



HEALTH CARE STABILIZATION FUND



FEBRUARY 2007

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Stabilized, but a changing basic coverage market

For more than two years the number of insurance companies writing the basic professional liability insurance has been relatively stable with about thirty companies writing one or more Kansas resident health care providers.

Number of insurance companies	Number of health care provider policy years	Percent of total health care provider policy years
6	More than 200	76%
11	More than 50 but less than 200	15%
5	More than 10 but less than 50	.08%
7	One or more but less than 10	.02%

The Health Care Provider Insurance Availability Plan: 569 health care provider policy years 8%

In the last fiscal year, about 700 health care providers obtained their required basic coverage from the HCPIA Plan¹. The Availability Plan was established by the Kansas Fund law². Its purpose is to provide the required basic coverage for those health care providers who cannot obtain basic coverage from one of the insurance companies offering coverage in Kansas. Presently the number of health care providers insured by the Availability Plan indicates an insufficient capacity in the voluntary insurance market to accommodate all of our physicians, surgeons, hospitals, registered nurse anesthetists, podiatrists and chiropractors. During the period of 1995 to 2000, the number of health care providers insured by the Availability Plan was typically less than 250. *

¹ HCPIA Plan means the Health Care Provider Insurance Availability Plan or Availability Plan

² The formal name of the Fund law is the Health Care Provider Insurance Availability Act

Watch for gaps in coverage when changing basic coverage insurance companies

(All but the first paragraph and minor editorial changes, this article is a reprint from our April 2004 newsletter.)

The purpose of this article is to assist health care providers in avoiding unnecessary problems when changing their basic professional liability insurance company. Listed here are some of the most common issues to review with your insurance agent or

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Watch for gaps in coverage when changing basic coverage insurance companies

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insurance company representative.

1. Will the beginning or inception date of the new policy match the expiration or termination date of the existing policy, leaving no period of time uncovered when coverage was actually desired?
2. Are there any known situations which may be reasonably anticipated as giving rise to some future claim or allegation of coverage under the basic coverage policy? Make sure any questionable situation is reviewed carefully with your insurance agent or company representative.
3. Are the claims made coverage provisions between the two insurance company policy forms compatible? Minor language differences between insurance company policies can and do result in disputes between basic coverage insurance companies.
4. Some insurance companies have different "territorial coverage" provisions. If you previously practiced outside of Kansas while you were a Kansas resident health care provider, you should review this area carefully (also you may wish to review the August 2003 newsletter article regarding these differences between insurance company policy forms).
5. There continues to be some insurance companies offering a choice of claims made or occurrence basic coverage professional liability insurance policies. Individual health care providers should consider these choices carefully.
6. Review coverage exclusions contained in policy forms. The Kansas Health Care Provider Insurance Availability Act and other related laws allow exclusions for claims arising from sexual acts or activities of a health care provider, the removal of coverage for vicarious liability between defined health care providers and punitive damage liability.

These are some of the major items to specifically review. You should ask your insurance agent or company representative to provide a review and summary of any other substantial differences between your existing basic coverage policy and the replacement basic coverage policy.

Health care providers who have recently changed their basic coverage insurance companies and did not ask for a review of these matters, may wish to contact their current insurance agent or insurance company representative asking for a similar review at this time.

If you find coverage gaps or coverage differences which are of concern, you should contact your insurance agent, insurance company representative or the Kansas Insurance Department. *



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A list of the basic coverage insurance companies is available on the Internet

Included on our Internet web site (www.hcsf.org) is a list of insurance companies which provide the required basic coverage for our health care providers, including contact information for each insurance company. *

Medical professional liability insurance market still problematic for medical professionals in other states

We in Kansas enjoy a professional liability coverage system that was developed in the mid 1970's. This system continues to stabilize what would otherwise have similar problems with disruptive cyclical medical professional liability market that has been occurring in states other than Kansas.

