

**Agency Mission:** To assure the citizens of Kansas safe and competent practice by nurses and mental health technicians.

**Kansas Board of Nursing  
APRN Committee Agenda  
June 16, 2020**

**NOTE: The meeting will be held by conference call. To participate in  
the conference call, dial 1-877-278-8686, Access 865816**

**Time: 2:00 p.m. – 3:00 p.m.**

**Committee Members:**

Carol Bragdon, PhD, APRN, Chair  
Patsy Zeller, MSN, APRN, NP-C, V. Chair  
Jennifer Bendure, CRNA, DNP  
Benjamin Cochran, DNP, APRN, NP-C  
Bobbe Mansfield, DNP, FNP-BC  
Jamie Harrington, DNP, APRN, CNM, FNP-BC  
Dawn Gosnell, MSN, APRN, CNS, CCRN

**Staff:** Carol Moreland, MSN, RN – Executive Administrator  
Jill Simons – Executive Assistant

- I. Call to Order
- II. Review of on-site packet
- III. Additions/Revisions to the agenda
- IV. Approval of minutes – December 10, 2019
- V. Unfinished Business
  1. Prescription Monitoring Program (PMP) Committee Report – Bobbe Mansfield
  2. K-Tracs Funding for FY 21
  3. Update on CNM-I Regulations and Feedback from Joint Committee on Administrative Regulations re: CNM-I proposed regulations
- VI. New Business
  1. APRN Program approvals
    - a. Alverno College – Family NP
    - b. Old Dominion University – Neonatal NP
  2. Healthcare Stabilization Fund Information to Website and/or APRN Licensure Application
- VII. Agenda for September 2020 Committee meeting

Adjourn

**Please note:** Additional items which have come to the attention of the Board or Committee will be handled as time permits. Agenda is subject to change based upon items to come before the Board. Handouts or copies of materials brought to the Board or Committee for discussion by Committee Members or visitors must be submitted to staff 30 calendar days prior to start of the meeting. Any items received after the 30<sup>th</sup> calendar day may be addressed at the meeting at the discretion of the President of the Board or Chairperson of the Committee.

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Alexandra Blasi, Executive Secretary

Laura Kelly, Governor

February 21, 2020

Sen. Kevin Braun  
Chair, Regulatory Boards and Commissions Subcommittee, Ways and Means  
Capitol Building, Room 124-E  
Topeka, Kansas 66612

**RE: Budget for Kansas Prescription Drug Monitoring Program (K-TRACS)**

Dear Senator:

The Division of the Budget and Boards of Pharmacy, Healing Arts, Nursing, Dental, and Examiners in Optometry have reviewed the K-TRACS budget for FY 2021, as well as your Subcommittee's recommendations to the Senate Ways and Means Committee. Over the past six months, the Board of Pharmacy has been working with the Division of the Budget to better project expenses for FY 2021. Several other factors have impacted the Board's budget, including:

- Shrinkage;
- Renegotiation with the software vendor to change annual lump-sum contracts to monthly installments;
- Cost minimization and economies of scale; and
- Not pursuing increased office space.

Upon review, the Board of Pharmacy believes the funding already transferred to the K-TRACS program for FY 2020 will be sufficient to cover the costs through FY 2021. Barring an unanticipated expense, no special revenue fund transfers will be necessary after June 30, 2020.

The Board of Pharmacy plans to host a joint stakeholder meeting this summer to analyze the K-TRACS program, discuss funding options, and identify a long-term funding solution for proposal to the legislature next session. The Boards and Division of the Budget respectfully request the legislature allow time for fulfillment of this process.

All parties appreciate your and the Subcommittee's support of the K-TRACS program and all attempts to ensure its continued success and viability.

Respectfully submitted,

Alexandra Blasi, JD, MBA  
Executive Secretary  
Kansas State Board of Pharmacy

Tucker L. Poling, JD  
Interim Executive Director  
Kansas Board of Healing Arts

B. Lane Hemsley, JD  
Executive Director  
Kansas Dental Board

Jan Murray  
Executive Officer  
Kansas Board of Examiners in Optometry

Carol Moreland, MSN, RN  
Executive Administrator  
Kansas State Board of Nursing

STATE OF KANSAS

**RANEY L. GILLILAND**

Director

**MELISSA S. RENICK**

Assistant Director for Research

**J. G. SCOTT**

Assistant Director for Fiscal Affairs

**AMY DECKARD**

Assistant Director for Information Management



**STAFF**

LEGISLATIVE COORDINATING COUNCIL

INTERIM COMMITTEES

STANDING COMMITTEES

**LEGISLATIVE INQUIRIES**

**KANSAS LEGISLATIVE RESEARCH DEPARTMENT**

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December 6, 2019

Carol Moreland, Executive Administrator  
Board of Nursing  
Landon State Office Building, Suite 1051  
Topeka, Kansas 66612-1230

Dear Executive Administrator Moreland:

At its meeting on November 20, 2019, the Joint Committee on Administrative Rules and Regulations (Committee) reviewed for public comment rules and regulations promulgated by your agency. The enclosed Committee report from that meeting contains comments to which your agency may wish to respond.

The Committee may review the regulations the agency ultimately adopts, and it reserves any expression of legislative concern to that review. To assist in that final review, agencies are expected to respond to each question or comment of the Committee. Please direct the response to me, with copies to the Chairperson, Vice-chairperson, and Ranking Minority Member, or to the Chairperson, with copies to the Vice-chairperson, Ranking Minority Member, and me.

Please inform the Committee and its Kansas Legislative Research Department (KLRD) staff, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes that have been made following the public hearing. Agencies also are expected to notify the Committee and KLRD, in writing, when the agency has delayed implementation of the regulations or decided not to adopt any of the regulations.

Failure to respond to each and every comment contained in this report may result in a request from the Committee that a spokesperson from the agency appear before the Committee to explain the agency's failure to reply.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jill A. Shelley". The signature is written in a cursive, flowing style.

Jill Shelley,  
Principal Research Analyst, KLRD

December 6, 2019

**To:** Kansas Legislature

**From:** Joint Committee on Administrative Rules and Regulations

**Re:** Report of the November 20, 2019, Meeting of the Joint Committee on Administrative Rules and Regulations

With this report, the Joint Committee on Administrative Rules and Regulations (Committee) provides its comments on rules and regulations reviewed at its meeting of November 20, 2019. Agencies are asked to respond to each comment or request for information.

### **Board of Healing Arts**

New Article 28b: Independent Practice of Midwifery. KAR 100-28b-1, definitions; KAR 100-28b-5, license expiration and cancellation; KAR 100-28b-9, scope of practice, limitations; KAR 100-28b-15, transport and transfer protocol requirements; KAR 100-28b-16, duty to consult, refer, transfer, and transport; KAR 100-28b-17, identifiable risks requiring immediate referral and transport of patient; KAR 100-28b-18, identifiable risks requiring immediate referral and transport of newborn.

**Request.** The Committee requests a representative of the Board of Nursing accompany a representative of the Board of Healing Arts when any changes proposed to rules and regulations regarding midwifery are presented to the Committee.

**Request.** The Committee requests the agencies review statutes regarding midwifery and request changes to statutes to clarify current language or place policy positions on certain matters into statute.

**KAR 100-28b-9.** The Committee understands the version of KAR 100-28b-9 presented does not reflect consensus from both the Board of Healing Arts and the Board of Nursing. The Committee suggests adopting the version presented in order to have a rule and regulation on scope of practice in place, followed by later promulgation of a version reflecting consensus between the boards. It requests information on a timeline for adopting a version that does reflect consensus between the boards.

