

HEALTH CARE STABILIZATION FUND BOARD OF GOVERNORS

	Actual FY 2020	Agency Est. FY 2021	Gov. Rec. FY 2021	Agency Req. FY 2022	Gov. Rec. FY 2022
Operating Expenditures:					
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Other Funds	34,819,674	38,020,420	38,020,420	37,012,064	37,012,064
<i>Subtotal</i>	<i>\$ 34,819,674</i>	<i>\$ 38,020,420</i>	<i>\$ 38,020,420</i>	<i>\$ 37,012,064</i>	<i>\$ 37,012,064</i>
Capital Improvements:					
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Other Funds	0	0	0	0	0
<i>Subtotal</i>	<i>\$ 0</i>	<i>\$ 0</i>	<i>\$ 0</i>	<i>\$ 0</i>	<i>\$ 0</i>
TOTAL	<u>\$ 34,819,674</u>	<u>\$ 38,020,420</u>	<u>\$ 38,020,420</u>	<u>\$ 37,012,064</u>	<u>\$ 37,012,064</u>
Percentage Change:					
Operating Expenditures					
State General Fund	-- %	-- %	-- %	-- %	-- %
All Funds	(3.7)	9.2	9.2	(2.7)	(2.7)
FTE Positions	21.0	21.0	21.0	21.0	21.0

For purposes of this analysis, full-time equivalent (FTE) positions include non-FTE permanent unclassified positions but continue to exclude temporary employees. FTE positions reflect permanent state positions equating to a 40-hour work week.

AGENCY OVERVIEW

The 1976 Health Care Providers Insurance Availability Act created the Health Care Stabilization Fund (Fund) to stabilize the availability of medical professional liability coverage for health care providers. From 1976 to 1995, the Fund was the administrative responsibility of the Commissioner of Insurance. Beginning in 1995, the administration of the Fund was established as an independent state agency separate from the Kansas Insurance Department.

Among the provisions of the Fund law are a mandate for health care providers to maintain basic professional liability insurance as a condition to render services in Kansas, a requirement that the Fund provide excess professional liability insurance coverage, and the establishment of an availability plan to provide the required basic professional liability insurance coverage when such coverage is not available through insurance companies.

Fund loss exposures begin when a medical professional liability claim or legal action exceeds the required professional liability coverage of \$200,000 per claim, with an annual aggregate for all claims of \$600,000. Fund coverage also may be provided for claims and legal actions brought against eligible inactive health care providers. Since July 1, 1999, health care providers have selected one of three fund coverage limits: \$100,000/\$300,000; \$300,000/\$900,000; or \$800,000/\$2,400,000.

The Fund is financed by a surcharge levied on and paid by Kansas health care providers based on a rating classification system established by the Board of Governors. The surcharge revenue in fiscal year (FY) 1991 was \$35.7 million. Surcharge receipts in FY 2019 were \$27.7 million and are estimated at \$28.5 million in FY 2020. In addition to Fund surcharges, the Fund also receives interest on agency investments. The investment income for FY 2019 was \$8.5 million and is expected to be approximately \$8.1 million in FY 2020 based on an assumption of 2.95 percent yield on average assets. Investments for the Board of Governors are administered by the Pooled Money Investment Board.

Full-time faculty, private practice foundations and corporations, and residents at the University of Kansas Medical Center (KUMC) and affiliated programs in Wichita and Salina receive basic coverage through statutory self-insurance provisions and excess coverage from the Fund. Basic coverage provisions applicable to these individuals and entities are set forth in the Fund law, including a \$500,000 reserve fund maintained by the University of Kansas School of Medicine private practice foundations. The law also contains provisions for reimbursement to the Fund of basic coverage losses arising from these statutory basic coverage self-insurance provisions from the State General Fund (SGF).

MAJOR ISSUES FROM PRIOR YEARS

The **2010 Legislature** authorized an additional FTE position for the agency beginning for FY 2011. This position is assigned to the Legal department and focuses on responding to Kansas Open Records Act requests. Although this is not a statutory duty of the Fund, external clients, such as hospitals and insurance companies, rely on the Fund to provide information on levels of coverage and claims history for health care providers.

The **2010 Legislature** also passed SB 414, which amended the Health Care Provider Insurance Availability Act to exempt the Fund from transfers to the SGF under the allotment authority delegated to the Secretary of Administration by KSA 75-3722. The bill also deferred payment to the Fund from the SGF for costs and expenditures associated with the administration of a self-insurance program for the full-time faculty, private practice foundations and corporations, and the residents of KUMC and affiliated programs. Payments scheduled for FY 2010, FY 2011, FY 2012, and FY 2013 were not transferred until July 1, 2013. At that time, annual SGF payments resumed and continued through July 1, 2017, each in the amount of 20.0 percent of the total amount owed.

On **October 5, 2012**, in *Miller v. Johnson*, the Kansas Supreme Court upheld the \$250,000 cap on non-economic damage awards in a 5-2 decision. This cap on the amount of damages for pain and suffering awarded by juries to personal injury action claimants has been previously upheld (1990, *Samsel II*). The majority of the Court upheld KSA 60-19a02 as it applied to *Miller* (personal injury plaintiff, medical malpractice claim)—the statute provides for a \$250,000 cap on non-economic damages and applies to all personal injury actions, including medical malpractice claims, accruing on or after July 1, 1988.

