



Kansas Health Care Stabilization Fund

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Testimony To
House Health and Human Services Committee
From HCSF Board of Governors
By Charles L. Wheelen
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Regarding House Bill 2575

The Health Care Stabilization Fund (HCSF) Board of Governors does not have a position on HB2575. We are neutral. The purpose of this testimony is to provide information regarding the definition contained in section 1(f) of the bill which says,

“Health care entity” means a “health care provider,” as that term is defined in K.S.A. 40-3401, and amendments thereto, or a “medical care facility,” as that term is defined in K.S.A. 40-3401, and amendments thereto.

K.S.A. 40-3401 is the definition section of the Health Care Provider Insurance Availability Act. Generally, if a health care professional or facility is a defined “health care provider” (HCP) in K.S.A. 40-3401(f), the HCP must maintain a policy of professional liability insurance and also select one of three levels of excess professional liability coverage via the Health Care Stabilization Fund (HCSF) as a condition of active licensure to render professional services in the State of Kansas. Currently, those are:

- The three professions licensed under the Healing Arts Act (D.C.s, D.O.s, and M.D.s) including physicians engaged in postgraduate training
- Physician assistants
- Optometrists
- Pharmacists
- Podiatrists
- Nurse anesthetists
- Nurse midwives
- Medical care facilities (includes general hospitals, special hospitals, critical care access hospitals, ambulatory surgery centers, and recuperation centers)
- Community mental health centers
- Psychiatric hospitals (licensed prior to 1/1/1988)
- Three categories of adult care facilities (nursing facilities, assisted living facilities, and residential health care facilities)
- Health maintenance organizations

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- Kansas professional corporations or partnerships created by defined health care providers for the purpose of rendering professional services
- Kansas limited liability companies organized by defined health care providers for the purpose of rendering professional services
- Kansas not-for-profit corporations organized by defined health care providers for the purpose of rendering professional services
- Nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine

Even though optometrists, pharmacists, and health maintenance organizations are defined HCPs in K.S.A. 40-3401, they are no longer required to participate in excess coverage via the HCSF. Language contained in other sections of the Availability Act makes them exempt from the minimum professional liability insurance and excess coverage requirements.

Because the definition of “health care provider” in K.S.A. 40-3401 already includes medical care facilities, the definition contained in section 1(f) of HB2575 is somewhat redundant. Perhaps more important, depending on legislative intent in HB2575, there may be some types of HCPs that are unintentionally excluded. For example, the definition of HCP contained in K.S.A. 65-4915 (peer review law) includes dentists, professional nurses, practical nurses, mental health technicians, occupational therapists, physical therapists, respiratory therapists, and ambulance services as well as the HCPs defined as such in K.S.A. 40-3401. Conversely, there may be some defined HCPs in K.S.A. 40-3401 that are not germane to the legislative intent in HB2575.

It may be advisable to identify specifically those health care providers that the Legislature believes should be subject to the provisions of HB2575. We hope this information is relevant and assists the Committee in making a well-informed decision.