



# Kansas Health Care Stabilization Fund

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Website <http://hcsf.kansas.gov>  
E-mail [hcsf@hcsf.org](mailto:hcsf@hcsf.org)  
Fax: 785-291-3550

300 S.W. 8<sup>th</sup> Avenue, Second Floor  
Topeka, Kansas 66603-3912  
Phone 785-291-3777

Testimony in Support of House Bill 2579  
House Insurance and Financial Institutions Committee  
By Charles L. Wheelen  
On Behalf of the Health Care Stabilization Fund Board of Governors  
February 16, 2016

You may recall that the 2014 Legislature amended the Health Care Provider Insurance Availability Act to add three categories of adult care homes to the definition of “health care provider” in K.S.A. 40-3401. This amendment was requested by the two principal associations representing the adult care home industry and the legislation was passed unanimously in both the House and the Senate. The three facility types are nursing facilities, assisted living facilities, and residential health care facilities. These facilities are now defined in K.S.A. 40-3401 as “health care facilities.”

We requested a six-month transition period such that even though HB 2516 became law on July 1, 2014, the new definition and the associated compliance requirements did not become effective until January 1, 2015. This gave us an opportunity to communicate with the administrators of affected facilities and their insurance agents. We stressed the following requirements: (1) all health care providers must maintain professional liability insurance coverage, (2) the basic insurance policy must be purchased from a company that has been approved by the Kansas Commissioner of Insurance, (3) the basic insurance policy must be a claims-made rather than an occurrence policy, (4) the basic insurance policy must provide minimum limits of \$200,000 per claim subject to not less than \$600,000 annual aggregate coverage, and (5) the health care provider must choose one of three levels of supplemental coverage via the Health Care Stabilization Fund.

In April 2015 we identified 96 facilities that appeared to be non-compliant because we had not received the notice of basic coverage required by K.S.A. 40-3402. We wrote to the administrators of those facilities and explained the importance of compliance. A copy of our letter to the administrators is attached for your reference. As a result, 80 of those facilities obtained the required professional liability insurance and achieved compliance.

As you may know, the Health Care Stabilization Fund Board of Governors does not have regulatory authority. We monitor compliance with the Availability Act, but if there is a problem with an insurance company or an agent, we refer the matter to the Commissioner of Insurance. If we identify non-compliance by a health care provider, we refer the matter to the appropriate licensing agency.

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The section in the Health Care Provider Insurance Availability Act that provides for enforcement is K.S.A. 40-3416. It says that if we have reason to believe that a health care provider is in violation of K.S.A. 40-3402 (the principal section stipulating professional liability insurance requirements) then we must report the suspected violation to the state agency that licenses and regulates the health care provider.

Unfortunately, in July 2015 we determined that it was necessary to report sixteen health care facilities that had failed to comply. Our letter was sent to the Commissioner of Survey, Certification and Credentialing at the Kansas Department for Aging and Disability Services. Mr. Ewert then contacted each of those facility administrators and stressed the importance of becoming compliant with the Health Care Provider Insurance Availability Act. Within a few weeks we began to receive the Notice of Basic Coverage documents for most of those facilities.

At the conclusion of the first year of implementation, we achieved a 99% compliance rate, but there remained a few facilities that failed to obtain the required insurance. It is important to note that these facilities may have general liability insurance purchased from a non-admitted carrier, but they have failed to obtain the required professional liability insurance from a company approved by the Commissioner of Insurance.

K.S.A. 40-3416 mentioned above goes on to say that the regulatory agency “shall make such investigation as it deems necessary and take such other official action as deemed appropriate.” It also says that if the regulatory agency determines that there is a violation, the agency “shall promptly notify the attorney general.” The next step requires the Attorney General or the appropriate county attorney to file an action in district court “to enjoin the health care provider from rendering professional services in this state.” In other words, the facility would be forced to discontinue operations and presumably would have to relocate the residents. We believe this remedy is too extreme.

House Bill 2579 would allow the licensing agency to issue a correction order in the event of non-compliance with the professional liability insurance requirements. The correction order would grant the health care facility a specific amount of time to achieve compliance. If the facility fails to achieve compliance within the specified timeframe, the agency would then impose a fine not to exceed \$500 per day. This is identical to the existing statutory method and penalty for addressing health or safety violations. We believe this would be a reasonable method of enforcing compliance with the professional liability insurance requirements under the Health Care Provider Insurance Availability Act.

We respectfully request that you recommend passage of HB2579. Thank you.



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April 27, 2015

<Administrator>  
<Facility Name>  
<Address>  
<City, KS, Zip>

Dear <Administrator>:

Last year, at the request of the two associations representing adult care homes, the Legislature amended the Health Care Provider Insurance Availability Act to include nursing facilities, assisted living facilities, and residential health care facilities. This means facilities like yours will be provided a number of valuable protections and also means your patients will be assured reasonable recourse in the event of an injury caused by negligence.

In summary, your facility must maintain minimum levels of professional liability insurance coverage and participate in funding the Kansas Health Care Stabilization Fund. Your insurance company is responsible for submitting documentation that your facility is in compliance with *Kansas Statutes Annotated* 2014 Supp. 40-3402. For details, please refer to the enclosed copy of our Bulletin 2014-3 dated May 30, 2014.

Abundant information about the requirements prescribed in the Availability Act is available at our website. You may be particularly interested in the 2014 Bulletins you may download by selecting the "News" link at the top of the page.

The legislation became effective July 1, 2014, but the licensed facilities were given six months to make arrangements for compliance with the law. Numerous communications were promulgated by the industry associations and appearances were made by our staff to assure that all administrators of licensed nursing facilities, assisted living facilities and residential health care facilities were properly informed. In addition, the Kansas Department for Aging and Disability Services mailed a letter to each affected facility notifying them of the new statutory requirement. We have waited patiently for over three months and **we have not received the statutory notice of basic coverage from your insurer.**

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Another section of the Kansas Statutes says that if our Board of Governors “suspects that a health care provider licensed to render professional services is in violation of K.S.A. 40-3402, and amendments thereto, such board shall report the suspected violation to the state agency which licenses, registers or certifies such health care provider. Upon receipt of such report or other evidence of violation of K.S.A. 40-3402, and amendments thereto, the state agency shall make such investigation as it deems necessary and take such other official action as deemed appropriate.”

There may be a reasonable explanation why our records do not indicate that your facility is in compliance with K.S.A. 2014 Supp. 40-3402. Perhaps your compliance problem can be easily resolved.

**Please contact our Compliance Officer, Matthew Ball at 785 291 3480 or email address [matt.ball@hcsf.org](mailto:matt.ball@hcsf.org) as soon as possible to discuss your insurance situation.** We need to make certain that your facility is in compliance with the law. If it is not, we have a statutory duty to report your facility to the Secretary of the Department for Aging and Disability Services for investigation.

Thank you for your assistance in resolving this issue.

Sincerely,



Charles L. Wheelen  
Executive Director