

Kansas Health Care Stabilization Fund

General Information

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How Fund Coverage Limits Apply to Professional Practice

The Fund provides professional liability coverage for defined health care providers only. The Fund coverage limit is based on when the incident occurred that resulted in a claim alleging professional negligence. The coverage limits selected for a specific compliance period remain in effect for any claim or lawsuit attributable to the compliance period.

Claims made or lawsuits filed against licensed health care providers, or eligible inactive health care providers, are covered only for those services rendered or failed to be rendered during the period when the health care provider was in compliance with the Fund law.

Resident health care providers, i.e., those who are legal residents of Kansas and are in compliance with the Fund law, are provided coverage from the HCSF for judgments or settlements which exceed the required basic professional liability insurance coverage limits for their services rendered inside and outside of Kansas.

For non-resident health care providers, e.g., a provider who lives in Missouri and practices in Kansas, the Fund's coverage is available only for those professional services rendered in the state of Kansas.

For additional assistance in understanding the Fund coverage limits, contact your insurance agent, your insurance company representative, or the HCSF office.

Overview of the Health Care Provider Insurance Availability Act

In addition to creating the Health Care Stabilization Fund, the Health Care Provider Insurance Availability Act establishes statutory requirements pertaining to professional liability coverage for health care providers. For example, the Availability Act:

- Requires that basic professional liability insurance covers those professional services authorized by laws governing licensure of a Kansas health care provider.
- Requires that basic professional liability insurance provides coverage with minimum limits of \$500,000 per claim subject to not less than a \$1,500,000 annual aggregate limit for each individual health care provider.
- Requires that health care providers purchase their basic professional liability insurance from a company that is authorized by the Insurance Commissioner to sell insurance in Kansas. If for some reason a health care provider cannot obtain commercial professional liability insurance from a company admitted to do business in Kansas, the Availability Act creates a joint underwriting association for that purpose.
- Requires that all basic professional liability insurance policies cover all claims made during the policy period. The policy must cover all professional liability claims made during the term of the policy regardless of the date of the incident giving rise to the claim.
- Provides HCSF coverage for eligible Kansas resident health care providers applicable to their professional services wherever those services are rendered. Eligible non-resident health care providers are afforded Fund coverage only for professional services rendered in the state of Kansas.
- Creates special State self-insurance programs to provide the basic coverage for the full-time faculty members, foundations and individuals engaged in the residency training programs at the University of Kansas Medical Center and certain affiliated programs, and for certain non-profit corporations organized to administer graduate medical education programs.
- Provides continued coverage for prior acts when a health care provider becomes inactive. In addition, this "tail coverage" is improved beginning July 1, 2014 such that the coverage is equal to both the minimum required basic insurance coverage plus the level of Fund coverage that was in effect at the time of the incident resulting in a claim. This also applies to health care provider facilities that are no longer licensed to operate in Kansas.

Notes

Fund or *HCSF* means the Health Care Stabilization Fund. *Fund law* means the Health Care Provider Insurance Availability Act (K.S.A. 40-3401 et seq.). *Availability Plan* or *the Plan* means the joint underwriting association created by K.S.A. 40-3413.

Active or Inactive Health Care Providers

Active and inactive are terms used in the Health Care Provider Insurance Availability Act to establish how Health Care Stabilization Fund coverage applies to claims or lawsuits asserted against a health care provider. The term “inactive” as used in the Availability Act does not mean the same thing as inactive licensure.

Active health care providers are those individuals and entities that maintain an active Kansas license, maintain basic professional liability insurance, and participate in the HCSF by paying the applicable premium surcharge. For active health care providers, the Fund coverage is supplemental to the primary insurance policy.

Inactive health care providers are those individuals who no longer maintain basic professional liability insurance and are no longer rendering professional services. Health care providers who become inactive are provided continued Fund coverage without any additional cost. The limits of extended HCSF coverage are based on the level of Fund coverage in effect on the date of the incident that resulted in a claim against the health care provider plus an additional \$500,000 per claim subject to a \$1,500,000 annual aggregate limit.

Additional Excess Professional Liability Insurance

Excess professional liability insurance above the Fund coverage limit may be available via basic professional liability insurance companies. This is an individual decision to be made by each health care provider.

