, the Governor approved the bill on May 19, and the law became effective on July 1, 2021.

House Sub. for SB 78

Provisions pertaining to HCPIAA amendments are described as follows (background information included as “comment”).

Health Care Stabilization Fund Board of Governors Membership

The bill amends Board membership provisions to require at least two of the three members appointed by the Commissioner of Insurance from a list of nominees submitted to the Commissioner by the Kansas Medical Society to be doctors of medicine who are licensed to practice medicine and surgery in Kansas (*Section 14*).

Comment. Under continuing law, the 11-member Board is required to:

- Administer the Fund and exercise and perform other powers, duties and functions required of the Board under the HCPIAA;

- Provide advice, information, and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;
- Prepare and publish, on or before October 1 of each year, a report for submission to this Oversight Committee that includes a summary of the Fund's activity during the preceding fiscal year, including, but not limited to, the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the Fund, the number of judgments paid from the Fund, the number of settlements paid from the Fund, and the Fund balance at the end of the fiscal year; and
- Have the authority to grant temporary exemptions from the provisions of KSA 40-3402 and 40-3404, and amendments thereto, to health care providers who have exceptional circumstances and verify in writing that the health care provider will not render professional services in this state during the period of exemption.

Liability of the Health Care Stabilization Fund

The bill increases, from \$300,000 to \$500,000, the minimum amount of liability on the HCSF, if the Fund is liable, for the HCSF to pay a judgment or settlement by making installment payments of \$500,000 or 10.0 percent of the judgment, whichever is greater (*Section 13*).

Required Coverage for Minimum Professional Liability

Comment. Each health care provider subject to the HCPIAA must choose among HCSF coverage options. The three current HCSF coverage options remain available through December 31, 2021, and limit the HCSF liability with respect to judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services from July 1, 1989, and prior to January 1, 2022. (*Note:* Coverage requirements described below appear in Section 13 and 14 of the bill.)

Two Coverage Options

On and after January 1, 2022, every health care provider is required to choose one of two HCSF coverage options limiting the HCSF liability for judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services, as follows:

- \$500,000 for any one judgment or settlement against a health care provider, subject to an aggregate limit of \$1,500,000 for all judgments and settlements arising from all claims made in the fiscal year against such health care provider; or
- \$1.5 million for any one judgment or settlement against a health care provider, subject to an aggregate limit of \$4.5 million for all judgments and settlements arising from all claims made in the fiscal year against such health care provider.

Captive Insurers; Qualification as a Self-insurer

The bill further specifies a medical care facility or health care facility deemed as a self-insurer may opt out of the coverage requirements, as long as such facility substantially meets the minimum coverage requirements created by the bill through coverage provided by the facility's captive insurance coverage (*Section 14*).

Excess Coverage

The bill specifies the Board shall have the authority to adjust certain coverage amounts needed to effectuate provisions of the HCPIAA, provided such minimum coverage is not less than \$1.0 million per claim and \$3.0 million in the aggregate (*Section 14*).

Liability of Insurer for HCSF-Covered Provider or Self-Insurer; HCPIAA

The bill updates a provision limiting liability for a claim for personal injury or death arising out of the rendering of or failure to render professional services by such health care provider. The bill provides, for such claims, the insurer of a health care provider covered by the HCSF or self-insurer shall be liable only for the amount of basic coverage in effect on the date of the incident giving rise to the claim, which is subject to an annual aggregate amount of not less than three times the primary amount for all such claims against the health care provider (*Section 15*).

Notification Regarding Actions Filed for Personal Injury or Death Arising out of the Rendering of or Failure to Render Professional Services; HCPIAA

The bill updates language regarding a plaintiff's service of a copy of a petition upon the Board to include certified mail, priority mail, commercial delivery service, or first-class mail and require such service within 30 calendar days from the filing of such petition (*Section 16*).

Certificate of Self-Insurance, Requirements on Certain Facilities; HCPIAA

The bill modifies provisions pertaining to requirements on medical care or health care facilities certified as self-insurers (*Section 17*).

Those modifications:

- Increase, from \$100,000 to \$150,000, the aggregate annual insurance premium specified (one of two options for insurance coverage required for facilities obtaining a certificate of self-insurance); and
- Update criteria specified for the determination of the Board regarding qualification for a certificate of self-insurance to include any other factors the Board deems relevant and further specify:
 - Any applicant that owns and operates more than one medical care facility or more than one health care facility shall be deemed qualified by the Board, if such applicant is insured by a captive insurance company (as defined in KSA 40-4301) or under the laws of the state of domicile of any such captive insurance company.

Claims Made for Incidents Occurring after January 1, 2022; HCPIAA

The bill updates language referencing claims made against a resident or nonresident health care provider on and after July 1, 2014, to specify the minimum professional liability coverage policy limits associated with the HCSF liability are the limits in effect on the date of the incident giving rise to a claim.

The bill also specifies for claims made for incidents occurring on or after January 1, 2022, the aggregate HCSF liability for all judgments and settlements made in any fiscal year against a resident or nonresident inactive health care provider shall not exceed three times the basic coverage limit (*Section 18*).