

## HOUSE BILL No. 2748

By Committee on Insurance

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AN ACT amending the health care provider insurance availability act; concerning coverage documentation and surcharge payment due date; providing for payment of interest; amending K.S.A. 40-3402 and K.S.A. 2001 Supp. 40-3404 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 40-3402 is hereby amended to read as follows: 40-3402. (a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995 nor to health maintenance organizations on or after July 1, 1997. Such policy shall provide as a minimum 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. Any insurer offering such policy of professional liability insurance to any health care provider may offer to such health care provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage ~~shall, within 30~~ 60 days after the ~~premium for the basic coverage is received by the insurer or within 30 days from the effective date of this act, whichever is later~~ date the basic coverage becomes effective, shall notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be issued, the name and address of all health care providers covered by the policy, the amount of the annual premium, the inception and expiration dates of the coverage ~~and~~, such other information as the board of governors shall require *and shall be accompanied by the surcharge payment required by subsection*

1 (b) of K.S.A. 40-3404, and amendments thereto. A copy of the notice  
2 required by this subsection shall be furnished the named insured.

3 (2) In the event of termination of basic coverage by cancellation, non-  
4 renewal, expiration or otherwise by either the insurer or named insured,  
5 notice of such termination shall be furnished by the insurer to the board  
6 of governors, the state agency which licenses, registers or certifies the  
7 named insured and the named insured. Such notice shall be provided no  
8 less than 30 days prior to the effective date of any termination initiated  
9 by the insurer or within 10 days after the date coverage is terminated at  
10 the request of the named insured and shall include the name and address  
11 of the health care provider or providers for whom basic coverage is ter-  
12 minated and the date basic coverage will cease to be in effect. No basic  
13 coverage shall be terminated by cancellation or failure to renew by the  
14 insurer unless such insurer provides a notice of termination as required  
15 by this subsection.

16 (3) Any professional liability insurance policy issued, delivered or in  
17 effect in this state on and after July 1, 1976, shall contain or be endorsed  
18 to provide basic coverage as required by subsection (a) ~~of this section~~.  
19 Notwithstanding any omitted or inconsistent language, any contract of  
20 professional liability insurance shall be construed to obligate the insurer  
21 to meet all the mandatory requirements and obligations of this act. The  
22 liability of an insurer for claims made prior to July 1, 1984, shall not  
23 exceed those limits of insurance provided by such policy prior to July 1,  
24 1984.

25 (b) Unless a nonresident health care provider is a self-insurer, such  
26 health care provider shall not render professional service as a health care  
27 provider in this state unless such health care provider maintains coverage  
28 in effect as prescribed by subsection (a), except such coverage may be  
29 provided by a nonadmitted insurer who has filed the form required by  
30 subsection (b)(1). This provision shall not apply to optometrists and phar-  
31 macists on or after July 1, 1991 nor to physical therapists on and after  
32 July 1, 1995.

33 (1) Every insurance company authorized to transact business in this  
34 state, that is authorized to issue professional liability insurance in any  
35 jurisdiction, shall file with the commissioner, as a condition of its contin-  
36 ued transaction of business within this state, a form prescribed by the  
37 commissioner declaring that its professional liability insurance policies,  
38 wherever issued, shall be deemed to provide at least the insurance re-  
39 quired by this subsection when the insured is rendering professional serv-  
40 ices as a nonresident health care provider in this state. Any nonadmitted  
41 insurer may file such a form.

42 (2) Every nonresident health care provider who is required to main-  
43 tain basic coverage pursuant to this subsection shall pay the surcharge

1 levied by the board of governors pursuant to subsection (a) of K.S.A. 40-  
2 3404, and amendments thereto, directly to the board of governors and  
3 shall furnish to the board of governors the information required in sub-  
4 section (a)(1).

5 (c) Every health care provider that is a self-insurer, the university of  
6 Kansas medical center for persons engaged in residency training, as de-  
7 scribed in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto,  
8 the employers of persons engaged in residency training, as described in  
9 subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, the private  
10 practice corporations or foundations and their full-time physician faculty  
11 employed by the university of Kansas medical center or a medical care  
12 facility or mental health center for self-insurers under subsection (e) of  
13 K.S.A. 40-3414, and amendments thereto, shall pay the surcharge levied  
14 by the board of governors pursuant to subsection (a) of K.S.A. 40-3404,  
15 and amendments thereto, directly to the board of governors and shall  
16 furnish to the board of governors the information required in subsection  
17 (a)(1) and (a)(2).

18 (d) In lieu of a claims made policy otherwise required under this  
19 section, a person engaged in residency training who is providing services  
20 as a health care provider but while providing such services is not covered  
21 by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and  
22 amendments thereto, may obtain basic coverage under an occurrence  
23 form policy if such policy provides professional liability insurance cover-  
24 age and limits which are substantially the same as the professional liability  
25 insurance coverage and limits required by subsection (a) of K.S.A. 40-  
26 3402, and amendments thereto. Where such occurrence form policy is in  
27 effect, the provisions of the health care provider insurance availability act  
28 referring to claims made policies shall be construed to mean occurrence  
29 form policies.

