

March 26, 2024

# SPRING LEARNING FORUM

## The Fund 101

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Rita L. Noll, JD



# TODAY'S SPEAKER

**Rita L. Noll, JD**

**Deputy Director and Chief Counsel**

*Kansas Health Care Stabilization Fund*

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# **Kansas Health Care Stabilization Fund**

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website: [hcsf.kansas.gov](http://hcsf.kansas.gov)

Presentation to: KAMMCO – March 26, 2024

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# Health Care Stabilization Fund

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# Health Care Provider Insurance Availability Act

K.S.A. 40-3401, et seq. (1976)

\*Key component of the tort reforms of the 1970s and 1980s.

\*Mandates professional liability insurance coverage for health care providers as a condition to practice in Kansas.

\*Established the Health Care Provider Insurance Availability Plan.

\*Created the Health Care Stabilization Fund (Fund).

# Health Care Stabilization Fund

## Key Features:

- \*Provides excess professional liability coverage for all health care providers.
- \*Provides “tail” coverage for qualified inactive health care providers.
- \*Financial back-up for The Plan.
- \*Administers K.U. Foundation, Faculty, and Residents self-insurance programs (primary coverage).

# Who are “Health Care Providers” eligible for HCSF coverage?

K.S.A. 40-3401(f)

M.D.

D.O.

D.C.

D.P.M.

CRNA

\*Physician Assistants

\*Certified Nurse Midwives

Hospitals

Ambulatory Surgical Centers

Certain Partnerships and Professional Corporations

Mental Health Centers and Clinics

Certain Psychiatric Hospitals

\*Adult Care Homes

\*Residential Health Care Facilities

\*Assisted Living Facilities

\* Added to the HCSF by the legislature effective 1/1/2015

# HCSF Coverage

*Professional liability coverage for claims for personal injury or death arising out of the rendering of or the failure to render professional services as a health care provider.*

- \*Does not apply to punitive damages or intentional torts
- \*Does not apply to administrative proceedings, such as licensure issues
- \*Does not apply to property damage/general liability
- \*Does not apply to administrative fines or penalties



# HCSF Coverage

- Must have active Kansas license
- Inactive or exempt license not eligible for coverage
- Kansas resident: primary insurance and HCSF provide coverage wherever you practice
- Non-resident: HCSF provides coverage only for your Kansas practice
- HCSF “Tail” coverage for claims made against inactive health care providers for care provided when active. It is “automatic”, no additional charge, coverage does not end.

# Kansas Professional Liability Coverage Requirements

1989-2022

2022

## Basic/Primary insurance coverage

**\$200,000/\$600,000**

**Kansas admitted Ins. Co.**

**\$500,000/\$1.5 million**

**Kansas admitted Ins. Co.**

## Excess coverage from HCSF

**1. \$100,000/\$300,000**

**2. \$300,000/\$900,000**

**3. \$800,000/\$2,400,000**

**1. \$500,000/\$1.5 million\***

**2. \$1.5 million/\$4.5 million**

**Board of Governors  
determines option(s) offered**

# Current HCSF Surcharge Rates, Physicians

Class Group	General Description	Annual Surcharge	+ Missouri License
1	No surgery; Pathology, Public Health	\$396	\$515
2	No surgery; Family Practice, Pediatrics, Physical Medicine, Radiology	\$808	\$1,050
3	Minor surgery; Gastroenterology, Infectious Disease, Internal Medicine	\$1,168	\$1,518
4	Family Physicians Minor Surgery	\$1,310	\$1,703
5	Surgical Specialists; Colorectal, Urological	\$1,505	\$1,957
6	Emergency Medicine	\$1,701	\$2,211
7	Anesthesiologists	\$1,337	\$1,738
8	Surgical Specialists; Abdominal, Bariatric, Gynecology, Plastic surgery	\$3,123	\$4,060
9	Surgical Specialists; Cardiac, Orthopedic, Thoracic, Vascular	\$3,434	\$4,464
10	Obstetrics, Perinatology	\$4,459	\$5,797
11	Neurosurgeons	\$10,006	\$13,008

# Example: compliance record for family practitioner for last five years.

<b>Policy Period</b>	<b>Primary Ins.</b>	<b>Premium</b>	<b>Fund coverage</b>	<b>Surcharge</b>
<b>1/1/24 – 1/1/25</b>	\$500,000	\$7,482	\$500,000	\$ 808
<b>1/1/23 – 1/1/24</b>	\$500,000	\$7,018	\$500,000	\$ 851
<b>1/1/22 – 1/1/23</b>	\$500,000	\$6,467	\$500,000	\$ 851
<b>1/1/21 – 1/1/22</b>	\$200,000	\$5,376	\$800,000	\$1,641
<b>1/1/20 – 1/1/21</b>	\$200,000	\$5,430	\$800,000	\$1,641