The opinion also cited the Health Care Provider Insurance Availability Act by indicating, “As noted in several of our prior cases, the legislature’s expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the non-economic damages cap have long been accepted by this court to carry a valid public interest objective.”

The opinion also noted the Legislature passed this statute “in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of non-economic damages awards and the possibility of large non-economic damage awards.”

On **July 31, 2012**, in *Watts v. Lester E. Cox Medical Centers*, the Missouri Supreme Court struck down a 2005 law that had capped non-economic damage awards in Missouri medical malpractice actions at \$350,000 in a 4-3 decision. The plaintiff, Deborah Watts, filed suit against Cox Medical Centers in Springfield; her son was born with severe brain injuries in 2006. A jury had awarded Watts \$1.450 million for non-economic damages for the injuries (Watts was also awarded \$3.371 million for future medical expenses). Missouri law limited the awards to \$350,000. The Missouri Supreme Court found the cap unconstitutional because it violated the state's constitutional right to trial by jury.

The decision states the statutory cap (§538.210) is “unconstitutional to the extent that it infringes on the jury’s constitutionally protected purpose of determining the amount of damages sustained by an injured party. Such a limitation was not permitted at common law when Missouri’s constitution first was adopted in 1820 and, therefore, violates the right to trial by jury guaranteed by Article I, section 22(a) of the *Missouri Constitution*.”

The **2014 Legislature** passed SB 311, which increased the statutory limit on non-economic damages in personal injury actions. On July 1, 2014, the cap increased from \$250,000 to \$300,000. The limit will increase again on July 1, 2018, to \$325,000 and then again on July 1, 2022, to \$350,000.

The **2014 Legislature** also passed HB 2516, which added five new categories of health care providers to the definition section of the Health Care Provider Insurance Availability Act. The new categories of providers include physician assistants, nurse-midwives, assisted living facilities, nursing facilities, and residential health care facilities. The Legislature added \$73,379 and 1.0 FTE position for FY 2015 to allow the agency to implement relevant provisions of the Act.

The **2015 Legislature** passed HB 2064, which allowed health care systems to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance. The Legislature added \$40,980 and 0.5 FTE positions for FY 2016 and FY 2017 to fund operating expenditures associated with a Compliance Officer.

The **2016 Legislature** added \$1.7 million, all from the Health Care Stabilization Fund, due to a revised estimate of claims payments and associated legal expenditures in FY 2016.

The **2017 Legislature** passed HB 2118, which stated the Fund will not be liable for any claim that is a result of professional services rendered as a charitable health care provider or that is covered under the Federal Tort Claims Act. The bill also established an annual maximum amount of \$3.0 million for the aggregate liability of the Fund for judgments and settlements arising from claims made against a resident or nonresident inactive health care provider.

The **2018 Legislature** passed SB 217, which amended language to clarify the annual report of the Kansas Health Care Stabilization Fund Board of Governors will be submitted to the Health Care Stabilization Fund Oversight Committee and requires the reporting of the Fund balance at the end of the fiscal year.

The **2019 Legislature** added \$37,899, all from the Health Care Stabilization Fund, for the 2.5 percent Legislative Pay Plan for FY 2020. The Legislature also passed HB 2119, which would allow defined "business entities" to obtain authorization for the employment of health care professionals to provide professional services to the entity's employees. The provision allowing the employment of health care professionals will take effect March 1, 2020.

On **June 14, 2019**, in *Hilburn v. Enerpipe LTD*, the Kansas Supreme Court diverted from its non-economic damages framework in *Miller v. Johnson* in a plurality opinion and ruled the cap on non-economic damages as unconstitutional. The case involved an auto accident where the plaintiff received a judgment that included \$301,509 for non-economic damages, but which was reduced to \$250,000 as a result of the cap (the amount of the cap at the time).

The justices, joining the opinion of the court, found that KSA 60-19a02 violated the right to a jury trial protected by the *Kansas Constitution Bill of Rights* by effectively taking the decision out of the jury's hand and replacing it with the \$250,000 cap. The concurring opinion felt a restriction on what may be decided by a jury in personal injury cases may be constitutional, but as it stood now, the procedure of the cap was unconstitutional. The dissent viewed that the previous holding in *Miller* was not clearly erroneous and the *quid pro quo* test should have been applied.

While this case was an auto accident case, the Supreme Court was not clear whether the cap on non-economic damages was only unconstitutional as it pertained to those cases, or whether it applied to medical malpractice cases as well.

BUDGET SUMMARY AND KEY POINTS

FY 2021 – Current Year. The **agency** estimates revised expenditures of \$38.0 million, all from special revenue funds, in FY 2021. This is an all funds decrease of \$17,808, or less than 0.1 percent, below the FY 2021 approved budget. The decrease is primarily attributable to decreased expenditures on contractual services for computer software maintenance contracts. The revised estimate includes 21.0 FTE positions, which is the same as the FY 2021 approved number.

The **Governor** concurs with the agency's revised estimate in FY 2021.