**Concern.** The Committee expresses its concern regarding the lack of timeliness of these proposed rules and regulations, which KSA 65-28b07

requires to have been adopted by January 1, 2017, and it urges continued cooperation between the Board of Healing Arts and the Board of Nursing.

### **Board of Adult Care Home Administrators**

New Article 38: Licensure of Adult Care Home Administrators, Department for Aging and Disability Services. KAR 26-38-1, definitions; KAR 26-38-2, educational requirements for licensure; KAR 26-38-3, application for initial licensure; KAR 26-38-4, licensing examinations; KAR 26-38-5, potentially disqualifying civil and criminal records, advisory opinion, fee; KAR 26-38-6, temporary license; KAR 26-38-7, licensure by reciprocity; KAR 26-38-8, licensing renewal and license reinstatement, continuing education, sponsorship; KAR 26-38-9, display of license; KAR 26-38-10, change of name or address, replacement licenses; KAR 26-38-11, fees.

Revocation of Article 38, Licensure of Adult Care Home Administrators, Department of Health and Environment. KAR 28-38-18, revocation (was licensing examinations); KAR 28-38-19, revocation (was qualification for licensure); KAR 28-38-20, revocation (was application for licensure); KAR 28-38-21, revocation (was temporary license); KAR 28-38-22, revocation (was licensure by reciprocity); KAR 28-38-23, revocation (was license renewal and license reinstatement, continuing education); KAR 28-38-26, revocation (was display of license); KAR 28-38-28, revocation (was change of name or address and replacement or renewal license card); KAR 28-38-29, revocation (was definitions); KAR 28-38-30, revocation (was fees).

**KAR 26-38-3.** The Committee notes KSA 65-3504 requires an applicant to have “completed preliminary education satisfactory to the board” and asks the Board to explain why a baccalaureate or postbaccalaureate degree is required for initial licensure. The Committee also asks how many other states require a baccalaureate or postbaccalaureate degree and, if so, whether those states specify acceptable degrees or majors.

**KAR 26-38-7.** The Committee asks the agency to clarify whether an applicant for licensure by reciprocity must have a baccalaureate or postbaccalaureate degree and, if not, to provide information on what education the Board considers to be “substantially equivalent.”

**Request.** The Committee asks the Board to provide its requirements specific to a person who is the administrator of record at multiple facilities, e.g., how much time must be spent at each facility.

**Request.** The Committee requests information on the number of licensed adult care home administrators and the number of adult care homes, by year, over a period of time, preferably five or more years.

### **Kansas Racing and Gaming Commission**

KAR 112-105-1, security department.



**Request.** The Committee asks the agency to provide its statutory authority to promulgate regulations concerning concealed carry on the gaming floor of casinos.

### **Kansas Department of Revenue**

KAR 92-19-56, revocation (was coins, bullion, stamps, antiques, collectables, commemoratives, and similar items).

The Committee had no comments.

### **State Bank Commissioner**

KAR 17-23-9, revocation (was custody of investments).

The Committee had no comments.

### **State Board of Pharmacy**

KAR 68-2-5, pharmacist-in-charge, notice to board; KAR 68-5-16, ratio of pharmacy technicians to pharmacists.

**KAR 68-5-16.** The Committee requests information on what tasks a pharmacy technician in Kansas may lawfully perform. In addition, the Committee requests a copy of a report referenced by the agency representative that provides information on tasks other states authorize pharmacy technicians to perform.

### **Board of Indigents' Defense Services**

KAR 105-5-2, rates of compensation; KAR 105-5-3, appellate courts, compensation; KAR 105-5-6, reasonable compensation, non-tried cases; KAR 105-5-7, reasonable compensation, tried cases; KAR 105-5-8, compensation, exceptional cases.

**Comment.** The Committee states it understands budget constraints on the agency have led to reimbursement rates for attorneys that are significantly less than market rates for attorneys with necessary skills for those roles, and it recognizes the implications of those budget constraints on Kansans accused of crimes and the state as a whole.

### **Kansas Real Estate Commission**

KAR 86-1-10, approved courses of instructions, procedure; KAR 86-1-11, minimum curricula and standards for course; KAR 86-1-12, monitoring courses, withdrawal of approval;

KAR 86-1-13, revocation (was submission of evidence of course attendance); KAR 86-1-16, revocation (was instructor credit for hours taught); KAR 86-1-17, responsibilities of schools; KAR 86-1-18, revocation (was alternative licensing criteria for broker applicants); 86-3-6a, revocation (was offices); KAR 86-3-7, advertising; KAR 86-3-20, revocation (was reinstatement of deactivated license).

The Committee had no comments.

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Carol Moreland, MSN, RN  
Executive Administrator

Kansas State Board of Nursing

Laura Kelly, Governor

February 6, 2020

Jill A. Shelley  
Principal Research Analyst  
Kansas Legislative Research Department  
State Capitol, Room 68 W  
300 SW Tenth Avenue  
Topeka, KS 66612-1504

Dear Ms. Shelley:

I received a letter from you with the report from the November 20, 2019 Joint Committee on Administrative Rules and Regulations meeting. At that meeting the Kansas Board of Healing Arts presented the following proposed regulations for the Independent Practice of Midwifery: KAR 100-28b-1, KAR 100-28b-5, KAR 100-28b-9, KAR 100-28b-15, KAR 100-28b-16, KAR-28b-17 and KAR 100-28b-18. The Board of Nursing was asked to respond to each comment or request for information in the report pertaining to these proposed regulations. My response to each request follows:

**Request:** The Committee requests a representative of the Board of Nursing accompany a representative of the Board of Healing Arts when any changes proposed to rules and regulations regarding midwifery are presented to the Committee.

**Agency Response:** I apologize there was no representation from the Board of Nursing when these were presented. Our agency was not notified these were being presented. I will share with the Board of Healing Arts the need for the Board of Nursing to be present when these are presented and request they notify us of the date they are on the agenda. The Board of Nursing can check the Kansas Register weekly for a notice of public hearing and watch the agendas of the Joint Committee on Administrative Rules and Regulations.

**Request:** The Committee request the agencies review statutes regarding midwifery and request changes to statutes to clarify current language and place policy positions on certain matters into statute.

**Agency Response:** I will put this on the agenda for the next meeting (March 2020) of the APRN Committee, which is a subcommittee of the Kansas Board of Nursing, along with a copy of the statutes so discussion can start. I will contact the Interim Director at the Board of Healing Arts to let him know that is my plan and inquire how their Board is going to proceed with this request.

**KAR 100-28b-9:** The Committee understands the version of KAR 100-28b-9 presented does not reflect consensus from both the Board of Healing Arts and the Board of Nursing. The Committee suggests adopting the version presented in order to have a rule and regulation on scope of practice in place, followed by later promulgation of a version reflecting consensus between the boards. It requests information on a timeline for adopting a version that does reflect consensus between the boards.

**Agency Response:** I will share this with my Board at the March 2020 meeting and also contact the Interim Director at the Board of Healing Arts to develop a plan to develop a version that reflect consensus between the boards. We can follow-up with you and share the plan.

**Concern:** The Committee expresses its concern regarding the lack of timeliness of these proposed rules and regulations, which KSA 65-28b07 requires to have been adopted by January 1, 2017, and it urges continued cooperation between the Board of Healing Arts and the Board of Nursing.

**Agency Response:** I will share this concern with my Board at the March 2020 meeting. I believe they are committed to continuing to work with the Board of Healing Arts to get regulations that reflect consensus between the boards.

