



Kansas Health Care Stabilization Fund

Website <http://hcsf.kansas.gov>
300 S.W. 8th Avenue, 2nd Floor
Topeka, Kansas 66603-3912

E-mail hcsf@ks.gov
Phone 785-291-3777
Fax 785-291-3550

HCSF Bulletin 2017-1

TO: Companies Authorized to Offer Professional Liability Insurance to Kansas Health Care Providers

FROM: Charles L. Wheelen, Executive Director, Health Care Stabilization Fund

DATE: May 24, 2017

SUBJECT: 2017 House Bill 2118

Kansas Statutes Annotated 2016 Supp. 40-3402(a) requires that health care providers, as defined in K.S.A. 2016 Supp. 40-3401(f), maintain in effect a professional liability insurance policy as a condition of active licensure to render professional services in Kansas. The law also stipulates that the professional liability insurance policy must cover all claims made during the policy period. This year the Legislature passed and the Governor approved legislation that will allow exceptions to this "all claims made" requirement under specific circumstances. This change in the law will go into effect July 1, 2017.

K.S.A. 2016 Supp. 40-3408 is amended by adding a new subsection that says,

(e) Notwithstanding any provision of article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, an insurer that provides coverage to a health care provider may exclude from coverage:

- (1) Any liability incurred by such health care provider as a result of professional services rendered as a charitable health care provider; or*
- (2) any liability incurred by such health care provider that is covered under the federal tort claims act pursuant to chapter 171 of title 28 of the United States code.*

A related amendment adds a new definition to K.S.A. 2016 Supp. 40-3401 as follows:

(z) "Charitable health care provider" means the same as defined in K.S.A. 75-6102, and amendments thereto.

The first exclusion would apply to a health care provider who, in addition to his or her regular practice, also serves as a charitable health care provider. This means he or she has entered into an agreement with the Kansas Secretary of Health and Environment in which the health care provider agrees to provide gratuitous medical care to patients who meet the eligibility criteria to be defined as medically indigent.
(continued)

Jimmie A. Gleason, M.D., Chairman

BOARD OF GOVERNORS

John W. Mize, J.D., Vice-Chairman

Scott D. Booker, D.O.
Harold M. Chalker, D.C.
Kiley A. Floyd

Jeffery W. Glasgow, C.R.N.A.
Kevin D. McFarland

Steven R. Short, D.O.
Travis W. Stembridge, M.D.
Wayne T. Stratton, J.D.

When serving as a charitable health care provider, the health care provider is defined as an employee of the State of Kansas and therefore his or her professional liability exposure is covered under the Kansas Tort Claims Act. This exclusion may also apply to a facility that is a defined health care provider in K.S.A. 40-3401(f) and is a charitable health care provider pursuant to K.S.A. 75-6102.

The second exclusion would apply to a health care provider who is employed in a position that is covered under the Federal Tort Claims Act. Examples are employees of federal entities such as Veterans Administration hospitals or federally qualified health centers. If a health care provider engages in professional services outside the scope of his or her full-time federal employment (moonlighting), then the health care provider needs a basic insurance policy to cover professional services rendered when moonlighting. A somewhat different situation would be a health care provider who is covered by a basic insurance policy while engaged in his or her principal practice and is also employed part-time by a federal entity. In either case, the basic professional liability insurance policy could exclude coverage for claims that may arise from liability exposure that is covered under the Federal Tort Claims Act.

Although 2017 House Bill 2118 will not become law until July 1, 2017, insurers may wish to submit their proposed exclusion language to the Kansas Insurance Department in advance. If approved, the new exclusion language could be included in policies issued with effective dates on or after July 1, 2017.