



Kansas Health Care Stabilization Fund

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BULLETIN 2018-1

TO: Interested Insurers and Agents that Insure Kansas Health Care Facilities

FROM: HCSF Executive Director, Charles L. Wheelen

DATE: January 2, 2018

SUBJECT: Health Care Facilities; Ownership Changes

You may recall that a few years ago the definition of health care provider under the Kansas Health Care Provider Insurance Availability Act was amended by the Legislature to include nursing homes, assisted living facilities, and residential health care facilities licensed by the State of Kansas. As a result of the amendment, as of January 1, 2015 these three types of health care facilities must maintain in effect a policy of professional liability insurance with minimum limits of \$200,000 per claim subject to not less than \$600,000 annual aggregate coverage for all claims made in the policy period. In addition, the health care facility must have excess coverage under the Health Care Stabilization Fund. The maximum level of excess coverage under the HCSF is \$800,000 per claim subject to not less than \$2.4 million annual aggregate coverage. In this context, it is important to keep in mind that it is the licensed facility, not the owner, that is a defined health care provider.

The Health Care Provider Insurance Availability Act generally requires claims made coverage in lieu of occurrence coverage. The law says, "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." The Act also provides for statutory "tail coverage" if a health care provider becomes inactive. In order for a health care facility to become inactive and eligible for statutory HCSF tail coverage, the facility must discontinue operations and the license must be cancelled. Change of ownership does not meet the statutory eligibility criteria for HCSF tail coverage.

If you know that a client is contemplating the sale of a health care facility, please inform the seller that he, she, or the company will not be eligible for statutory tail coverage via the HCSF. Your client may wish to indemnify themselves against liability for a future claim or lawsuit attributable to an event that occurred prior to the transfer of ownership.

Thank you for your attention to this matter.

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