

40-3413. Apportionment of risk among insurers; preparation of plan; contents; approval or disapproval; amendment; preparation by commissioner of insurance, when; order to discontinue unfair or unreasonable activities or activities inconsistent with act; governing board, membership; commissions on insurance written under plan; prior acts liability insurance for certain providers, policy limits.

(a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner and the board of governors within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

- (1) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise including the authority to make assessments against the insurers participating in the plan or plans;
- (2) rates and rate modifications applicable to such risks which shall be reasonable, adequate and not unfairly discriminatory;
- (3) a method whereby periodically the plan shall compare the premiums earned to the losses and expenses sustained by the plan. If there is any surplus of premiums over losses and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned such losses shall be transferred from the fund, however such transfers shall not occur more often than once each three months;
- (4) the limits of liability which the plan shall be required to provide, but in no event shall such limits be less than those limits provided for in subsection (a) of K.S.A. 40-3402, and amendments thereto;
- (5) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner.

(b) For every such plan or plans, there shall be a governing board which shall meet at least annually to review and prescribe operating rules. Such board of directors shall consist of nine members to be appointed, for terms of four years, by the commissioner as follows:

- (1) Two members shall be representatives of foreign insurers;
- (2) two members shall be representatives of domestic insurers;
- (3) two members shall be health care providers;
- (4) one member shall be a licensed insurance agent actively engaged in the solicitation of casualty insurance;
- (5) one member shall be the chairperson of the board of governors or the chairperson's designee; and
- (6) one member shall be a representative of the general public.

(c) The commissioner and board of directors shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection (a). As soon as reasonably possible after the plan has been filed the commissioner, consistent with the recommendations of the board of directors, shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsection (a), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

(d) If no plan meeting the standards set forth in subsection (a) is submitted to the commissioner and board of directors within 60 calendar days from the effective date of this act or within the period stated in any order disapproving an existing plan, the commissioner with the assistance of the board of directors shall after a hearing, if necessary to carry out the purpose of this act, prepare and promulgate a plan meeting such requirements.

(e) If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner and board of directors find that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this act, the commissioner and board of directors may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring discontinuance of such activity or practice.

(f) An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance written under the plan to an insurance agent licensed for any other insurer participating in the plan or to any insurer participating in the plan. Such commission shall be reasonably equivalent to the usual customary commission paid on similar types of policies issued in the voluntary market.

(g) Notwithstanding the provisions of K.S.A. 40-3402, and amendments thereto, the plan shall make available policies of professional liability insurance covering prior acts. Such professional liability insurance policies shall have limits of coverage not exceeding \$1,000,000 per claim, subject to not more than \$3,000,000 annual aggregate liability for all claims made as a result of personal injury or death arising out of the rendering of or the failure to render professional services within this state on or before December 31, 2014. Such professional liability insurance policies shall be made available only to physician assistants licensed by the state board of healing arts, licensed advanced practice registered nurses authorized by the state board of nursing to practice as an advanced practice registered nurse in the classification of a nurse-midwife, nursing facilities licensed by the state of Kansas, assisted living facilities licensed by the state of Kansas and residential health care facilities licensed by the state of Kansas that will be in compliance with K.S.A. 40-3402, and amendments thereto, on January 1, 2015. The premiums for such professional liability insurance policies shall be based upon reasonably prudent actuarial principles. The provisions of this subsection shall expire on January 1, 2016.

History: L. 1976, ch. 231, § 13; L. 1977, ch. 166, § 1; L. 1980, ch. 144, § 1; L. 1982, ch. 208, § 1; L. 1984, ch. 178, § 2; L. 1987, ch. 179, § 1; L. 1988, ch. 356, § 124; L. 1989, ch. 144, § 1; L. 1992, ch. 23, § 2; L. 1995, ch. 145, § 5; L. 2014, ch. 56, § 15; July 1.