30 Sec. 2. K.S.A. 2001 Supp. 40-3404 is hereby amended to read as  
31 follows: 40-3404. (a) Except for any health care provider whose partici-  
32 pation in the fund has been terminated pursuant to subsection (i) of  
33 K.S.A. 40-3403, and amendments thereto, the board of governors shall  
34 levy an annual premium surcharge on each health care provider who has  
35 obtained basic coverage and upon each self-insurer for each fiscal year.  
36 This provision shall not apply to optometrists and pharmacists on or after  
37 July 1, 1991 nor to physical therapists on or after July 1, 1995, nor to  
38 health maintenance organizations on and after July 1, 1997. Such pre-  
39 mium surcharge shall be an amount based upon a rating classification  
40 system established by the board of governors which is reasonable, ade-  
41 quate and not unfairly discriminating. The annual premium surcharge  
42 upon the university of Kansas medical center for persons engaged in  
43 residency training, as described in paragraph (1) of subsection (r) of

1 K.S.A. 40-3401, and amendments thereto, shall be based on an assumed  
2 aggregate premium of \$600,000. The annual premium surcharge upon  
3 the employers of persons engaged in residency training, as described in  
4 paragraph (2) of subsection (r) of K.S.A. 40-3401, and amendments  
5 thereto, shall be based on an assumed aggregate premium of \$400,000.  
6 The surcharge on such \$400,000 amount shall be apportioned among the  
7 employers of persons engaged in residency training, as described in par-  
8 agraph (2) of subsection (r) of K.S.A. 40-3401, and amendments thereto,  
9 based on the number of residents employed as of July 1 of each year. The  
10 annual premium surcharge upon any nonprofit corporation organized to  
11 administer the graduate medical education programs of community hos-  
12 pitals or medical care facilities affiliated with the university of Kansas  
13 school of medicine shall be based upon an assumed aggregate premium  
14 of \$10,000. The surcharge on such assumed aggregate premium shall be  
15 apportioned among all such nonprofit corporations.

16 (b) (1) In the case of a resident health care provider who is not a  
17 self-insurer, the premium surcharge shall be collected in addition to the  
18 annual premium for the basic coverage by the insurer and shall not be  
19 subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 *et seq.*,  
20 and amendments thereto. The amount of the premium surcharge shall  
21 be shown separately on the policy or an endorsement thereto and shall  
22 be specifically identified as such. Such premium surcharge shall be due  
23 and payable by the insurer to the board of governors within ~~30~~ 60 days  
24 after the annual premium for the basic coverage is received by the insurer,  
25 ~~but in the event basic coverage is in effect at the time this act becomes~~  
26 ~~effective, such surcharge shall be based upon the unearned premium until~~  
27 ~~policy expiration and annually thereafter. Within 15 days immediately~~  
28 ~~following the effective date of this act, date basic coverage becomes ef-~~  
29 ~~fective. Premium surcharge payments submitted beyond the 60-day pe-~~  
30 ~~riod shall include accrued interest beginning with the effective date of the~~  
31 ~~basic coverage to the postmarked date of the premium surcharge payment~~  
32 ~~submission. The interest accrued shall be calculated based on double the~~  
33 ~~interest rate provided for in subsection (e)(1) of K.S.A. 40-204, and~~  
34 ~~amendments thereto. Interest amounts shall be payable by the basic cov-~~  
35 ~~erage insurer and shall not be the responsibility of the health care pro-~~  
36 ~~vider. Premium surcharge payments shall be submitted with the notifi-~~  
37 ~~cation form required by subsection (a)(1) of K.S.A. 40-3402, and~~  
38 ~~amendments thereto. The board of governors shall send to each insurer~~  
39 information necessary for their compliance with this subsection.

40 (2) The certificate of authority of any insurer who fails to comply with  
41 the provisions of *paragraph (1)* of this subsection, shall be suspended  
42 pursuant to K.S.A. 40-222, and amendments thereto, until such insurer  
43 shall pay the annual premium surcharge due and payable to the board of

1 governors, including any accrued interest amount due under paragraph  
2 (1).

3 (3) *Nonresident compliance documents and surcharge payments must*  
4 *be submitted to the board of governors within 60 days of the effective*  
5 *date of the coverage period being requested by the nonresident health*  
6 *care provider. In the case of a nonresident health care provider or a self-*  
7 *insurer, the premium surcharge shall be collected in the manner pre-*  
8 *scribed in K.S.A. 40-3402, and amendments thereto.*

9 (c) In setting the amount of such surcharge, the board of governors  
10 may require any health care provider who has paid a surcharge for less  
11 than 24 months to pay a higher surcharge than other health care  
12 providers.

13 Sec. 3. K.S.A. 40-3402 and K.S.A. 2001 Supp. 40-3404 are hereby  
14 repealed.

15 Sec. 4. This act shall take effect and be in force from and after its  
16 publication in the statute book.

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