



Kansas Health Care Stabilization Fund

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

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

DATE: May 30, 2014

SUBJECT: New Health Care Providers as of January 1, 2015

Our previous Bulletin 2014-2 explained that House Bill 2516 amends numerous sections in the Health Care Provider Insurance Availability Act. Among the many changes, the definition of "health care provider" is amended as of January 1, 2015 to add physician assistants, nurse-midwives, nursing facilities, assisted living facilities, and residential health care facilities. Limited exceptions are made for physician assistants and nurse-midwives employed exclusively by federal agencies. The Legislature made these changes at the request of associations representing physician assistants, nurse-midwives, and adult care facilities.

Current law (K.S.A. 40-3402) requires that defined health care providers (HCPs) maintain professional liability insurance that meets the following criteria:

1. Each individual licensed HCP must be insured by a policy issued by an insurance company or risk retention group that has been granted authority by the Kansas Insurance Commissioner to transact business in Kansas.
2. The policy must cover all claims made during the policy period and if the insured HCP is a Kansas resident health care professional, the policy must cover the HCP's professional services everywhere he or she renders services.
3. The policy must have coverage limits not less than \$200,000 per claim subject to not less than a \$600,000 annual aggregate limit. Coverage limits exceeding the \$200,000 per claim/\$600,000 annual aggregate are acceptable.

If a new HCP is currently insured by a policy that meets the criteria listed above, it will not be necessary to cancel the policy and obtain a new one with a January 1, 2015 effective date. Instead, the insurer can prepare and submit a notice of basic coverage form applicable to the remaining number of days in the term of the primary insurance policy. The HCSF surcharge will be calculated based on the usual method and will then be prorated based on the ratio derived from dividing the remaining number of days by 365. For example, a policy with an effective date of April 1, 2014 with a one year term will have 90 days remaining in 2015. The ratio to be used to prorate the surcharge is 0.25 (25%) of the normal annual surcharge. Some insurers may, however, prefer to cancel the current policy and issue a new policy with a January 1, 2015 effective date.

The detailed instructions for completion of the notice of basic coverage form can be downloaded from the HCSF website. The URL for the forms page is <http://hcsf.kansas.gov/insurers/Pages/forms.aspx> and then select "NBC Instructions." These instructions will be updated when HB2516 becomes law on July 1, 2014.

(continued)

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On the other hand, if a new HCP is currently insured by a policy that has already been renewed on or after January 1, 2014 and the policy does not meet the criteria listed above, plans should be made to cancel the policy and obtain a new policy with an effective date of January 1, 2015 that does meet the statutory criteria. Similarly, if a new HCP is currently insured by a policy that expires any time between now and December 31, 2014, and that policy does not meet the statutory criteria, upon expiration of that policy it is advisable to obtain a different policy in order to meet the statutory criteria. Otherwise, if the non-compliant policy is renewed, it will be necessary to cancel that policy and obtain a new policy effective January 1, 2015.

An obvious concern will of course be the adequacy of coverage limits. This concern can be addressed by making a well informed choice among the three Health Care Stabilization Fund coverage levels. Current law [K.S.A. 40-3403(l)] requires that each HCP choose one of three levels of HCSF coverage. Those levels are:

- (1) \$100,000 per claim subject to an aggregate limit of \$300,000 per state fiscal year
- (2) \$300,000 per claim subject to an aggregate limit of \$900,000 per state fiscal year
- (3) \$800,000 per claim subject to an aggregate limit of \$2,400,000 per state fiscal year.

If a new health care provider is currently insured under a policy that meets the statutory criteria and the limits of coverage are considered adequate, the HCP may choose the first option for purposes of participating in the HCSF. If, however, a HCP is currently insured by a policy that does not meet the statutory criteria, the HCP may want to obtain a new policy effective January 1, 2015 that is liable for \$200,000 per claim subject to an annual aggregate limit of \$600,000 and then select the second or third coverage option for HCSF participation. Of course there are other possible combinations of coverage, but the HCSF coverage is always supplemental, that is, liable only for claims exceeding the policy limits of the commercial insurance policy.

Because HCSF coverage is statutory and HCSF liability for claims attributable to the new health care providers will not be applicable until January 1, 2015, HCPs may wish to consider purchasing prior acts coverage for professional services rendered on or before December 31, 2014. Prior acts coverage is not required under the Availability Act, but may be advisable. Some commercial insurance companies offer prior acts coverage, but if a new HCP cannot obtain prior acts coverage from a commercial insurer, a prior acts policy will be available to new HCPs for a limited period of time via the Health Care Provider Insurance Availability Plan.

Until such time that the HCSF Board of Governors acquires sufficient historical loss experience attributable to the new categories of health care providers, it is planned to use the percentage surcharge method similar to the current method of calculating the HCSF surcharge for hospitals and a number of other HCP categories. The HCSF surcharge is determined by multiplying the premium for the basic layer of insurance coverage by the applicable percentage for the chosen level of HCSF coverage. The current rates are:

<u>HCSF Coverage Level</u>	<u>Rate</u>
(1) \$100,000 per claim subject to an aggregate limit of \$300,000 per state fiscal year	22%
(2) \$300,000 per claim subject to an aggregate limit of \$900,000 per state fiscal year	33%
(3) \$800,000 per claim subject to an aggregate limit of \$2,400,000 per state fiscal year	38%

The actuary employed by the HCSF Board of Governors is currently updating HCSF liabilities as a result of tail coverage improvements resulting from enactment of HB2516. Depending on the actuarial analysis, the HCSF surcharge rates may be adjusted effective January 1, 2015. In that event, the new rates will be published as soon as possible.

A copy of the final, enrolled version of HB2516 and a Legislative Research Department staff summary can be downloaded at http://www.kslegislature.org/li/b2013_14/measures/hb2516/.