FY 2022 – Budget Year. The agency requests \$37.0 million, all from special revenue funds, for FY 2022. This is an all funds decrease of \$1.0 million, or 2.7 percent, below the FY 2021 revised estimate. The decrease is primarily attributable to decreased expenditures on court-approved settlement agreements or jury awards. This decrease is partially offset by increased expenditures for contractual services related to legal fees (attorneys, expert witnesses, court costs) and salaries and wages expenditures for a 2.5 percent merit-based salary increase and increases for salaries and wages fringe benefits. The request includes 21.0 FTE positions, which is the same number as the FY 2021 revised estimate.

The **Governor** concurs with the agency's request for FY 2022.

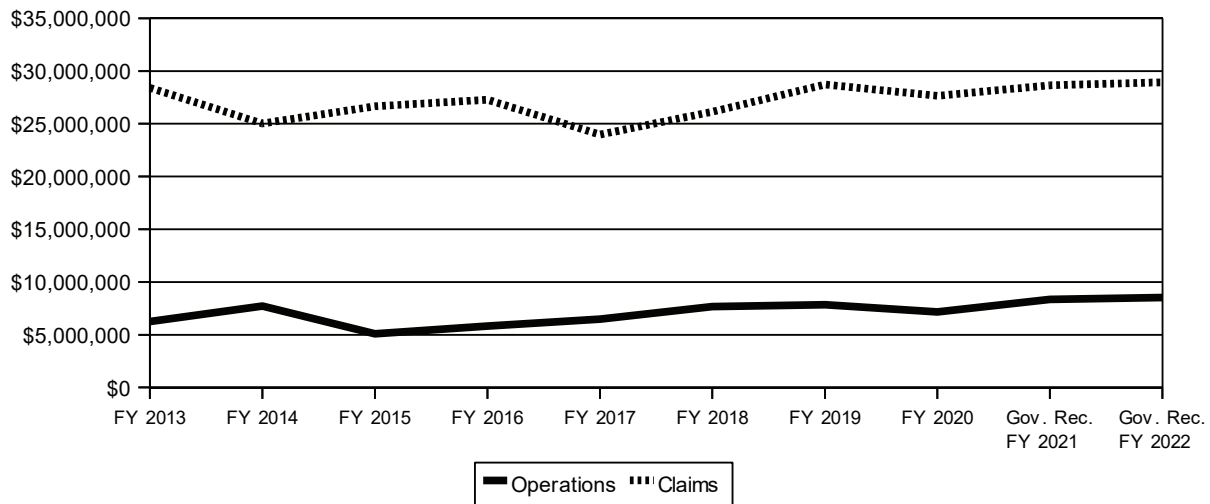
PERFORMANCE MEASURES

The 2016 Legislature passed HB 2739, which outlined a three-year process for state agencies to develop and implement a system of performance budgeting using outcome measures to evaluate program effectiveness. Measures to evaluate agency-wide performance are presented below. Additional measures to evaluate specific programs appear in the relevant program sections.

PERFORMANCE MEASURES						
Measure	Actual FY 2018	Actual FY 2019	Gov. Rec. FY 2020	Actual FY 2020	Gov. Rec. FY 2021	Gov. Rec. FY 2022
Number of Health Care Providers in Compliance as of July 1	14,574	15,992	14,741	14,741	15,474	15,474
Number of Cases Opened	570	597	560	586	586	586
Number of Cases Closed	578	549	556	524	524	524
Agency Expenditures						
All Funds (Dollars in Millions)	\$ 33.8	\$ 36.6	\$ 37.5	\$ 34.8	\$ 38.0	\$ 37.0
FTE Positions	20.0	21.0	21.0	21.0	21.0	21.0

BUDGET TRENDS

OPERATING EXPENDITURES FY 2013 – FY 2022



OPERATING EXPENDITURES FY 2013 – FY 2022

Fiscal Year	Operations	% Change	Claims	% Change	FTE
2013	\$ 6,250,365	(0.7)%	\$ 28,405,415	29.6 %	20.0
2014	7,722,355	23.6	25,029,266	(11.9)	20.0
2015	5,099,207	(34.0)	26,654,184	6.5	20.0
2016	5,824,554	14.2	27,278,643	2.3	20.0
2017	6,490,517	11.4	23,976,127	(12.1)	20.0
2018	7,658,489	18.0	26,136,165	9.0	20.0
2019	7,843,317	2.4	28,718,064	9.9	21.0
2020	7,168,138	(8.6)	27,651,536	(3.7)	21.0
2021 Gov. Rec.	8,053,337	12.3	29,967,083	8.4	21.0
2022 Gov. Rec.	8,361,369	3.8	28,650,695	(4.4)	21.0
Ten-Year Change Dollars/Percent	\$ 2,111,004	33.8 %	\$ 245,280	0.9 %	1.0