Excess professional liability insurance may be available on a claims made basis. Health care providers may want to inquire about the cost of an extended reporting endorsement (“tail coverage”).

HCSF Guidelines for Health Care Providers Licensed to Practice in Kansas

Kansas Resident Health Care Providers

Health care providers who are legal residents of Kansas and have an active Kansas license, as well as health care providers that are licensed facilities located in Kansas, are required to maintain the minimum basic professional liability coverage as a condition of active licensure. In addition, they are required to participate in the Fund. The primary insurance carrier collects the provider's payment for the professional liability insurance coverage and remits the premium surcharge to the Fund without any reductions for commissions, collection or processing expenses.

The primary insurer is responsible for calculating the provider's premium surcharge based on the Fund coverage limit selected by the provider, the rating classification code of the provider and the number of years the provider has been in compliance with the Fund.

Approximately 25 commercial insurance companies and risk retention groups offer medical professional liability coverage in Kansas. Some of these insurers offer coverage only to a specific profession or specialty. If coverage is not available through a primary carrier, the provider can apply for coverage offered by the Health Care Provider Insurance Availability Plan. Providers should contact their agent for information regarding the Plan.

Kansas Residents Practicing Out of State

Health care providers who reside in Kansas and have an active Kansas license, but practice exclusively in another state are still required to comply with the Fund. A resident health care provider who does not wish to maintain Fund compliance or pay the surcharge should contact the appropriate licensing agency to discuss inactivating or discontinuing his or her Kansas professional license. A license may be converted to inactive status or another licensure category that is exempt from the Fund law.

Kansas Residents Practicing in Missouri

Kansas resident health care providers who have an active license to practice in Missouri or are otherwise authorized to render professional services in Missouri are required to pay an additional surcharge to the Fund. If the health care provider does not actually practice in Missouri, he or she may convert their license to inactive until such time that he or she decides to resume practice in Missouri.

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Inactive Kansas Residents Who Reinstate Their Active Kansas License

The required primary insurance coverage must be obtained from an admitted Kansas company. The primary carrier will be responsible for enrolling the provider in the HCSF. The Fund does not provide prior acts coverage for services rendered in another state prior to reinstating Fund compliance.

Non-Resident Health Care Providers

Health care providers who do not reside in Kansas but have an active license to practice in Kansas are subject to the basic professional liability coverage requirements (minimum of \$500,000 per claim with \$1,500,000 annual aggregate limits) plus a Fund surcharge that is based upon the percentage ratio of their Kansas practice. This is a statutory requirement and is a condition of licensure. If a licensee is no longer actively practicing in Kansas, he or she must convert their license to inactive in order to avoid the basic insurance and HCSF surcharge required by Kansas law.

Unlike Kansas resident health care providers, nonresident health care providers who have an active license to practice in Kansas must initiate compliance with the Fund law by completing the HCSF Non-Resident Certification Form. The surcharge payment is submitted to the Fund with the completed Non-Resident Certification Form and a copy of a current Certificate of Insurance from the primary insurance carrier. A "Non-Resident Certification" form may be downloaded from the forms page at <https://hcsf.kansas.gov>

Non-Residents Relocating to Kansas

The required primary coverage must be obtained from an admitted Kansas insurance company. When the provider becomes a legal resident of Kansas the primary carrier will be responsible for enrolling the provider in the Fund.

Locum Tenens Practicing in Kansas

The Availability Act defines a locum tenens as a health care provider who renders professional services during a short-term assignment not exceeding 182 days per calendar year. A locum tenens must be licensed to practice in Kansas and must comply with the Fund law.

Kansas Residents

If the health care provider is a Kansas resident and maintains a separate professional liability policy for the locum tenens assignment, it is important to know that both insurance policies are required to provide coverage for all services rendered. Pursuant to K.S.A. 40-3402, each policy is required to be liable "for all claims made during the policy period."