Thank you for your assistance and if you or the Joint Committee on Administrative Rules and Regulations have any questions or concerns, please contact me.

Sincerely,



Carol Moreland, MSN, RN  
Executive Administrator

# BOHA Adopted

## CNM-I

### Regulations

100-28b-1 Definitions

100-28b-5 License expiration and cancellation

100-28b-15 Transport and transfer protocol requirements

100-28b-16 Duty to consult, refer, transfer and transport

100-28b-17 Identifiable risks requiring immediate referral and transport of patient

100-28b-18 Identifiable risks requiring immediate referral and transport of newborn

# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

**100-28b-1. Definitions.** As used in this article of the board's regulations, each of the following terms shall have the meaning specified in this regulation:

- (a) "Abortion" has the meaning specified in K.S.A. 65-6701, and amendments thereto.
- (b) "Antepartum" means occurring in the period that commences when a pregnant woman presents herself to a licensee during pregnancy and ends at the onset of labor.
- (c) "Approved national certification" means certification as a certified nurse-midwife by the American midwifery certification board.
- (d) "Birthing center" means a facility that provides delivery services for normal, uncomplicated pregnancies. This term shall not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.
- (e) "Family planning services" means the provision of contraceptive methods, preconception health services, and sexually transmitted infection screening and treatment to patients.
- (f) "Formal consult" means the process whereby a licensee formally requests a physician's written recommendations for the care and treatment of a patient's identifiable risks.
- (g) "Home birth" means an attended birth at a private residence or a location other than a birthing center or hospital.
- (h) "Hospital" has the meaning specified in K.S.A. 65-425, and amendments thereto.
- (i) "Identifiable risk" means medical history or clinical signs or symptoms that could require clinical services other than those associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery.
- (j) "Informal consult" means the process whereby a licensee who maintains management responsibility for the patient's care informally requests the advice or opinion of a physician.
- (k) "Initial care of a normal newborn" means the clinical services provided to a normal newborn during the first 28 days of life. This term shall include lactation services.
- (l) "Intrapartum" means occurring in the period commencing with the onset of labor and ending after the delivery of the placenta.
- (m) "Licensee" means an individual licensed by the board to engage in the independent practice of midwifery as defined in K.S.A. 65-28b02, and amendments thereto.
- (n) "Minor vaginal laceration" means a tear that extends beyond the fourchette, perineal skin,

and vaginal mucosa to perineal muscles and fascia, but not the anal sphincter.

(o) "Newborn" means an infant during the first 28 days of life after birth.

(p) "Normal newborn" means a newborn who has been clinically determined to have no complications or to be at low risk of developing complications.

(q) "Normal, uncomplicated delivery" means delivery of a singleton cephalic vaginal birth that has been clinically determined to be at low risk for complications.

(r) "Normal, uncomplicated pregnancy" means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.

(s) "Patient" means a woman to whom an independent certified nurse-midwife provides clinical services.

(t) "Physician" means an individual licensed to actively practice medicine and surgery or osteopathic medicine and surgery in Kansas.

(u) "Poor pregnancy outcome" means any outcome other than a live, healthy patient.

(v) "Postpartum" means occurring in the period commencing with the delivery of the placenta and ending six weeks after birth.

(w) "Referral" means the process whereby a licensee requests a physician to assume management responsibility for a patient's care.

(x) "Transfer" means the process whereby a licensee or physician accepts management responsibility for a patient's care.

(y) "Transport" means the process whereby a patient is moved from one location to another. (Authorized by K.S.A. 65-28b07(d); implementing K.S.A. 65-28b02 and 65-28b07(d); effective Jan. 10, 2020.)

# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

**100-28b-5. License expiration and cancellation.** (a) Each license to engage in the independent practice of midwifery issued within the seven-month period beginning June 1 and ending December 31 shall expire on September 30 of the following year and shall be cancelled on October 30 of that year, unless renewed.

(b) Each license to engage in the independent practice of midwifery issued within the five-month period beginning January 1 and ending May 31 shall expire on September 30 and shall be cancelled on October 30 of the same year, unless renewed. (Authorized by K.S.A. 65-28b04 and 65-28b07(d); implementing K.S.A. 65-28b04; effective Jan. 10, 2020.)



# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

**100-28b-15. Transport and transfer protocol requirements.** (a) Each licensee shall have a written protocol in place for each patient for the timely and safe transport to a hospital with an obstetrical unit and physician within a reasonable proximity of the planned location of labor and delivery. Each written protocol shall include the following:

- (1) A plan for transporting the patient by emergency medical services;
  - (2) a plan for notification of the hospital and physician;
  - (3) a plan for communication of the patient's medical history and present condition; and
  - (4) at least one of the following:
    - (A) A plan for transferring the patient to the hospital and a physician;
    - (B) evidence of a transfer agreement with the hospital and physician; or
    - (C) evidence that the licensee has admitting privileges at the specified hospital.
- (b) Each licensee shall ensure that all staff members attending the patient's labor and delivery have immediate access to a working telephone or another communication device and to all necessary information for transporting and transferring a patient in case of an emergency. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

**100-28b-16. Duty to consult, refer, transfer, and transport.** (a) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a patient to a physician, or transport the patient to a hospital if the patient's medical history or condition presents identifiable risks to the course of pregnancy, labor, delivery, or health of the patient.

(b) Any licensee may continue or resume providing clinical services to the patient if a physician has determined that the patient's medical history or condition has been resolved, or that the identifiable risks presented by the patient's medical history or condition are not likely to affect the course of pregnancy, labor, delivery, or health of the patient or newborn.

(c) A licensee shall immediately informally consult, formally consult, refer, or transfer care of a newborn to a physician, or transport the newborn to a hospital if at any time the newborn's condition presents identifiable risks to the health of the newborn.

(d) Any licensee may continue or resume providing clinical services to the newborn if a physician has determined that the newborn's condition has been resolved or that the identifiable risks presented by the newborn's condition are not likely to affect the health of the newborn. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

##### **100-28b-17. Identifiable risks requiring immediate referral and transport of patient.**

Identifiable risks requiring the immediate referral and transport of a patient shall include the following:

- (a) Maternal fever of more than 100.4 degrees Fahrenheit during labor, in the absence of environmental factors;
- (b) suggestion of fetal jeopardy, including clinically significant frank bleeding before delivery, abnormal bleeding with or without abdominal pain, evidence of placental abruption, or detection of abnormal fetal heart tones;
- (c) current spontaneous preterm labor;
- (d) current preterm premature rupture of membranes;
- (e) current preeclampsia;
- (f) current hypertensive disease of pregnancy;
- (g) continuous uncontrolled bleeding;
- (h) postpartum bleeding that does not subside with the administration of oxytocin or other antihemorrhagic agent;
- (i) delivery injuries to the bladder or bowel;
- (j) grand mal seizure;
- (k) uncontrolled vomiting;
- (l) coughing or vomiting blood;
- (m) severe chest pain; and
- (n) sudden onset of shortness of breath and labored breathing. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

# KANSAS ADMINISTRATIVE REGULATIONS (K.A.R.)

## Agency 100

### Kansas State Board of Healing Arts

#### Article 28b.—Independent Practice of Midwifery

##### **100-28b-18. Identifiable risks requiring immediate referral and transport of newborn.**

Identifiable risks requiring the immediate referral and transport of a newborn shall include the following:

- (a) Respiratory rate greater than 80 or grunting, flaring, or retracting following delivery with meconium-stained fluid;
- (b) central cyanosis or pallor for more than 10 minutes;
- (c) Apgar score of six or less at five minutes of age;
- (d) abnormal bleeding;
- (e) more than eight hours of continuous postpartum evaluation;
- (f) vesicular skin lesions;
- (g) seizure-like activity;
- (h) poor feeding effort due to lethargy or lack of interest for more than two hours immediately following birth;
- (i) temperature less than 96.8 degrees Fahrenheit or greater than 100.4 degrees Fahrenheit documented more than 15 minutes apart;
- (j) heart murmur lasting more than 24 hours immediately following birth;
- (k) cardiac arrhythmia;
- (l) congenital anomalies;
- (m) failed critical congenital heart disease screening;
- (n) birth injury;
- (o) clinical evidence of prematurity, including low birth weight of less than 2,500 grams, smooth soles of feet, or immature genitalia;
- (p) jaundice in the first 24 hours after birth or significant jaundice at any time;
- (q) no stool for more than 24 hours immediately following birth;
- (r) no urine output for more than 24 hours; and
- (s) development of persistent poor feeding effort at any time. (Authorized by K.S.A. 65-28b07;

implementing K.S.A. 65-28b02, 65-28b07; effective Jan. 10, 2020.)

# Kansas Statutes CNM-I

*(effective 7/1/17)*

- 65-28b01 Independent practice of midwifery act;  
citation
- 65-28b02 Same; definitions
- 65-28b03 Same; standards and requirements for  
licensure
- 65-28b04 Same; expiration of license
- 65-28b05 Same; fees
- 65-28b06 Same; unlawful acts
- 65-28b07 Same; rules and regulations; standards of  
care
- 65-28b08 Same; revocation, suspension, limitation,  
censure or denial of license; grounds
- 65-28b09 Same; advisory council
- 65-28b10 Same; abortion not authorized

**65-28b01. Independent practice of midwifery act; citation.** The provisions of K.S.A. 65-28b01 through 65-28b10, and amendments thereto, shall be known and may be cited as the independent practice of midwifery act.

**History:** L. 2016, ch. 92, § 88; July 1.

**65-28b02. Same; definitions.** As used in the independent practice of midwifery act:

(a) "Board" means the state board of healing arts.

(b) "Certified nurse-midwife" means an individual who:

(1) Is educated in the two disciplines of nursing and midwifery;

(2) is currently certified by a certifying board approved by the state board of nursing; and

(3) is currently licensed under the Kansas nurse practice act.

(c) "Independent practice of midwifery" means the provision of clinical services by a certified nurse-midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery when such clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including:

(1) The prescription of drugs and diagnostic tests;

(2) the performance of episiotomy or repair of a minor vaginal laceration;

(3) the initial care of the normal newborn; and

(4) family planning services, including treatment or referral of male partners for sexually-transmitted infections.

(d) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 89; July 1.



**65-28b03. Same; standards and requirements for licensure.** (a) In order to obtain authorization to engage in the independent practice of midwifery, a certified nurse-midwife must meet the following requirements:

- (1) Be licensed to practice professional nursing under the Kansas nurse practice act;
- (2) have successfully completed a course of study in nurse-midwifery in a school of nurse-midwifery approved by the board;
- (3) have successfully completed a national certification approved by the board;
- (4) have successfully completed a refresher course as defined by rules and regulations of the board, if the individual has not been in active midwifery practice for five years immediately preceding the application;
- (5) be authorized to perform the duties of a certified nurse-midwife by the state board of nursing;
- (6) be licensed as an advanced practice registered nurse by the state board of nursing; and
- (7) have paid all fees for licensure prescribed in K.S.A. 65-28b05, and amendments thereto.

(b) Upon application to the board by any certified nurse-midwife and upon satisfaction of the standards and requirements established under this act, the board shall grant an authorization to the applicant to engage in the independent practice of midwifery.

(c) A person whose licensure has been revoked may make written application to the board requesting reinstatement of the license in a manner prescribed by the board, which application shall be accompanied by the fee prescribed in K.S.A. 65-28b05, and amendments thereto.

(d) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 90; July 1.

**65-28b04. Same; expiration of license.** (a) Licenses issued under this act shall expire on the date of expiration established by rules and regulations of the board, unless renewed in the manner prescribed by the board. The request for renewal shall be accompanied by the fee prescribed in K.S.A. 65-28b05, and amendments thereto.

(b) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration, by mail, addressed to the licensee's last known mailing address. If the licensee fails to submit an application for renewal on a form provided by the board, or fails to pay the renewal fee by the date of expiration, the board shall give a second notice to the licensee that the license has expired and the license may be renewed only if the application for renewal, the renewal fee, and the late renewal fee are received by the board within the 30-day period following the date of expiration and that, if both fees are not received within the 30-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(c) The board may require any licensee, as a condition of renewal, to submit with the application of renewal evidence of satisfactory completion of a program of continuing education as required by rules and regulations of the board.

(d) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 91; July 1.

**65-28b05. Same; fees.** (a) The board shall charge and collect, in advance, fees for certified nurse-midwives, as established by the board, not to exceed:

Application for license	\$100
License renewal	\$100
Late license renewal	\$100
License reinstatement fee	\$100
Revoked license fee	\$100
Certified copy of license	\$50
Verified copy of license	\$25

(b) The board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such amount shall be credited to the state general fund, and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or persons designated by the president.

(c) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 92; July 1.

**65-28b06. Same; unlawful acts.** (a) It shall be unlawful for a person to engage in the independent practice of midwifery without a collaborative practice agreement with a person licensed to practice medicine and surgery, unless such certified nurse-midwife holds a license from the state board of nursing and the board.

(b) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 93; July 1.

**65-28b07. Same; rules and regulations; standards of care.** (a) The board, in consultation with the state board of nursing, shall adopt rules and regulations pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests, diagnostic services and prescribing of drugs and referral or transfer to physicians in the event of complications or emergencies. Such rules and regulations shall not be adopted until the state board of nursing and the board have consulted and concurred on the content of each rule and regulation. Such rules and regulations shall be adopted no later than January 1, 2017.

(b) A certified nurse midwife engaging in the independent practice of midwifery shall be subject to the provisions of the independent practice of midwifery act with respect to the ordering of tests, diagnostic services and prescribing of drugs, and shall not be subject to the provisions of K.S.A. 65-1130, and amendments thereto.

(c) The standards of care for certified nurse-midwives in the ordering of tests, diagnostic services and the prescribing of drugs shall be those standards which protect patients and shall be standards comparable to persons licensed to practice medicine and surgery providing the same services.

(d) The board is hereby authorized to solely adopt those rules and regulations necessary to administer the administrative provisions of this act.

**History:** L. 2016, ch. 92, § 94; July 1.

**65-28b08. Same; revocation, suspension, limitation, censure or denial of license; grounds.** (a) The board may deny, revoke, limit or suspend any license or authorization issued to a certified nurse-midwife to engage in the independent practice of midwifery that is issued by the board or applied for under this act, or may publicly censure a licensee or holder of a temporary permit or authorization, if the applicant or licensee is found after a hearing:

(1) To be guilty of fraud or deceit while engaging in the independent practice of midwifery or in procuring or attempting to procure a license to engage in the independent practice of midwifery;

(2) to have been found guilty of a felony or to have been found guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120, and amendments thereto, no license or authorization to practice and engage in the independent practice of midwifery shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated, prior to its repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 2019 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;

(3) to have committed an act of professional incompetence as defined in subsection (c);

(4) to be unable to practice the healing arts with reasonable skill and safety by reason of impairment due to physical or mental illness or condition or use of alcohol, drugs or controlled substances. All information, reports, findings and other records relating to impairment shall be confidential and not subject to discovery or release to any person or entity outside of a board proceeding. The provisions of this paragraph providing confidentiality of records shall expire on July 1, 2022, unless the legislature reviews and reenacts such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2022;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act;

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to have been publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country, or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph; or

(9) to have assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 Supp. 21-5407, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty to a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019 Supp. 21-5407, and amendments thereto;

(B) a copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto; or

(C) a copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

(b) No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state, except the crime of perjury as defined in K.S.A. 2019 Supp. 21-5903, and amendments thereto.