Summary of Operating Budget FY 2020 - FY 2022

	Actual FY 2020	Agency Estimate			Governor's Recommendation				
		Estimate FY 2021	Request FY 2022	Dollar Change from FY 21	Percent Change from FY 21	Rec. FY 2021	Rec. FY 2022	Dollar Change from FY 21	Percent Change from FY 21
By Program:									
Administration	\$ 2,116,301	\$ 2,480,854	\$ 2,537,743	\$ 56,889	2.3 %	\$ 2,480,854	\$ 2,537,743	\$ 56,889	2.3 %
Claims and Claim Expenses	32,703,373	35,539,566	34,474,321	(1,065,245)	(3.0)	35,539,566	34,474,321	(1,065,245)	(3.0)
TOTAL	\$ 34,819,674	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %
By Major Object of Expenditure:									
Salaries and Wages	\$ 1,711,832	\$ 1,844,200	\$ 1,912,843	\$ 68,643	3.7 %	\$ 1,844,200	\$ 1,912,843	\$ 68,643	3.7 %
Contractual Services	5,318,978	6,116,693	6,353,969	237,276	3.9	6,116,693	6,353,969	237,276	3.9
Commodities	21,880	32,224	32,837	613	1.9	32,224	32,837	613	1.9
Capital Outlay	115,448	60,220	61,720	1,500	2.5	60,220	61,720	1,500	2.5
Debt Service	0	0	0	0	--	0	0	0	--
<i>Subtotal - Operations</i>	<i>\$ 7,168,138</i>	<i>\$ 8,053,337</i>	<i>\$ 8,361,369</i>	<i>\$ 308,032</i>	<i>3.8 %</i>	<i>\$ 8,053,337</i>	<i>\$ 8,361,369</i>	<i>\$ 308,032</i>	<i>3.8 %</i>
Aid to Local Units	0	0	0	0	--	0	0	0	--
Other Assistance	27,651,536	29,967,083	28,650,695	(1,316,388)	(4.4)	29,967,083	28,650,695	(1,316,388)	(4.4)
TOTAL	\$ 34,819,674	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %
Financing:									
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	-- %	\$ 0	\$ 0	\$ 0	-- %
Conference Fee Fund	0	12,000	12,000	0	0.0	12,000	12,000	0	0.0
Coronavirus Relief Fund	192	0	0	0	0.0	0	0	0	--
Health Care Stabilization Fund	34,819,482	38,008,420	37,000,064	(1,008,356)	(2.7)	38,008,420	37,000,064	(1,008,356)	(2.7)
TOTAL	\$ 34,819,674	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %	\$ 38,020,420	\$ 37,012,064	\$ (1,008,356)	(2.7) %

BUDGET OVERVIEW

A. FY 2021 – Current Year

Adjustments to Approved State General Fund Budget

The agency's revised estimate does not include any State General Fund (SGF) expenditures.

CHANGE FROM APPROVED BUDGET					
	Legislative Approved FY 2021	Agency Estimate FY 2021	Agency Change from Approved	Governor Rec. FY 2021	Governor Change from Approved
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
All Other Funds	38,038,228	38,020,420	(17,808)	38,020,420	(17,808)
TOTAL	\$ 38,038,228	\$ 38,020,420	\$ (17,808)	\$ 38,020,420	\$ (17,808)
FTE Positions	21.0	21.0	0.0	21.0	0.0

The **agency** estimates revised expenditures of \$38.0 million, all from special revenue funds, in FY 2021. This is an all funds decrease of \$17,808, or less than 0.1 percent, below the FY 2021 approved budget. The decrease is primarily attributable to decreased expenditures on contractual services for computer software maintenance contracts. The revised estimate includes 21.0 FTE positions, which is the same as the FY 2021 approved number. Major categories of expenditures are detailed below:

Salaries and Wages. The agency requests a revised estimate of \$1.8 million, all from special revenue funds, for salaries and wages expenditures in FY 2021. This is a decrease of \$23, or less than 0.1 percent, below the FY 2021 approved amount. The decrease is due to a classified position change to an unclassified position; and

Contractual Services. The agency requests a revised estimate of \$6.1 million, all from special revenue funds, for contractual services expenditures in FY 2021. This is a decrease of \$17,785, or 0.3 percent, below the FY 2021 approved amount. This decrease is attributable to decreased expenditures for computer software maintenance costs.

The **Governor** concurs with the agency's revised estimate in FY 2021.

B. FY 2022 – Budget Year

FY 2022 OPERATING BUDGET SUMMARY			
	Agency Request	Governor's Recommendation	Difference
Total Request/Recommendation	\$ 37,012,064	\$ 37,012,064	\$ 0
FTE Positions	21.0	21.0	0.0
Change from FY 2021:			
<i>Dollar Change:</i>			
State General Fund	\$ 0	\$ 0	
All Other Funds	(1,008,356)	(1,008,356)	
TOTAL	\$ (1,008,356)	\$ (1,008,356)	
<i>Percent Change:</i>			
State General Fund	0.0 %	0.0 %	
All Other Funds	(2.7)	(2.7)	
TOTAL	(2.7) %	(2.7) %	
Change in FTE Positions	0.0	0.0	

The **agency** requests \$37.0 million, all from special revenue funds, for FY 2022. This is an all funds decrease of \$1.0 million, or 2.7 percent, below the FY 2021 revised estimate. The decrease is primarily attributable to decreased expenditures on court-approved settlement agreements or jury awards. This decrease is partially offset by increased expenditures for contractual services related to legal fees (attorneys, expert witnesses, court costs) and salaries and wages expenditures for a 2.5 percent merit-based salary increase and increases to salaries and wages fringe benefits. The request includes 21.0 FTE positions, which is the same number as the FY 2021 revised estimate.