Non-Residents

A non-resident health care provider who will participate in a locum tenens assignment must comply with the Health Care Provider Insurance Availability Act. The health care provider must complete a non-resident application. A copy of the "Non-Resident Certification" form may be downloaded from the forms at <https://hcsf.kansas.gov>

The primary liability insurance company must either be authorized to issue professional liability insurance in Kansas or must provide a signed "Declaration of Compliance" form to the Health Care Stabilization Fund which confirms: 1) that the insurer will provide the required \$500,000/\$1,500,000 minimum level of primary coverage and 2) the insurer is aware that they are responsible for any and all prior acts that occurred in Kansas.

An exception from the normal claims made insurance policy requirement is allowed for those non-resident locum tenens health care providers who have an occurrence policy, but the "Declaration of Compliance" means the insurer agrees to generally comply with the Health Care Provider Insurance Availability Act if any claims arise as a result of professional services rendered during the locum tenens assignment.

Important Points to Remember

- A self-insurance policy provided by an employer will not satisfy the basic coverage requirement in Kansas.
- A primary policy with coverage exceeding the basic \$500,000/\$1,500,000 (minimum required) does not exempt a health care provider from participation in the Fund.
- If a health care provider is unable to secure a basic policy, he or she may need to have the insurance agent or locum tenens company contact the Kansas Availability Plan for assistance.
- If a health care provider maintains an active Kansas license, he or she must continuously maintain the basic \$500,000/\$1,500,000 coverage and comply with the Fund law. This is a statutory requirement.

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Termination of Assignment

The health care provider should contact the appropriate Kansas licensing agency to discuss the status of his or her license. If the license is converted to inactive, the health care provider will no longer be required to maintain the basic insurance policy nor participate in the Fund.

Obtaining Basic Professional Liability Coverage from the Availability Plan

The Health Care Provider Insurance Availability Plan is one of the principal features of the Act. Without this Availability Plan, some individual health care providers would not be able to obtain professional liability insurance.

Any defined health care provider who has an active license to render professional services in Kansas may obtain basic professional liability insurance from the Health Care Provider Insurance Availability Plan if the provider has been denied basic coverage from the commercial insurance market.

Any licensed insurance agent should be able to provide assistance in making application to the Availability Plan. At the time this document was published, the Availability Plan was administered by the Kansas Medical Mutual Insurance Company of Topeka, Kansas (telephone 785-232-4740 or 1-800-232-2259).

How the HCSF Becomes Aware of Lawsuits and Claims

If a claim is made without a formal legal action being filed, the provider should notify their primary insurance company and the Fund's Legal Section as soon as possible. All inactive health care providers should contact the Fund as soon as they have any notice of a claim, regardless of whether or not actual court proceedings have been commenced by the filing of a petition.

Any health care provider, active or inactive, who is sued outside Kansas, has an obligation to notify the Health Care Stabilization Fund. If any action is filed against a resident health care provider outside of this State, the health care provider or the health care provider's insurance company must notify the HCSF Board of Governors as soon as possible.

When and How the HCSF Defends Health Care Providers

Primary insurance companies provide a defense on behalf of active health care providers. If the claim or lawsuit exceeds the basic coverage limits and results in a tender, the Health Care Stabilization Fund will assume the cost of defending the health care provider. In most situations, the Fund continues to provide a defense using the same attorney utilized by the primary insurer.

Inactive health care providers, who are qualified for Fund tail coverage, rely on the Fund to appoint a defense attorney. Defense attorneys appointed by the Fund to defend actions against inactive providers are skilled medical malpractice defense lawyers.

If a health care provider has questions or concerns regarding the primary insurer's defense or the Fund's defense activities relating to a specific claim or suit, the provider should contact the Fund's Chief Attorney at 785-291-3777.

University of Kansas Postgraduate Training Programs

The professional liability exposure of residents in training at KU Medical Center or one of the affiliated residency programs is self-insured by the State of Kansas for the physician's basic coverage. This self-insurance does not, however, cover extracurricular medical practice (moonlighting).

State self-insurance of the KUMC postgraduate training programs provides continuing coverage for any future claims or suits that are attributable to an event that occurred during the postgraduate training program.

Residents who engage in moonlighting activities which are not part of the residency training program should obtain separate basic professional liability insurance coverage for those activities. One of the few sources for this specific coverage is the Health Care Provider Insurance Availability Plan.

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