(c) As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of care to a degree which

constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to engage in the independent practice of midwifery.

(d) The board, upon request, shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions, as necessary, for the purpose of determining initial and continuing qualifications of licensees and applicants for licensure by the board.

(e) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 95; July 1.

**65-28b09. Same; advisory council.** (a) There is hereby established a nurse-midwives council to advise the board in carrying out the provisions of this act. The council shall consist of seven members, all residents of the state of Kansas appointed as follows: Two members shall be licensees of the board, appointed by the board, who are licensed to practice medicine and surgery and whose specialty and customary practice includes obstetrics; one member shall be the president of the board or a board member designated by the president; and four members shall be licensed certified nurse-midwives appointed by the board of nursing.

(b) If a vacancy occurs on the council, the appointing authority of the position which has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.

**History:** L. 2016, ch. 92, § 96; July 1.



**65-28b10. Same; abortion not authorized.** (a) Nothing in the independent practice of midwifery act should be construed to authorize a certified nurse-midwife engaging in the independent practice of midwifery under such act to perform, induce or prescribe drugs for an abortion.

(b) The provisions of this section shall become effective on January 1, 2017.

**History:** L. 2016, ch. 92, § 97; July 1.

### Advanced Practice Program Summary June 2020

Program	Role/Specialty	Advanced Pathophysiology Credit Hrs	Advanced Health Assessment Credit Hours	Advanced Pharmacology Credit Hours	Total Clinical Hrs	Accreditation	Meets Requirements
Alverno College	Family NP	3	3	3	840	CCNE	Yes
Old Dominion University	Neonatal NP	3	3	3	600	CCNE	Yes

# Kansas Health Care Stabilization Fund

## General Information

(As of January 1, 2018)

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### The HCSF Board of Governors

The Health Care Stabilization Fund Board of Governors is a state agency governed by an eleven member Board appointed by the Kansas Commissioner of Insurance. The statutory membership is: five physicians, three representatives of Kansas hospitals, one representative of adult care homes, one chiropractor, and one nurse anesthetist. Board members are normally appointed for a four year term. A current list of Board members is posted on the HCSF website.

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### Health Care Professionals and Facilities Affected by the Fund Law

The phrase "health care provider" is defined in K.S.A. 40-3401 and includes the following:

- Physicians (M.D.s and D.O.s) who have an active license or hold a temporary permit issued by the Kansas Board of Healing Arts,
- Physicians engaged in a postgraduate training program which is approved by the Kansas Board of Healing Arts,
- Chiropractors,
- Podiatrists,
- Nurse Anesthetists,
- Medical Care Facilities (special hospitals, general hospitals, surgical centers, and recuperation centers),
- Psychiatric Hospitals licensed prior to 1/1/1988,
- Mental Health Clinics or Centers,
- Physician Assistants\*,
- Nurse-Midwives\*,
- Nursing Facilities\*,
- Assisted Living Facilities\*,
- Residential Health Care Facilities\*,
- Dentists who have been certified by the Kansas Board of Healing Arts to administer anesthetics\*\*,
- Kansas Professional Corporations or Partnerships created by defined health care providers\*\*,
- Kansas Limited Liability Companies organized for the purpose of rendering professional services by its members who are defined health care providers\*\*,
- Kansas not-for-profit corporations organized for the purpose of rendering professional services by persons who are defined health care providers\*\*, and
- 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.

\*These categories of health care providers are defined as such in K.S.A. 40-3401 effective January 1, 2015.

\*\*These categories of providers are carefully reviewed to assure they meet the strict statutory criteria for Fund participation. Please note that although health maintenance organizations, optometrists, and pharmacists are defined as health care providers in K.S.A. 40-3401(f), the Legislature discontinued their compliance requirements in 1991 and 1997.

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#### 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.

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## 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 \$200,000 per claim subject to not less than a \$600,000 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.

## Health Care Stabilization Fund Coverage

Three different levels of Fund coverage are available to defined health care providers. The coverage levels are as follows:

- \$100,000 per claim / \$300,000 annual aggregate
- \$300,000 per claim / \$900,000 annual aggregate
- \$800,000 per claim / \$2,400,000 annual aggregate

The first dollar amount is the amount of coverage available for a single claim. The second dollar amount is the aggregate annual limit on the amount of coverage available for all claims made during a Fund fiscal year. Most health care providers choose \$800,000 per claim subject to a \$2.4 million annual aggregate limit.

Fund coverage is always supplemental to and in excess of any other available professional liability coverage. Kansas law allows a health care provider to reduce HCSF coverage limits upon request, but an increase in coverage limits must be approved by the Board of Governors. A copy of the "Request to Decrease Fund Coverage" or the "Request to Increase Fund Coverage" may be downloaded from the forms page at [www.hcsf.org](http://www.hcsf.org).

### Notes

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## How Fund Coverage Limits Apply to Professional Practice

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.

For example, assuming that: (1) a health care provider first complies with the Fund on January 1, 2014 and selects the \$100,000/\$300,000 coverage limit, then (2) on the policy renewal date of January 1, 2015, the health care provider receives approval from the Board of Governors to increase the Fund coverage limits to \$800,000/\$2,400,000, and (3) in 2016 a claim is made based on professional services that were rendered in 2014; the health care provider has \$100,000 Fund excess coverage for this claim. When combined with the primary commercial insurance coverage, the total coverage is \$300,000 for the claim.

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.

The Fund provides professional liability coverage for defined health care providers only. Some primary insurance carriers may offer an additional coverage limit for the health care provider's professional employees who are not defined as health care providers in K.S.A. 40-3401(f).

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

## 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 \$200,000 per claim subject to a \$600,000 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").

### Notes

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## **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 twenty five 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.

### **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 \$200,000 per claim with \$600,000 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 [www.hcsf.org](http://www.hcsf.org).

### **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 page at [www.hcsf.org](http://www.hcsf.org).

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 \$200,000/\$600,000 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 \$200,000/\$600,000 (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 \$200,000/\$600,000 coverage and comply with the Fund law. This is a statutory requirement.

### 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).

### Notes

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## 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.

Therefore, a physician establishing private practice after completing a Kansas postgraduate training program may obtain the required basic professional liability insurance coverage at a first year claims-made rate and will pay a lower HCSF surcharge rate.

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.

## Contact Information

The HCSF website at <https://hcsf.kansas.gov/> is designed for use by health care providers, their insurers, and their attorneys. The website provides access to numerous reference documents and forms.

Questions not addressed in this document or via the website may be sent to e-mail address [hcsf@ks.gov](mailto:hcsf@ks.gov) to be referred to the appropriate staff person. The HCSF office phone number is (785) 291-3777 and the fax number is (785) 291-3550.