Salaries and Wages. The agency requests \$1.9 million, all from special revenue funds, for salaries and wages expenditures for FY 2022. This is an all funds increase of \$68,643, or 3.7 percent, above the FY 2021 revised estimate. The increase is attributable to the agency anticipating previously vacant positions being filled and a 2.5 percent merit-based salary increase;

Contractual Services. The agency requests \$6.4 million, all from special revenue funds, for contractual services expenditures for FY 2022. This is an all funds increase of \$237,276, or 3.9 percent, above the FY 2021 revised estimate. The increase is primarily attributable to increases relating to defending claims, including expert witness fees and attorney fees;

Commodities. The agency requests \$32,837, all from special revenue funds, for commodities expenditures for FY 2022. This is an all funds increase of \$613, or 1.9 percent, above the FY 2021 revised estimate. The increase is primarily attributable to increases relating to data processing supplies and fuel expenses for legal staff travel;

Capital Outlay. The agency requests \$61,720, all from special revenue funds, for capital outlay expenditures for FY 2022. This is an all funds increase of \$1,500, or 2.5 percent, above

the FY 2021 revised estimate. The increase is the result of the agency replacing office chairs, routine system maintenance, and office equipment; and

Other Assistance (Medical Malpractice Claims). The agency requests \$28.7 million, all from special revenue funds, for other assistance for FY 2022. This is an all funds decrease of \$1.3 million, or 4.4 percent, below the FY 2021 revised estimate. The decrease is attributable to the agency estimating decreased payments of settlements and judgments for medical malpractice claims. The decrease is based on the agency examining the ten-year average for those expenditures.

The **Governor** concurs with the agency's request for FY 2022.

Governor's Recommended Salary and Wage Adjustments

For FY 2022, the Governor recommends adding \$31.5 million, including \$11.3 million SGF, for a 2.5 percent state employee base pay adjustment. The plan would increase salaries for classified and unclassified employees in the Executive Branch, Legislative Branch, and Judicial Branch. Legislative and elected officials would be excluded from this salary adjustment. The funds would be appropriated to and certified for distribution by the State Finance Council if approved. Employees of state universities are also not included in the proposed pay plan; however, the Governor recommends adding \$10.4 million, all SGF, to the university operating grants. This amount is equivalent to what the pay plan would have provided for university employees, but the funds are included in the Kansas Board of Regents budget for use at their discretion.

Longevity Bonus Payments. In FY 2021 and for FY 2022, the Governor recommends funding longevity bonus payments for eligible state employees at the statutory rate of \$40 per year of service, with a 10-year minimum (\$400) and a 25-year maximum (\$1,000). Classified employees hired after June 15, 2008, are not eligible for longevity bonus payments. The estimated cost for the recommended FY 2021 payment is \$3.0 million, including \$1.1 million SGF. For FY 2022, the estimated cost is \$3.1 million, including \$1.1 million SGF. **For this agency, there are no longevity payments.**

Kansas Public Employees Retirement System (KPERs). The employer retirement contribution rate, including Death and Disability contributions, for the KPERs State and School Group is scheduled to be 14.23 percent in FY 2021 and 15.09 percent for FY 2022. The FY 2021 rate excludes the 1.0 percent KPERs Death and Disability contribution that is currently subject to a moratorium described below.

The Governor recommends the KPERs State and School Group be reamortized. The current amortization period was set by the Legislature in 1993 for 40 years. The Governor proposes the new amortization be set for 25 years beginning in FY 2022, an extension of 10 years to the current plan. Reamortization would reduce employer contributions for the KPERs State and School Group in the short term. It is estimated that resetting the amortization period to 25 years could produce budget savings of \$177.3 million, including \$158.7 million SGF, for FY 2022. The Governor's recommendation would also incorporate \$25.8 million in KPERs layering payments into the amortization schedules. **No savings from this policy are currently included in this agency's budget.**

KPERs Death and Disability Group Insurance Fund. During FY 2021, a moratorium on employer contributions to the KPERs Death and Disability Group Insurance Fund was in effect. The fund had a sufficient balance to suspend payments on a temporary basis without affecting employee benefits. The moratorium was implemented *via* the Governor's allotment authority; therefore, the Legislative and Judicial branches are currently excluded from the moratorium. The total savings for the moratorium are estimated at \$46.7 million in contributions from the SGF. Included in this amount were savings of approximately \$40.3 million from KPERs School Group contributions in the Kansas State Department of Education budget. No similar moratorium is proposed for FY 2022, requiring the addition of \$46.7 million to annualize the payments for the full fiscal year.

