

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Insurance and Pensions** recommends **HB 2380** be amended on page 12, in line 12, after "(l)" by inserting "(1)"; in line 14, by striking "paragraph (1)" and inserting "subparagraph (A)"; in line 19, by striking "paragraph (2)" and inserting "subparagraph (B)"; in line 26, after the period by inserting "A medical care facility or a healthcare facility deemed qualified as a self-insurer under K.S.A. 40-3414(a), and amendments thereto, may opt out of the requirements set forth in subparagraph (B) if such medical care facility or healthcare facility substantially meets the minimum coverage requirements of this section through coverage provided by the captive insurance company of such medical care facility or healthcare facility.";

On page 13, in line 5, by striking the first "(1)"; also in line 5, after "(A)" by inserting "(i)"; in line 10, by striking "(B)" and inserting "(ii)"; in line 15, by striking "(C)" and inserting "(iii)"; in line 20, by striking "(2) (A)" and inserting "(B) (i)"; in line 25, by striking "(B)" and inserting "(ii)"; following line 29, by inserting:

"(2) The board of governors shall have the authority to adjust the amounts provided in subparagraph (B) as the board deems necessary to effectuate the provisions of the healthcare provider insurance availability act, except that the minimum coverage for a healthcare provider shall not be less than \$1,000,000 per claim and \$3,000,000 in the aggregate.";

On page 15, following line 29, by inserting:

"Sec. 4. K.S.A. 40-3409 is hereby amended to read as follows: 40-3409. (a) (1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any ~~health care~~ healthcare provider covered by the fund or any

inactive-~~health care~~ healthcare provider covered by the fund, the plaintiff shall serve a copy of the petition upon the board of governors by registered mail, certified mail, priority mail, commercial delivery service or first class mail within ~~10~~ 30 calendar days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the ~~health care~~ healthcare provider or the provider's insurer or the inactive-~~health care~~ healthcare provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any ~~health care~~ healthcare provider or any inactive-~~health care~~ healthcare provider covered by the fund, the inactive-~~health care~~ healthcare provider, the self-insurer or the insurer of a ~~health care~~ healthcare provider or an inactive-~~health care~~ healthcare provider shall notify the board of governors, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names as a defendant in the action a ~~health care~~ healthcare provider who is licensed, registered or certified by the state board of healing arts, the board of governors shall forward a copy of the petition to the state board of healing arts.

(b) Such action shall be defended by the insurer or the self-insurer, but if the board of governors believes it to be in the best interests of the fund, the board of governors may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The board of governors is authorized to employ independent counsel in any such action against an inactive-~~health care~~ healthcare provider covered by the fund.

(c) The attorneys of record and the board of governors shall submit to the state board of healing arts expert witness reports which have been made available to the opposing parties in the case and, upon the request of the state board of healing arts, any depositions, interrogatories, admissions or other relevant information concerning the case which has been made available to

the opposing parties in the case shall also be submitted. The board of governors shall not be required to furnish information not in the possession of the board of governors. Any report or other information made available to the state board of healing arts in accordance with this subsection shall be subject to K.S.A. 65-2898a and amendments thereto. Reasonable expenses incurred in reproducing such reports or other information shall be paid by the state board of healing arts.

Sec. 5. K.S.A. 2020 Supp. 40-3414 is hereby amended to read as follows: 40-3414. (a) (1) Any ~~health care~~ healthcare provider or any ~~health care~~ healthcare system organized and existing under the laws of this state which owns and operates more than one medical care facility or more than one ~~health care~~ healthcare facility, as defined in K.S.A. 40-3401, and amendments thereto, licensed by the state of Kansas, whose aggregate annual insurance premium is or would be ~~\$100,000~~ \$150,000 or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. Upon application of any such ~~health care~~ healthcare provider or ~~health care~~ healthcare system, on a form prescribed by the board of governors, the board of governors may issue a certificate of self-insurance if the board of governors is satisfied that the applicant ~~is possessed~~ possesses and will continue to ~~be possessed of~~ possess the ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a ~~health care~~ healthcare provider obtained against such applicant arising from the applicant's rendering of professional services as a ~~health care~~ healthcare provider.

(2) In making such determination the board of governors shall consider:

(1)(A) The financial condition of the applicant;

(2)(B) the procedures adopted and followed by the applicant to process and handle

claims and potential claims;

~~(3)(C)~~ the amount and liquidity of assets reserved for the settlement of claims or potential claims; and

~~(4)(D)~~ any other ~~relevant~~ factors the board deems relevant.

(3) Any applicant for self-insurance that owns and operates more than one medical care facility or more than one healthcare facility shall be deemed qualified by the board of governors if such applicant is insured by a captive insurance company, as defined in K.S.A. 40-4301, and amendments thereto, or under the laws of the state of domicile of any such captive insurance company.

(4) The certificate of self-insurance may contain reasonable conditions prescribed by the board of governors. Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable arising from the self-insurer's rendering of professional services as a ~~health care~~ healthcare provider, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-insurance. The provisions of this subsection shall not apply to the Kansas soldiers' home, the Kansas veterans' home or to any ~~person~~ individual who is a self-insurer pursuant to subsection (d) or (e).

(b) Any such ~~health care~~ healthcare provider or ~~health care~~ healthcare system that holds a certificate of self-insurance shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto.

(c) The Kansas soldiers' home and the Kansas veterans' home shall be self-insurers and shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto.