### Notes

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## Brief History of the Health Care Stabilization Fund

The 1976 Legislature enacted the original version of the Health Care Provider Insurance Availability Act. Among other things, the Availability Act created the Health Care Stabilization Fund (HCSF). The Availability Act requires that all hospitals and other defined health care facilities and professionals purchase professional liability insurance and participate in capitalization of the Fund by paying a premium surcharge to the HCSF. To enforce the insurance and HCSF requirements, the Legislature decided to make liability insurance a condition of licensure in Kansas. To accommodate those doctors who could not buy commercial insurance coverage, a joint underwriting association was created; the Health Care Provider Insurance Availability Plan.

An important feature of the early version of the Availability Act was a requirement that health care providers obtain "claims made" coverage. In other words, the health care provider is insured for any claims made during the term of the insurance policy, regardless of when the incident occurred. Equally important, if a health care provider retires or leaves Kansas to practice elsewhere, the HCSF remains liable for any claims attributable to professional services rendered when the health care provider was covered by the Fund.

In 1984 the Legislature enacted a number of significant amendments to the original Availability Act. Among other things, there was a limit imposed on the amount that could be recovered from the HCSF. That year, the Legislature also established a Board of Governors to advise the Commissioner of Insurance.

Another major 1984 amendment removed the statutory limit on the Fund's balance and prescribed that premium surcharges should be based on estimated accrued liabilities. In other words, the Legislature decided the HCSF should be actuarially sound.

During the second half of the eighties there was continued pressure on the Legislature to reform the rules of civil litigation. The controversy surrounding tort reform focused a great deal of attention on the HCSF.

Some legislators insisted that the State should divest the HCSF and legislation was passed in 1989 that provided for a gradual phase-out of the Stabilization Fund. The Fund was scheduled for discontinuation in 1994 based on a five-year plan to collect sufficient revenue from Kansas health care providers to pay for all accrued liabilities.

The filing of new cases began to level off during the early nineties, and Fund assets gradually increased. By 1992 the HCSF was considered actuarially sound, and premium surcharges were reduced accordingly. By this time, interest in phasing out the HCSF had waned. Instead, the 1994 Legislature decided to remove the HCSF from the Insurance Department. On July 1, 1995, the HCSF was made independent, and the Board of Governors appointed an Executive Director. The Commissioner of Insurance retains an important role, however. Members of the Board of Governors are appointed by the Commissioner.

In October 2012 the Kansas Supreme Court cited the Health Care Provider Insurance Availability Act in an important decision that upheld the constitutionality of a statutory limit on noneconomic damages in personal injury lawsuits. Then in 2014 the Legislature passed a bill that updated the Health Care Provider Insurance Availability Act and broadened its application to five new categories of health care providers. The Legislation included major improvements in HCSF tail coverage for health care providers.

The Kansas Health Care Provider Insurance Availability Act has accomplished legislative intent. It provides stability by assuring that physicians and other health care providers have access to liability insurance, it promotes a favorable market environment for the commercial insurance companies, it provides for efficient administration of the Health Care Stabilization Fund, it assures a reliable source of compensation if a patient is injured, and it assures timely payment when it is decided a patient should be compensated.

## Kansas Health Care Stabilization Fund

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### 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.

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## Frequently asked questions about the Kansas Health Care Provider Insurance Availability Act

### General Questions

**Q: Why are health care providers required to comply with the Fund law?**

**A:** The original Health Care Provider Insurance Availability Act was enacted in 1976 at a time when many physicians and other health care providers could not obtain adequate or affordable professional liability insurance coverage. The Kansas Medical Society, the Kansas Hospital Association, and the Kansas Commissioner of Insurance were instrumental in persuading the Legislature to pass the laws that became the Health Care Provider Insurance Availability Act. The three principal features of the Act have always been: (1) a requirement that all health care providers, as defined under K.S.A. 40-3401, maintain professional liability insurance coverage as a condition of active licensure, (2) creation of a joint underwriting association, the Health Care Provider Insurance Availability Plan, to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market, and (3) creation of the Health Care Stabilization Fund (HCSF) to, (a) provide excess coverage above the primary coverage purchased by health care providers, and (b) to serve as reinsurer of the Availability Plan.

The Availability Act was specifically cited by the Kansas Supreme Court in the *Miller v. Johnson* decision published in October 2012. The Court upheld the Legislature's authority to replace a common law rule with a statutory limit on noneconomic damages in personal injury actions. The Court's media release said, "The decision relied in part on the statutory cap's relationship to the Health Care Provider Insurance Availability Act. That Act requires that all health care providers maintain liability insurance with designated levels of excess coverage."

**Q: Who is required to comply with the Health Care Provider Insurance Availability Act?**

**A:** Any profession or facility defined as a "health care provider" under K.S.A. 40-3401 is required to comply with the Act. There are numerous health care providers defined as such in K.S.A. 40-3401(f).

Specified professionals licensed to practice in Kansas: chiropractors, nurse anesthetists, nurse midwives, physicians, physician assistants, and podiatrists are required to comply with the Act as a condition of active licensure.

Specified facilities licensed to operate in Kansas: ambulatory surgery centers, assisted living facilities, community mental health centers, hospitals (critical access, general, and special), nursing homes, and residential health care facilities are required to comply with the Act as a condition of licensure. One unique psychiatric hospital is also required to comply.

Specified business entities formed in Kansas such as professional corporations, limited liability companies, and partnerships organized by defined health care providers for the purpose of providing health care services are required to comply with the Act.

**Q: Are dentists, optometrists, or pharmacists required to comply with the Health Care Provider Insurance Availability Act?**

A: No. There are a few dentists certified by the Kansas Board of Healing Arts to administer anesthesia who are required to comply, but generally, dentists are not required to comply. For a number of years optometrists and pharmacists were required to comply and for that reason, they are listed in K.S.A. 40-3401(f). Another section in the Act discontinues compliance for optometrists and pharmacists as of July 1, 1991.

**Q: I am a health care provider but my profession is not included in your list. Can I participate in HCSF coverage?**

A: No. Only those professionals, facilities, and business entities specifically defined as health care providers under K.S.A. 40-3401 are eligible for HCSF coverage.

### **Requirements**

**Q: What is required of a health care provider in order to comply with the Availability Act?**

A: The principal requirements include: (1) professional liability insurance (PLI) coverage purchased from a company authorized by the Kansas Commissioner of Insurance to sell PLI to health care providers. These companies are often referred to as "admitted carriers." The PLI policy must be a claims-made policy and there must be separate limits of coverage (at least \$200,000 per claim subject to not less than \$600,000 annual aggregate coverage) for each individual health care provider insured under the PLI policy. If the health care provider is a Kansas resident, the insurance company is responsible for collecting the appropriate surcharge payment and is responsible for submitting a notice of basic coverage to the HCSF Board of Governors within 30 days of the effective date of the PLI policy.

The health care provider must also choose one of three levels of coverage under the Health Care Stabilization Fund. For a number of reasons, most health care providers purchase a basic PLI policy with \$200,000 per claim, \$600,000 annual aggregate limits and select the \$800,000 per claim, \$2.4 million annual aggregate coverage under the HCSF. This provides total coverage amounting to \$1.0 million per claim subject to \$3.0 million annual aggregate coverage for each health care provider. There are, however, other possible combinations of coverage allowed.

A non-resident health care provider may be insured by a company that is not an admitted carrier, but only if the non-admitted insurance company has submitted a properly executed declaration of compliance with the Health Care Provider Insurance Availability Act. Then the non-resident health care provider may be eligible to render professional services in Kansas. The individual non-resident health care provider is responsible for submitting a non-resident certification with a copy of the PLI certificate of insurance as well as the surcharge payment to the HCSF Board of Governors.