Funding Sources

<u>Funding Source</u>	<u>Agency Req. Percent of Total FY 2022</u>	<u>Gov. Rec. Percent of Total FY 2022</u>
Health Care Stabilization Fund	100.0	100.0
<i>(Note: Totals may not add due to rounding.)</i>		

Health Care Stabilization Fund Analysis

The Health Care Stabilization Fund (Fund) was established by KSA 40-3403. The Fund receives deposits from annual premium surcharges on every health care provider who has obtained basic professional liability insurance coverage and upon all self-insurers, investments, and transfers from the Health Care Provider Insurance Availability Plan. Each year the Fund's Board of Governors meet to discuss the well-being of the Fund and to assess whether the Fund's surcharge rates need to increase. In March 2019, the Board of Governors decided to raise surcharge rates by 6.0 percent for all providers effective January 1, 2020.

KSA 40-3403 authorizes the transfer of moneys from the SGF to reimburse the Fund for costs incurred defending any claim filed against a person participating in the University of Kansas Medical Center (KUMC) residency programs, including affiliated programs in Wichita and Salina, and for that portion of the paid claims, which is equal to the basic coverage liability of self-insurers. This statute also authorizes the transfer of moneys from the SGF and the KUMC Private Practice Foundation Reserve Fund to reimburse the Fund for costs incurred to defend any claim filed against KUMC foundations and full-time faculty and for that portion of any claim that is equal to the basic liability of self-insurers. For both FY 2020 and FY 2021, the agency requested total transfers of \$2.2 million from the SGF. The Governor recommended, and the 2019 Legislature approved, total transfers of \$2.5 million for both fiscal years.

The Governor's July 2010 allotment eliminated the SGF transfer into the Fund related to KUMC claims expenditures. The Fund wrote off the transfer, which would have been approximately \$2.9 million, as not collectible. The 2010 Legislature passed SB 414, which exempted the Fund from future allotments. It also deferred payment to the Fund from the SGF for costs and expenditures associated with the KUMC and the Wichita Center for Graduate Medical Education claims expenditures. The legislation stated payments scheduled for FY 2010, FY 2011, FY 2012, and FY 2013 would not be transferred until July 1, 2013. At that time, annual SGF payments would begin and continue through July 1, 2017, each in the amount of 20.0 percent of the total amount owed. All repayment obligations were met and completed July 1, 2017.

Resource Estimate	Actual FY 2020	Agency Estimate FY 2021	Gov. Rec. FY 2021	Agency Request FY 2022	Gov. Rec. FY 2022
Beginning Balance	\$ 2,064,862	\$ 1,014,866	\$ 1,014,866	\$ 2,306,446	\$ 2,306,446
Revenue	69,127,385	66,000,000	66,000,000	67,311,000	67,311,000
Transfers in	68,861,311	63,039,566	63,039,566	59,685,321	59,685,321
<i>Funds Available</i>	<u>\$ 140,053,558</u>	<u>\$ 130,054,432</u>	<u>\$ 130,054,432</u>	<u>\$ 129,302,767</u>	<u>\$ 129,302,767</u>
Less:					
Expenditures	\$ 34,819,482	\$ 38,008,420	\$ 38,008,420	\$ 37,000,064	\$ 37,000,064
Transfers Out	68,561,311	62,739,566	62,739,566	59,385,321	59,385,321
Off-Budget Expenditures	35,657,899	27,000,000	27,000,000	28,311,000	28,311,000
Ending Balance	<u>\$ 1,014,866</u>	<u>\$ 2,306,446</u>	<u>\$ 2,306,446</u>	<u>\$ 4,606,382</u>	<u>\$ 4,606,382</u>
Ending Balance as Percent of Expenditures	2.9%	6.1%	6.1%	12.4%	12.4%
Month Highest Ending Balance*	December <u>\$ 3,600,275</u>	August <u>\$ 6,957,674</u>	August <u>\$ 6,957,674</u>	January <u>\$ 3,745,200</u>	January <u>\$ 3,745,200</u>
Month Lowest Ending Balance*	October <u>\$ 55,654</u>	May <u>\$ 1,014,866</u>	May <u>\$ 1,014,866</u>	February <u>\$ 806,488</u>	February <u>\$ 806,488</u>

*Monthly cash balance provided by the agency. Estimates based on five year trend.

Staff Notes

The actual cash balance on any given day of the year is a function of three principal variables:

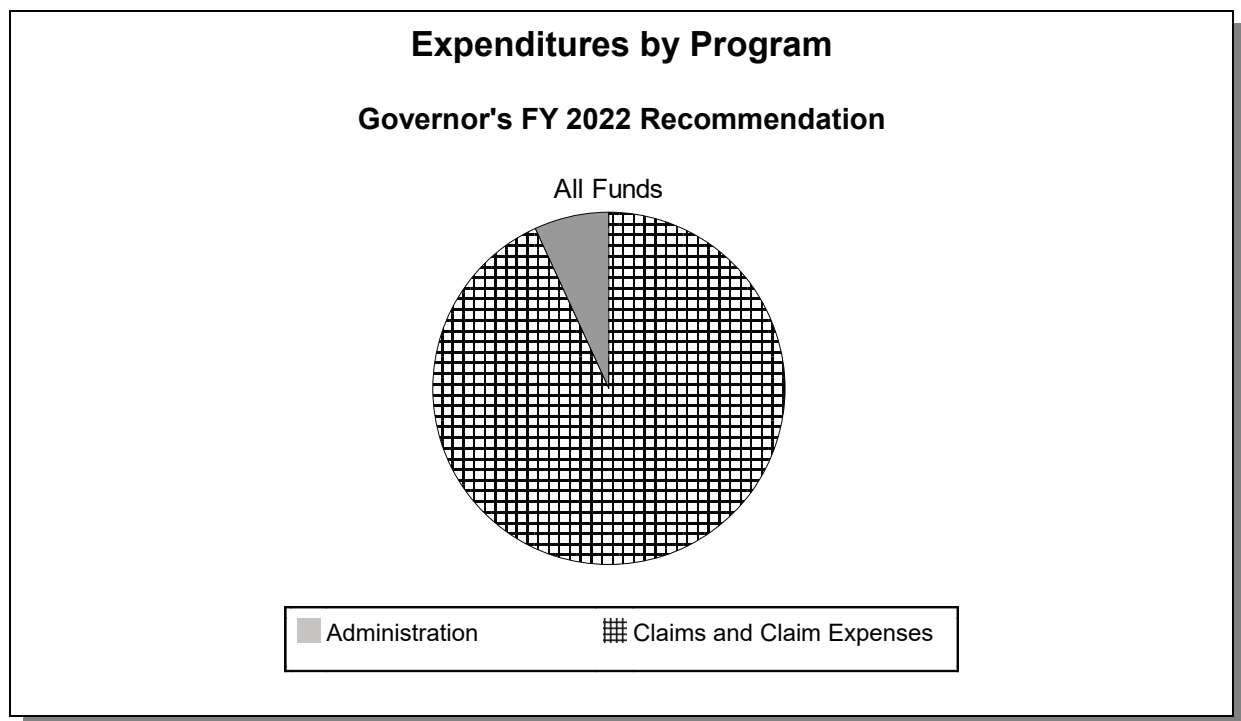
- Fund premium surcharges collected and remitted by commercial liability insurance companies;
- Investment maturity dates; and
- Pending claim payments.

Because many medical professional liability insurance policies have effective dates and renewal dates of January 1 or July 1, Fund premium surcharges are often collected by insurance companies in late December or late June. Because insurers have a statutory 30-day remittance period, the surcharge revenue is often received near the end of January or near the end of July. Therefore, those two months normally have a comparatively high ending balance.

The Health Care Stabilization Fund Board of Governors employs a conservative, laddered investment strategy. Reserves are invested by the Pooled Money Investment Board on behalf of the Board of Governors. As a result, there are maturities throughout the year. If a maturity occurs near the end of the month, there will be a higher ending balance at the conclusion of that particular month.

The Board's Chief Attorney maintains a contemporary accounting of settlements and jury awards that have been approved by the courts. This includes scheduled future payments attributable to settlements and jury awards in prior fiscal years. The agency indicates it is imperative that sufficient, unencumbered cash balances be maintained in order to promptly pay these statutory Fund liabilities. Consequently, the ending balance is often a reflection of pending claim payments at the conclusion of a particular month.

PROGRAM DETAIL



Program	Gov. Rec. All Funds FY 2022	Percent of Total	Gov. Rec. SGF FY 2022	Percent of Total
Administration	\$ 2,537,743	6.9 %	\$ 0	-- %
Claims and Claim Expenses	34,474,321	93.1	0	--
TOTAL	\$ 37,012,064	100.0 %	\$ 0	-- %

FTE POSITIONS BY PROGRAM FY 2020 – FY 2022

Program	Actual FY 2020	Agency Est. FY 2021	Gov. Rec. FY 2021	Agency Req. FY 2022	Gov. Rec. FY 2022
Administration	21.0	21.0	21.0	21.0	21.0
Claims and Claim Expenses	0.0	0.0	0.0	0.0	0.0
TOTAL	21.0	21.0	21.0	21.0	21.0

(Note: For purposes of this analysis, full-time equivalent (FTE) positions include non-FTE permanent unclassified positions but continue to exclude temporary employees. FTE positions reflect permanent state positions equating to a 40-hour work week.)

A. Administration

The Administration program is responsible for agency operations at the Health Care Stabilization Fund Board of Governors. The program includes the Board of Governors and the Executive Director, as well as the Legal, Compliance, and Administrative Support departments. The administrative expenditures of the Fund have traditionally been subject to an expenditure limitation as opposed to the Claims program, which does not have an expenditure limit. The agency has transitioned to a new program structure, and in future years the current Administration and Claims programs will be reflected as the Medical Professional Liability Coverage Program and the Medical Professional Liability Adjudication Program, with an Administrative Support Subprogram in each program.