(d) ~~Persons~~Individuals engaged in residency training as provided in K.S.A. 40-3401(r)(1) and (2), and amendments thereto, shall be self-insured by the state of Kansas for occurrences arising during such training, and such ~~person~~ individual shall be deemed a self-insurer for the purposes of the ~~health-care~~ healthcare provider insurance availability act. Such self-insurance shall be applicable to ~~a person~~ an individual engaged in residency training only when such ~~person~~ individual is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such ~~person~~ individual receives extra compensation and which have not been approved as provided in K.S.A. 40-3401(r)(1) and (2), and amendments thereto.

(e) (1) ~~A person~~An individual engaged in a postgraduate training program approved by the state board of healing arts at a medical care facility or mental health center in this state may be self-insured by such medical care facility or mental health center in accordance with this subsection ~~(e)~~ and in accordance with such terms and conditions of eligibility therefor as may be specified by the medical care facility or mental health center and approved by the board of governors. ~~A person~~An individual self-insured under this subsection ~~(e)~~ by a medical care facility or mental health center shall be deemed a self-insurer for purposes of the ~~health-care~~ healthcare provider insurance availability act. Upon application by a medical care facility or mental health center, on a form prescribed by the board of governors, the board of governors may authorize such medical care facility or mental health center to self-insure ~~persons~~ individuals engaged in postgraduate training programs approved by the state board of healing arts at such medical care facility or mental health center if the board of governors is satisfied that the medical care facility or mental health center is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a ~~health-care~~ healthcare provider obtained against ~~a person~~ an individual engaged in such a postgraduate

training program and arising from such ~~person's~~ individual's rendering of or failure to render professional services as a ~~health care~~ healthcare provider.

(2) In making such determination the board of governors shall consider:

(A) The financial condition of the medical care facility or mental health center;

(B) the procedures adopted by the medical care facility or mental health center to process and handle claims and potential claims;

(C) the amount and liquidity of assets reserved for the settlement of claims or potential claims by the medical care facility or mental health center; and

(D) any other factors the board of governors deems relevant.

The board of governors may specify such conditions for the approval of an application as the board of governors deems necessary. Upon approval of an application, the board of governors shall issue a certificate of self-insurance to each ~~person~~ individual engaged in such postgraduate training program at the medical care facility or mental health center who is self-insured by such medical care facility or mental health center.

(3) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel, upon reasonable grounds therefor, a certificate of self-insurance issued pursuant to this subsection ~~(e)~~ or the authority of a medical care facility or mental health center to self-insure ~~persons~~ individuals engaged in such postgraduate training programs at the medical care facility or mental health center. Failure of ~~a person~~ an individual engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such ~~person~~ individual, the failure to comply with any provisions of the ~~health care~~ healthcare provider

insurance availability act or the failure to comply with any conditions for approval of the application or any conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such ~~persons~~ individuals.

(4) A medical care facility or mental health center authorized to self-insure ~~persons~~ individuals engaged in such postgraduate training programs shall pay the applicable surcharge set forth in K.S.A. 40-3402(c), and amendments thereto, on behalf of such ~~persons~~ individuals.

(5) As used in this subsection ~~(e)~~, "medical care facility" does not include the university of Kansas medical center or those community hospitals or medical care facilities described in K.S.A. 40-3401(r)(2), and amendments thereto.

(f) For the purposes of subsection (a), "~~health care~~ healthcare provider" may include each health care provider in any group of ~~health care~~ healthcare providers who practice as a group to provide physician services only for a health maintenance organization, any professional corporations, partnerships or not-for-profit corporations formed by such group and the health maintenance organization itself. The premiums for each such provider, health maintenance organization and group corporation or partnership may be aggregated for the purpose of being eligible for and subject to the statutory requirements for self-insurance as set forth in this section.

(g) The provisions of subsections (a) and (f), relating to ~~health care~~ healthcare systems, shall not affect the responsibility of individual ~~health care~~ healthcare providers as defined in K.S.A. 40-3401(f), and amendments thereto, or organizations whose premiums are aggregated for purposes of being eligible for self-insurance from individually meeting the requirements imposed by K.S.A. 40-3402, and amendments thereto, with respect to the ability to respond to injury or damages to the extent specified therein and K.S.A. 40-3404, and amendments thereto, with respect to the payment of the ~~health care~~ healthcare stabilization fund surcharge.

(h) Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed a self-insurer for the purposes of the ~~health care~~ healthcare provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall pay the applicable surcharge set forth in K.S.A. 40-3404(a), and amendments thereto, on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center or on behalf of a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine.

(i) (1) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ healthcare provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been a ~~health care~~ healthcare provider as defined in K.S.A. 40-3401, and amendments thereto, from and after July 1, 1997.

(2) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ healthcare provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been a self-insurer within the meaning of subsection (h), and amendments thereto, from and after July 1,

1997.

(3) Subject to the provisions of paragraph (4), for the purposes of the ~~health care~~ healthcare provider insurance availability act, the election of fund coverage limits for each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been effective at the highest option, as provided in K.S.A. 40-3403(l), and amendments thereto, from and after July 1, 1997.

(4) No nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be required to pay to the fund any annual premium surcharge for any period prior to the effective date of this act. Any annual premium surcharge for the period commencing on the effective date of this act and ending on June 30, 2001, shall be prorated.";

Also on page 15, in line 38, after the period by inserting:

"(b)";

Also on page 15, in line 42, by striking "(b)";

On page 16, in line 5, before "K.S.A" by inserting "K.S.A. 40-3409 and"; also in line 5, after "40-3408" by inserting ", 40-3414";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after the semicolon by inserting "service of notice thereon;"; also in line 3, after "amending" by inserting "K.S.A. 40-3409 and"; in line 4, after "40-3408" by inserting ", 40-3414"; and the bill be passed as amended.

Chairperson