**Q: I provide telemedicine services from out of state and do not actually practice in Kansas. Am I required to comply with the Kansas laws pertaining to professional liability insurance?**

A: If you read images, read slides, or otherwise provide telemedicine services to a patient located in Kansas, then you must have an active license to render professional services in Kansas regardless of where you are located. In that case, you must also

comply with Kansas laws governing professional liability insurance and participation in Health Care Stabilization Fund coverage.

**Q: Can multiple health care providers be covered under a single policy?**

A: Yes. Whether the health care providers are individual professionals or separately licensed facilities, a single policy covering multiple health care providers may be issued as long as the policy provides separate limits of coverage for each insured health care provider. The limits cannot be less than \$200,000 per claim and cannot be less than \$600,000 annual aggregate for each licensed health care provider. There cannot be shared limits and the insurer must collect and remit an appropriate HCSF surcharge for each insured health care provider.

**Q: I am an out-of-state health care provider and I already have a liability insurance policy that provides \$1.0 million per claim coverage. Why should I also be required to pay for additional coverage via the HCSF?**

A: Some medical professional liability insurance policies contain an endorsement that stipulates different coverage limits when the insured health care provider is rendering professional services in a so-called "Fund State" like Kansas. If your policy has such a provision, your coverage under the policy will become \$200,000 per claim when you are practicing in Kansas. If you are absolutely certain that your policy will provide adequate liability coverage when you are practicing in Fund States like Kansas, you can select the minimum level of HCSF coverage in order to achieve compliance. The minimum HCSF coverage level is \$100,000 per claim subject to not more than \$300,000 annual aggregate coverage.

**Q: Can a health care provider purchase excess professional liability insurance coverage?**

A: Yes. For example, a health care provider could purchase a claims-made PLI policy with limits of \$200,000 per claim/\$600,000 annual aggregate issued by an admitted carrier, then select the \$100,000 per claim/\$300,000 annual aggregate level of HCSF coverage, and also purchase an excess policy to cover liabilities exceeding \$300,000 per claim and \$900,000 annual aggregate.

**Q: If for some reason a Kansas resident health care provider cannot obtain the basic professional liability insurance coverage required for compliance with the Availability Act, can the health care provider purchase liability insurance from a non-admitted insurance company?**

A: No. The Legislature created the Health Care Provider Insurance Availability Plan (the Plan) to assure that all Kansas health care providers will always have access to the basic professional liability insurance coverage required under the Act. The Plan is independent from the Health Care Stabilization Fund. The Plan is operated by a servicing carrier that is similar to a third party administrator. To assure that the Plan does not become competitive with commercial insurance companies, the Plan adopts premium rates that are higher than commercial premium rates. Furthermore, the Plan normally requires two declination letters from admitted insurance companies before it will insure a health care provider. To obtain contact information for the current servicing carrier, send an email message to [hcsf@ks.gov](mailto:hcsf@ks.gov).

**Self-Insurance****Q: Can a health care provider be self-insured?**

A: Yes. But the statute allowing self-insurance is very limited. In order to be eligible to apply for permission to self-insure, the individual health care provider must have an annual premium of \$100,000 or more for the basic \$200,000 per claim/\$600,000 annual aggregate coverage. If the health care provider is eligible to apply for a certificate of self-insurance, the health care provider must meet rigorous standards in order to be approved by the Board of Governors. Among other things, the health care provider must submit documentation that the health care provider has sufficient financial resources including assets reserved exclusively for payment of professional liability claims, and also has appropriate procedures established to process and handle claims.

**Q: Can a non-resident health care provider be self-insured?**

A: No. A non-resident health care provider may be insured by a non-admitted insurance company that has signed and submitted a declaration of compliance with the Health Care Provider Insurance Availability Act, but cannot be covered by a self-insurance plan.

**Q: If a health care system employs numerous health care providers and the premium for the group exceeds \$100,000, would it be possible to self-insure the group?**

A: No. The Kansas statute governing self-insurance of health care providers defines a health care system as common ownership of two or more licensed facilities. It does not include health care professionals.

**Tail Coverage****Q: When a health care provider retires or otherwise discontinues his or her professional services in Kansas, can the health care provider obtain an extended reporting endorsement (tail coverage) from the Health Care Stabilization Fund?**

A: One of the advantages of coverage from the HCSF is automatic tail coverage when a health care provider becomes inactive. The tail coverage is statutory; there is no insurance policy issued. The amount of coverage is equal to the level of HCSF coverage in effect on the date of the incident giving rise to the malpractice claim, plus the amount of basic coverage required under K.S.A. 40-3402. For most health care providers, this means they will have automatic tail coverage of \$1.0 million per claim when the health care provider becomes inactive. A health care provider should convert his or her license to inactive status at the same time they discontinue their basic PLI policy in order to assure HCSF tail coverage. Similarly, a facility that discontinues operations should cancel its Kansas license in order to assure tail coverage.

**Q: How long will my tail coverage last?**

A: HCSF tail coverage is continuous and unless the Legislature amends or repeals Kansas law, it will not expire. There are statutes of limitation in Kansas that determine how long a health care provider is liable for care provided to a patient.

**Licensure**

**Q: I am planning to retire and my license will expire not long thereafter. Can I just allow my license to lapse by not renewing it?**

A: Yes. But it would be better to coordinate inactivation of your license with the date of cancellation of your basic professional liability insurance policy. It is easy to inactivate a license and there is no fee. Then the inactive license will be cancelled if it is not renewed.

**Q: I am in the process of relocating to Kansas and I have applied for an active license. The licensing agency informs me that I need proof of professional liability insurance in order to be licensed, but the insurance company informs me that I need an active license in order to obtain a policy. What can I do?**

A: Apply for the basic insurance coverage and obtain a letter of intent from the insurance company. Send the letter of intent to the HCSF Compliance Section so we can verify that the insurer has been approved by the Insurance Commissioner. If the company is an approved insurer, we will forward the letter of intent to the licensing agency. The licensing agency will accept the letter of intent for purposes of processing your application and if all other requirements are met, will issue an active license. The insurer will then make the insurance policy effective on the same date as your active license to practice in Kansas.

**Q: I am relocating out of state. Can I maintain my Kansas license just in case I might return to practice in Kansas again?**

A: Because health care providers are required to comply with the Health Care Provider Insurance Availability Act as a condition of active licensure to render professional services in Kansas, there are two options available.

1. You can inactivate your license as of the date you discontinue your professional liability insurance policy, thereby assuring that you will receive the benefit of tail coverage via the HCSF. This is not the same as cancelling your license. If you decide to resume your practice in Kansas, you can convert your inactive license back to active status by showing evidence of continuing education credits and arrangements for professional liability insurance coverage. Some health care providers choose to convert their active license to exempt status which results in the same tail coverage as conversion to inactive status.
2. You can maintain an active license if you also maintain compliance after becoming a non-resident. In this case, tail coverage would be unnecessary because your compliance would be continuous. It is important to know that when you become a non-resident, the HCSF will continue to cover any claims that may arise as a result of professional services rendered when you were in compliance as a Kansas resident. But when you are a non-resident, the HCSF will cover only those claims that arise as a result of your practice in the State of Kansas.

**Facilities**

**Q: Are nursing facilities for mental health required to comply with the Health Care Provider Insurance Availability Act?**

A: No. Because the Legislature did not specifically define nursing facilities for mental health as health care providers under the Availability Act, nursing facilities for mental health are not eligible for coverage under the Health Care Stabilization Fund.