For example, between 2001 and 2003 health care providers in Kansas, like in many other states, encountered difficult situations when the Saint Paul Insurance Companies withdrew from the medical professional liability insurance markets. During that same period the PHICO Insurance Company and the Reciprocal Alliance (RRG) became insolvent. Following those events which impacted over 2,500 health care providers, the OHIC Insurance Company withdrew from Kansas leaving even more Kansas health care providers searching for new basic coverage insurance companies. Because of inadequate capacity in the remaining voluntary insurance companies, about 700 of our health care providers obtained the required basic coverage with the Availability Plan.

In many other states these events also occurred, resulting in demands for new or greater tort law reforms, coverage availability problems and what is commonly referred to as "unreasonable premium rate increases". Here are a few examples from industry literature and other news publications:

The Oklahoma Supreme Court struck down a key factor in the state's medical malpractice law. It ruled as unconstitutional the provision requiring patients to get a medical expert to declare their lawsuit has merit. (Source: *The Associated Press*, 12-19-06)

In Louisiana, the Third Circuit Court ruled that the state's \$500,000 cap on non-economic damages is unconstitutional because it does not meet the standard for "adequate remedy" for victims of medical malpractice. (Source: *Louisiana Business Report*, 12-19-06)

Nearly one third of Wyoming doctors plan to relocate to another state citing the cost of malpractice insurance as a factor. (Source: *The Associated Press*, 12-14-06)

The American Tort Reform Association named the entire state of West Virginia, South Florida, Southeast Texas and three notoriously plaintiff-friendly counties in Illinois as the 2006 Judicial Hellholes in the nation. Judicial Hellholes are places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants. (Source: *American Tort Reform Association*, 12-14-06)

Missouri continues to struggle with ever increasing medical malpractice insurance costs while observing how the Fund helps stabilize volatility in Kansas. In an interview with the Kansas City Star, Dr. Jonathan Chilton, a neurosurgeon who practices in both Kansas and Missouri, stated that medical malpractice premiums in Missouri have put doctors in a vise and he is afraid premiums will double.

The article discusses his opinions about the favorability of Kansas. Mr. Bill Turley, insurance executive, notes that Kansas has a \$250,000 cap on non-economic damages but "Kansas went further" and created the Kansas Health Care Stabilization Fund "which assumes the major risk of liability for doctors. Insurance rates in Kansas, like those in Missouri, have nearly doubled since 1995. The fund surcharge on the larger portion of coverage, however, has dropped more than 50 percent, helping offset the premium increases." Scott Lakin, director of the Missouri Department of Insurance, states flatly that the Fund "is the main difference why Kansas has done better at moderating malpractice insurance rates." (Source: *The Kansas City Star*, 1-11-05) *

December 19, 2006 Health Care Stabilization Fund Oversight Committee meeting

This committee meets each year to review information regarding the Health Care Stabilization Fund and about the continuation of the committee. Usually such information includes:

- A presentation regarding the status of the Fund by Mr. Bob Hayes, Executive Director of the Fund. A copy of that presentation is included on the Internet site of the Fund (<http://www.hcsf.org>);
- A review of Fund actuarial information by Mr. Russ Sutter, FCAS, MAAA, of Towers Perrin – Tillinghast;
- Status of the medical malpractice insurance markets;
- Proposed amendments to the Fund law; and
- Whether or not the committee have its own independent actuarial review and if the committee should be continued for one more year.

Mr. Jerry Slaughter, Kansas Medical Society, while discussing the Kansas medical malpractice insurance markets also advised the committee that there were no proposed amendments to be considered by the committee. Mr. Hayes agreed and the committee will not be making any specific recommendations; however, the Committee Chairperson did express the committee's intent to include strong wording in their report that the Fund was to be accounted separately and held in trust for the purposes set forth in the Fund law.

Continuation of the Oversight Committee was unanimous, but it was decided that a second actuarial review was not needed at this time.

The committee members are listed in the adjacent text box. The combination of legislators, health care providers, insurance industry and the general public makes this a somewhat unique committee. If you know one of these individuals, please take a moment to thank them for their time and interest in the Fund. *

Health Care Stabilization Fund Oversight Committee Members

Mr. Dick Bond, Chairperson
 Senator Greta Goodwin
 Senator James Barnett, M.D.
 Representative Eber Phelps
 Representative Jim Morrison
 Arthur D. Snow, Jr., M.D.
 Paul Kindling, M.D.
 James V. Rider, D.O.
 Debra Doubek-Phillips, M.D.
 Mr. Gene Schmidt
 (Insurance representative member is vacant)

Employed health care providers who wish to moonlight¹

The Health Care Stabilization Fund law requires each health care provider to obtain one basic coverage policy and pay one annual Fund surcharge.