PERFORMANCE MEASURES						
Measure	Actual FY 2018	Actual FY 2019	Gov. Rec. FY 2020	Actual FY 2020	Gov. Rec. FY 2021	Gov. Rec. FY 2022
Number of Health Care Providers in Compliance as of July 1	14,574	15,992	14,741	14,741	15,474	15,474
Agency Expenditures						
All Funds (Dollars in Millions)	\$ 1.8	\$ 1.9	\$ 2.5	\$ 2.1	\$ 2.5	\$ 2.5
FTE Positions	20.0	21.0	21.0	21.0	21.0	21.0

ADMINISTRATION SUMMARY OF EXPENDITURES FY 2020 – FY 2022					
Item	Actual FY 2020	Agency Est. FY 2021	Gov. Rec. FY 2021	Agency Req. FY 2022	Gov. Rec. FY 2022
Expenditures:					
Salaries and Wages	\$ 1,711,832	\$ 1,844,200	\$ 1,844,200	\$ 1,912,843	\$ 1,912,843
Contractual Services	267,669	545,054	545,054	531,250	531,250
Commodities	21,352	31,380	31,380	31,930	31,930
Capital Outlay	115,448	60,220	60,220	61,720	61,720
Debt Service	0	0	0	0	0
<i>Subtotal - Operations</i>	<i>\$ 2,116,301</i>	<i>\$ 2,480,854</i>	<i>\$ 2,480,854</i>	<i>\$ 2,537,743</i>	<i>\$ 2,537,743</i>
Aid to Local Units	0	0	0	0	0
Other Assistance	0	0	0	0	0
TOTAL	\$ 2,116,301	\$ 2,480,854	\$ 2,480,854	\$ 2,537,743	\$ 2,537,743
Financing:					
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
All Other Funds	2,116,301	2,480,854	2,480,854	2,537,743	2,537,743
TOTAL	\$ 2,116,301	\$ 2,480,854	\$ 2,480,854	\$ 2,537,743	\$ 2,537,743
FTE Positions	21.0	21.0	21.0	21.0	21.0

The **agency** requests expenditures of \$2.5 million, all from special revenue funds, for the Administration program for FY 2022. This is an all funds increase of \$56,889, or 2.3 percent, above the FY 2021 revised estimate. The increase is primarily attributable to capital outlay expenditures on office furniture and to salaries and wages expenditures for a 2.5 percent merit-based salary increase and increases to salaries and wages fringe benefits. This increase is partially offset by decreased expenditures on travel expenditures, including meals and lodging,

as well as employee and student tuition. The request includes 21.0 FTE positions, which is the same number as the FY 2021 revised estimate.

The **Governor** concurs with the agency's request for FY 2022.

B. Claims and Claim Expenses

The Claims program was instituted as a separate program in FY 2010 as the portion of the Fund responsible for the payment of court-approved claims, attorneys' fees, and other expenditures associated with claims activity. Historically, expenditures for the payment of claims have been treated as no limit by the Legislature. "No limit" means that although the Claims program operates within a budget, it does not have an appropriated limit on its expenditures. The program does not have any FTE positions.

PERFORMANCE MEASURES						
Measure	Actual FY 2018	Actual FY 2019	Gov. Rec. FY 2020	Actual FY 2020	Gov. Rec. FY 2021	Gov. Rec. FY 2022
Number of Cases Opened	595	597	560	586	586	586
Number of Cases Closed	570	549	556	524	524	524
Agency Expenditures						
All Funds (Dollars in Millions)	\$ 32.0	\$ 34.6	\$ 34.9	\$ 32.7	\$ 35.5	\$ 34.5
FTE Positions	0.0	0.0	0.0	0.0	0.0	0.0

CLAIMS AND CLAIM EXPENSES SUMMARY OF EXPENDITURES FY 2020 – FY 2022					
Item	Actual FY 2020	Agency Est. FY 2021	Gov. Rec. FY 2021	Agency Req. FY 2022	Gov. Rec. FY 2022
Expenditures:					
Salaries and Wages	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Contractual Services	5,051,309	5,571,639	5,571,639	5,822,719	5,822,719
Commodities	528	844	844	907	907
Capital Outlay	0	0	0	0	0
Debt Service	0	0	0	0	0
<i>Subtotal - Operations</i>	<u>\$ 5,051,837</u>	<u>\$ 5,572,483</u>	<u>\$ 5,572,483</u>	<u>\$ 5,823,626</u>	<u>\$ 5,823,626</u>
Aid to Local Units	0	0	0	0	0
Other Assistance	27,651,536	29,967,083	29,967,083	28,650,695	28,650,695
TOTAL	<u>\$ 32,703,373</u>	<u>\$ 35,539,566</u>	<u>\$ 35,539,566</u>	<u>\$ 34,474,321</u>	<u>\$ 34,474,321</u>
Financing:					
State General Fund	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
All Other Funds	32,703,373	35,539,566	35,539,566	34,474,321	34,474,321
TOTAL	<u>\$ 32,703,373</u>	<u>\$ 35,539,566</u>	<u>\$ 35,539,566</u>	<u>\$ 34,474,321</u>	<u>\$ 34,474,321</u>
FTE Positions	0.0	0.0	0.0	0.0	0.0

The **agency** requests expenditures of \$34.5 million, all from special revenue funds, for the Claims and Claim Expenses program for FY 2022. This is an all funds decrease of \$1.1 million, or 3.0 percent, below the FY 2021 revised estimate. The decrease is primarily attributable to decreased expenditures on court-approved settlement agreements or jury

awards. This decrease is partially offset by increased expenditures on legal costs and fees, including attorneys, expert witnesses, and court reporting fees. The request does not include any FTE positions, which is the same as the FY 2021 revised estimate.

The **Governor** concurs with the agency's request for FY 2022.