# Health Care Stabilization Fund

## Compliance Section

- \*Maintains compliance records for **more than 17,000** active health care providers
- \*Maintains compliance records for over **30,000** inactive health care providers
- \*Works with insurance carriers to receive compliance documentation and surcharge for HCSF coverage
- \*Works with non-resident health care providers to comply with Kansas licensure and coverage requirements

# Health Care Stabilization Fund Claims Section

- \*How the Fund is notified of claims
  - Service on the Fund and Initial Report Form
- \*How we set up our file
  - Insurance Carrier and defense counsel notified
- \*Monitoring and evaluating claims
- \*Settlement Conference
- \*"Tendering" to the Fund
- \*Coverage in excess of Fund limits
- \*Settlement Authority – HCSF Board of Governors

# Number of New Cases by Fiscal Year

<b>2023</b>	<b>307</b>
<b>2022</b>	<b>274</b>
<b>2021</b>	<b>318</b>
<b>2020</b>	<b>302</b>
<b>2019</b>	<b>323</b>
<b>2018</b>	<b>300</b>
<b>2017</b>	<b>276</b>
<b>2016</b>	<b>248</b>
<b>2015</b>	<b>235</b>
<b>2014</b>	<b>268</b>
<b>2013</b>	<b>229</b>
<b>2012</b>	<b>260</b>
<b>2011</b>	<b>267</b>
<b>2010</b>	<b>290</b>
<b>2009</b>	<b>310</b>
<b>2008</b>	<b>329</b>
<b>2007</b>	<b>304</b>
<b>2006</b>	<b>457</b>
<b>2005</b>	<b>336</b>
<b>2004</b>	<b>368</b>

# Number of Trials by Fiscal Year Involving KS health care providers

Fiscal Year	Total Trials	Defense Verdict	Plaintiff Verdict	Split Verdict	Mistrials
2023	21	17	3		1
2022	16	9	6		
2021*	4	4			
2020*	12	11	1		
2019	10	9			1
2018	12	9	3		
2017	16	14	1	1	
2016	14	12	1		1
2015	18	13	2		3
2014	27	23	3		1
2013	18	14	4		
2012	21	19	1		1



# HCSF Settlements by Fiscal Year

Fiscal Year	Number of Claims/Cases	(Inactive)	HCSF Amount	Settlement Av.
2023	95/85	13	\$33,419,872.84	\$351,788
2022	75/64	9	\$28,612,433.86	\$381,499
2021	50/40	6	\$17,352,000.00	\$347,040
2020	73/69	9	\$27,121,225.00	\$371,524
2019	74/61	12	\$23,407,875.00	\$316,323
2018	73/58	8	\$24,238,950.00	\$332,040
2017	64/53	8	\$21,745,583.00	\$339,775
2016	76/66	20	\$23,539,687.07	\$309,733
2015	60/53	3	\$24,322,582.00	\$405,376
2014	63/52	9	\$24,005,914.00	\$381,046

# Total Settlement Amounts

(cases involving HCSF money)

FY	Primary Ins.	HCSF	Excess Ins.	Total
2023	\$15,200,000.00	\$33,419,872.84	\$ 9,135,377.16	\$57,755,250.00
2022	\$13,105,866.14	\$28,612,433.86	\$14,850,000.00	\$56,568,300.00
2021	\$ 8,800,000.00	\$17,352,000.00	\$ 7,650,000.00	\$33,802,000.00
2020	\$12,400,000.00	\$27,121,225.00	\$ 7,700,000.00	\$47,221,225.00
2019	\$11,797,022.00	\$23,407,875.00	\$ 550,000.00	\$35,754,897.00
2018	\$12,755,050.00	\$24,238,950.00	\$ 2,895,000.00	\$39,889,000.00
2017	\$11,057,500.00	\$21,745,583.00	\$ 1,425,000.00	\$34,228,083.00
2016	\$11,000,000.00	\$23,539,687.07	\$ 3,400,000.00	\$37,939,687.07
2015	\$11,200,000.00	\$24,322,582.00	\$14,400,000.00	\$49,922,582.00
2014	\$10,135,000.00	\$24,005,914.00	\$ 3,875,000.00	\$38,015,914.00

# Future of tort reforms?

- \*Cap on non-economic damages (pain and suffering)

K.S.A. 60-19a02. (\$350,000 for causes of action accruing on and after 7/1/22)

Miller v. Johnson (2012)

Hilburn case (2019)

- \*Cap on Wrongful Death damages - \$250,000

- \*Vicarious liability exclusion. K.S.A. 40-3403(h)

One health care provider is not liable for another health care provider.

# QUESTION & ANSWER

Use the Q&A button on the Zoom interface to ask a question.

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## Contact Details

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