Health care providers who maintain their own professional liability insurance coverage enjoy professional liability coverage from their own policy that follows them to what ever practice location or practice scenario in which they may be involved.

Providers who are employed may wish to also work outside of the place of employment, or as commonly stated, they wish to also moonlight. If the health care provider's employer and the employment agreement do conflict with the health care provider's desire to moonlight, the employed health care provider contacts the Fund for assistance in obtaining a supplemental moonlighting policy; however, that kind of private practice moonlighting basic coverage policy is not available from any of the known basic coverage insurance companies.

Some health care providers believe this infringes on their ability to provide their professional services beyond their place of principle employment². Other health care providers readily understand that the problem is due to their professional liability coverage arrangement from their employer or group practice program, not from the Fund law.

In finality, if the Fund law were to be changed to make it easier for wide based moonlighting professional liability coverage to exist for Kansas health care providers, the

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Employed health care providers who wish to moonlight

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following are some of the problems that would inhibit the use of those moonlighting policies:

- Changing the Fund requirements would not have any impact on the employment contracts that health care providers enter into voluntarily. It can be anticipated that those employment contracts would continue to restrict the provider's ability to practice outside of the employment setting.
- Such change would complicate the Fund's tail coverage availability.
- There would be new questions for some claims regarding which basic coverage policy would be applicable and it may result in multiple exposure limits for the Fund because more than one basic coverage policy was applicable at the time of the alleged injury.

If there are questions or related issues that were not discussed in this brief article, please let us know by contacting the Fund office. We would prefer to receive your questions and comments in writing, by fax or by email so that we may pass on your comments directly to your Health Care Stabilization Fund Board of Governors. *

¹ "Moonlighting", as used in this article does not include the very special arrangements for persons engaged in the KUMC and WCGME postgraduate training programs. Because these individuals are self-insured via statutory provisions, there is special wording included in the Fund law which allows for "moonlighting" policies for these situations.

² Health care providers should always advise their basic coverage insurance company and their employer regarding all professional practice situations.

Health Care Stabilization Fund claim information

Health Care Stabilization Fund statistics for Fiscal Year 2006 are reviewed in this article.

Trials. The number of trials involving Kansas health care providers were:

	FY 2006	FY 2005	FY 2004	FY 2003	FY 2002
Total	29	34	28	19	21
Defense Verdict	23	22	23	10	13
Plaintiff Verdict	6	7	3	6	6
Hung Jury		1			1
Split Verdict		3	2	2	
Mistrial		1		1	1

Settlement and damage awards involving the Fund. During Fiscal Year 2006, 89 claims in 81 cases were settled involving contribution from the Fund. Settlement amounts incurred by the Fund for the fiscal year totaled \$24,917,984, for an average per claim of \$279,977.

	Number of Claims	Number of Cases	Fund Amount	Average
FY 2006	89	81	\$24,917,984	\$279,977
FY 2005	90	74	23,544,658	261,607
FY 2004	79	64	18,905,505	239,310
FY 2003	87	76	17,483,778	200,963
FY 2002	67	58	16,173,742	241,399

Number of new cases. As stated in the Fund April 2006 newsletter, the number of new cases in Fiscal Year 2006 increased. That increase was due to the impact new Missouri

Health Care Stabilization Fund claim information*(Continued from page 5)*

tort reform measures becoming effective in August of 2005; that is, plaintiffs' attorneys filed every possible suit before the August implementation date of Missouri's new tort reforms.

If you have any question about this article or would like additional information, contact Chief Attorney Rita Noll at ritanoll@ink.org or 785-291-3407. *

Fiscal Year	Number of Cases
2006	457
2005	336
2004	368
2003	392
2002	361

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Visit the Health Care Stabilization Fund

Internet site:

The Fund Board of Governors maintains a

web site at:

<http://www.hcsf.org>

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