**Q: Are separate insurance policies required for general liability versus professional liability?**

A: No. A single policy can provide both types of coverage as long as the type of coverage and associated limits are clearly identified. In addition, the policy can provide coverage for health care providers as defined under K.S.A. 40-3401(f) and separately insure other professional staff members who are not defined health care providers. Such policies cannot, however, stipulate a total aggregate policy limit that could interfere with the minimum limits for those health care providers insured under the policy. Furthermore the separate limits of coverage for each licensed health care provider must be identified in the policy.

**Q: If a health care provider is a facility that employs different types of employees, what kind of coverage is provided pursuant to the Health Care Provider Insurance Availability Act?**

A: The Act stipulates that the Health Care Stabilization Fund is liable for "Any amount due from a judgment or settlement which is in excess of the basic coverage" of a health care provider "for any personal injury or death arising out of the rendering of or the failure to render professional services." The Act also stipulates that the amount of HCSF coverage is the amount that was selected by the health care provider at the time of the incident that resulted in a claim. The phrase "professional services" is defined under the Act to mean "patient care or other services authorized under the act governing licensure of a health care provider." In other words, the HCSF does not cover general liability. Furthermore, there are specific provisions in the Act that exclude coverage for sexual acts or criminal acts.

If a health care provider facility employs nurses, therapists, or other professional staff that are not defined health care providers under K.S.A. 40-3401(f), and the facility is named as a defendant as a result of alleged negligence by a non-health care provider, then the HCSF will cover the vicarious liability of the health care provider facility. If, however, an individual non-health care provider staff person is named as a defendant, the non-health care provider is not covered by the HCSF. Similarly, because officers and administrators are not defined health care providers, if they are named individually as defendants in a professional liability claim, the HCSF cannot provide coverage. If the health care provider facility is named as a defendant as a result of alleged negligence by an officer or administrator that results in injury to a patient, then the HCSF will cover the vicarious liability of the facility. For these reasons, many health care provider entities purchase separate professional liability coverage for health care staff who are not defined health care providers under K.S.A. 40-3401(f).

**Q: Our client has sold their facility to a new owner. How does our client obtain tail coverage?**

**A:** Nothing in the Health Care Provider Insurance Availability Act precludes the seller from purchasing an extended reporting endorsement or tail coverage policy. A seller may want to obtain coverage for any claim that exceeds the buyer's policy limits. The purchase of an extended reporting endorsement or tail coverage policy does not, however, relieve the buyer of the responsibility imposed by K.S.A. 40-3402(a) to purchase coverage for "claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy." Unless a health care provider facility is actually closed and the license cancelled, there is no tail coverage provided by the HCSF.

**Q: Are the owners, lessees, operating companies, management firms or similar entities involved in operation of a health care provider facility covered by the Health Care Stabilization Fund?**

**A:** No. The Health Care Stabilization Fund is liable for "Any amount due from a judgment or settlement that is in excess of the basic coverage" of a health care provider "for any personal injury or death arising out of the rendering of or the failure to render professional services." The phrase "professional services" is defined under the Act to mean "patient care or other services authorized under the act governing licensure of a health care provider." Owners, lessees, operating companies, management firms and similar entities are not licensed by the State of Kansas for purposes of rendering patient care, nor are they identified in the definition of "health care provider" under the Act.

### **Business Entities**

**Q: How do I determine whether a business entity meets the definition of health care provider and is required to participate in the Fund?**

**A:** Send an email message to [hcsf@ks.gov](mailto:hcsf@ks.gov). Provide the name of the business entity, explain your inquiry, and request assistance from the HCSF Legal Section.

**Q: How do I file an amendment to create a Professional Limited Liability Company?**

**A:** In order for a Limited Liability Company (hereafter LLC) to be eligible for Health Care Stabilization Fund coverage, it must have a professional purpose and all of the members must be defined health care providers. Therefore, the entity must be a Professional LLC. If you have formed a General LLC rather than a Professional LLC, an amendment form is available on the Kansas Secretary of State's website. Form "CL" is available at URL [http://www.kssos.org/forms/business\\_services/CL.pdf](http://www.kssos.org/forms/business_services/CL.pdf)

If you have questions about filing an amendment, contact your legal counsel or you can contact the Business Services Department in the Secretary of State's office at 785-296-4564. In general, you will indicate you wish to form a Professional LLC, set forth a professional purpose, and attach an original certificate from the appropriate regulatory board indicating the members have active Kansas licenses and the corporate name has been approved. The amendment, filing fee, and original certificate are mailed to the Secretary of State's office.

**Q: Who do I contact to obtain the certificate from the regulatory agency?**

**A:** To obtain a certificate from the Board of Healing Arts, call 785-296-7413 and ask to speak with a staff member in the Office of General Counsel. To obtain a certificate from the Board of Nursing, call 785-296-4929.



**Miscellaneous**

**Q: How do I obtain verification of my compliance with the Fund law?**

A: Contact the HCSF office by sending an email message to [hcsf@ks.gov](mailto:hcsf@ks.gov). Provide your license number as well as your full name just in case there is another health care provider with the same name.

**Q: My principal employer paid the premium for a basic policy as well as the HCSF surcharge and informs me that the policy will not cover any outside employment I engage in. Can I purchase a separate policy to cover my moonlighting jobs?**

A: First you should review your employment contract to determine if moonlighting is prohibited. There is nothing in the Health Care Provider Insurance Availability Act that prevents the purchase of more than one basic policy, but it is unnecessary. The basic policy must cover all claims made during the policy period. Therefore, if a health care provider is covered under two policies, both policies are liable for any claim that arises during the period when both policies are in effect. For that reason, it may be advisable to make arrangements with the employers to share the cost of premiums and surcharges. Another, perhaps better, option would be for you to purchase an independent policy and ask the employers to reimburse you for part of your expense for premium and surcharge.

**Q: How do I increase or decrease my HCSF coverage?**

A: It is not possible for an insurer to adjust Fund coverage levels upon renewal of the basic policy. The health care provider must submit a separate request. There are forms available at the HCSF website or you can contact the office at [hcsf@ks.gov](mailto:hcsf@ks.gov) and ask for either of the two forms. Fund coverage limits can be decreased at any time, but higher coverage limits require approval by the HCSF Board of Governors.

**Q: Is there any way I can obtain an exemption from the compliance requirements?**

A: Yes. If you are no longer rendering professional services in Kansas, you may convert your active license to exempt or inactive status. Similarly, if your facility has discontinued operations, you can cancel your Kansas license to operate. In addition, the HCSF Board of Governors has statutory authority to grant temporary exemptions but only if there are exceptional circumstances. Requests for temporary exemptions must be in writing and the health care provider must sign an affidavit assuring the Board of Governors that the health care provider will not render professional services during the period of exemption.

**Q: Do insurance agents earn commissions on the entire amount of professional liability coverage?**

A: No. There are no commissions earned on the amount of excess HCSF coverage. The Legislature did, however, make provision for commissions on professional liability insurance coverage obtained from the Health Care Provider Insurance Availability Plan.

**Q: Where can I obtain more information about the Health Care Provider Insurance Availability Act?**

A: You can obtain a significant amount of information, including instructions and forms, from the HCSF website at <https://hcsf.kansas.gov/>. Or you can send an email message to [hcsf@ks.gov](mailto:hcsf@ks.gov) and it will be routed to the appropriate member of the staff.