

2019 Kansas Statutes

40-3402. Professional liability insurance to be maintained by health care providers as condition of active licensure to render services in state, exception, limits of coverage; information to be furnished by insurer; termination of coverage, notice; contents of policies issued in state; duties of certain insurance companies; surcharge and information required of certain health care providers; occurrence form policy as alternative to required claims made policy for certain persons.

(a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition of active licensure or other statutory authorization to render professional service as a health care provider in this state, unless such health care provider is a self-insurer. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995 nor to health maintenance organizations on or after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any health care provider may offer to such health care provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage shall, within 30 days after the effective date of any policy issued in accordance with this subsection, notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be issued, the name and address of all health care providers covered by the policy, the amount of the annual premium, the effective and expiration dates of the coverage and such other information as the board of governors shall require. A copy of the notice required by this subsection shall be furnished the named insured.

(2) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the board of governors, the state agency which licenses, registers or certifies the named insured and the named insured. Such notice shall be provided no less than 30 days prior to the effective date of any termination initiated by the insurer or within 10 business days after the date coverage is terminated at the request of the named insured and shall include the name and address of the health care provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after July 1, 1976, shall contain or be endorsed to provide basic coverage as required by subsection (a) of this section. Notwithstanding any omitted or inconsistent language, any contract of professional liability

insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) A nonresident health care provider shall not be licensed to actively render professional service as a health care provider in this state unless such health care provider maintains continuous coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404, and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1).

(c) Every health care provider that is a self-insurer, the university of Kansas medical center for persons engaged in residency training, as described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto, the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or a medical care facility or mental health center for self-insurers under subsection (e) of K.S.A. 40-3414, and amendments thereto, shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404, and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1) and (a)(2).

(d) In lieu of a claims made policy otherwise required under this section, a person engaged in residency training who is providing services as a health care provider but while providing such services is not covered by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and amendments thereto, may obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits which are substantially the same as the professional liability insurance coverage and limits required by subsection (a) of K.S.A. 40-3402, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the health care provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

(e) In lieu of a claims made policy otherwise required under this section, a nonresident health care provider employed pursuant to a locum tenens contract to provide services in this state as a health care provider may obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits which are substantially

the same as the professional liability insurance coverage and limits required by K.S.A. 40-3402, and amendments thereto. Where such occurrence form policy is in effect, the provisions of the health care provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

History: L. 1976, ch. 231, § 2; L. 1984, ch. 238, § 2; L. 1985, ch. 166, § 2; L. 1986, ch. 229, § 26; L. 1986, ch. 179, § 3; L. 1986 ch. 184, § 2; L. 1989, ch. 143, § 2; L. 1990, ch. 175, § 2; L. 1991, ch. 139, § 2; L. 1994, ch. 155, § 1; L. 1995, ch. 145, § 1; L. 1997, ch. 134, § 1; L. 2014, ch. 56, § 6; July 1.