

# Report of the Health Care Stabilization Fund Oversight Committee to the 2019 Kansas Legislature

**CHAIRPERSON:** Gary Hayzlett

**LEGISLATIVE MEMBERS:** Senators Anthony Hensley (substitute), Laura Kelly, and Vicki Schmidt; and Representatives Eber Phelps, Richard Proehl, and Jim Ward (substitute)

**NON-LEGISLATIVE MEMBERS:** Darrell Conrade; Dennis Cooley, MD; Dennis George; Jimmie Gleason, MD; James Rider, DO; and Jerry Slaughter

**CHARGE**

The Committee annually receives a report on the status of the Health Care Stabilization Fund and makes recommendations regarding the financial status of the Fund.

This page intentionally left blank.

# Health Care Stabilization Fund Oversight Committee

## ANNUAL REPORT

### Conclusions and Recommendations

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: whether this committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF or the Fund) is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report, the Board of Governors' actuary, and health care provider and insurance company representatives. The Committee agreed on the following recommendations and comments:

- **Actuarial report and status of the HCSF; compliance with 2018 law.** The Committee notes the report provided by the Board of Governors' actuary reviewed the financial performance of the HCSF and outlined relative stability in rates and improved internal equity in the Fund. The Committee notes the fiscal year 2019 surcharge rate decision by the Board of Governors to further lessen the difference in rates by Years of Compliance (YOC) in the Fund.

The Committee also notes compliance with the requirements of SB 217 (the HCSF Board of Governors is required to submit its annual report to this committee; in turn, the Committee includes review of the statutory report for consideration by the Legislative Coordinating Council (LCC) and the Legislature).

- **Contemporary issues and continued oversight.** The Committee notes the need for monitoring of the issue of claims-based versus occurrence-based coverage, as well as the status of the professional liability insurance marketplace.
  - The Committee requests the HCSF Board of Governors prepare a progress report regarding the issue of itinerant practitioners and the problems it creates with coverage and update the Committee at its next meeting.
- **Health Care Provider Insurance Availability Act (HCPIAA).** The Committee notes no amendments to this act were submitted for its consideration.
- **Fund to be held in trust.** The Committee recommends the following language to the LCC, the Legislature, and the Governor regarding the HCSF:

- The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and
- Further, the Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The Committee requests its report be directed to the standing committees on health and insurance, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.

Finally, the Committee concurs with representatives of the health care provider and insurance industry and recognizes the faithful stewardship and service of Charles “Chip” Wheelen, Executive Director of the Health Care Stabilization Fund Board of Governors. The Committee notes Mr. Wheelen’s testimony and comment to the Legislature on many occasions, always noting the success of the public-private partnership of the HCPIAA and the relationship between health care providers, the insurance industry, the public, and the Legislature. The Committee congratulates Mr. Wheelen on his retirement.

***Proposed Legislation:*** None

## **BACKGROUND**

The Committee was created by the 1989 Legislature and is described in KSA 2018 Supp. 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the general public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the Health Care Stabilization Fund (HCSF) Board of Governors or another member of the Board designated by the Chairperson. The law charges the Committee to report its activities to the Legislative Coordinating Council (LCC) and to make recommendations to the Legislature regarding the Health Care Stabilization Fund (HCSF or the Fund). The reports of the Committee are on file in the Kansas Legislative Research Department.

The Committee met November 16, 2018.

## **COMMITTEE ACTIVITIES**

### **Report of Willis Towers Watson**

The Willis Towers Watson actuarial report serves as an addendum to the report to the HCSF Board of Governors dated March 5, 2018, provided to the Board of Governors based on HCSF data as of December 31, 2017. The actuary addressed forecasts of the HCSF’s position at June 30, 2018, and June 30, 2019, based on the company’s annual review, along with the prior estimate for June 2018. The HCSF’s position at June 30, 2018, was as follows: the HCSF held assets of \$292.1 million and liabilities of \$244.2 million, with \$47.9 million in reserve. The projection for June 30, 2019, is as follows: assets

of \$296.9 million and liabilities of \$249.3 million, with \$47.7 million in reserve. The actuary noted, based on the analysis provided to the Board of Governors, the HCSF would need to raise its surcharge rates by 2.0 percent for calendar year (CY) 2019 in order to maintain its unassigned reserves at the expected year-end CY 2018 level. The actuary explained the forecasts of unassigned reserves assume an estimate of surcharge revenue in fiscal year (FY) 2019 (\$28.4 million), a 2.0 percent interest rate for estimating the tail liabilities on a present value basis, a 3.05 percent yield on HCSF assets for estimating investment income, full reimbursement for University of Kansas (KU) and Wichita Center for Graduate Medical Education (WCGME) claims, and no change in current Kansas tort law or HCSF law. Based on these conclusions, it was suggested the Board of Governors consider a modest increase in rates for CY 2019, perhaps by continuing to lessen the differences in rates by Year of Compliance (YOC) and making adjustments by specialty.

The actuary reviewed the HCSF's liabilities at June 30, 2018. The liabilities highlighted included claims made against active providers as \$75.2 million; associated defense costs as \$13.1 million; claims against inactive providers, as known on June 30, 2018, as \$8.8 million; tail liability of inactive providers as \$136.0 million; future payments as \$11.0 million; claims handling as \$8.6 million; and other, described as mainly plaintiff verdicts on appeals, as \$1.1 million. Total gross liabilities were \$253.8 million (the HCSF is reimbursed \$9.6 million for the KU/WCGME programs, which equates to a net liability of \$244.2 million).

The actuary also reviewed the HCSF's (surcharge) rate level indications for CY 2019, noting the indications assume a break-even target. The actuary highlighted payments, with settlements and defense costs of \$30.8 million; change in liabilities of \$4.9 million; administrative expenses of \$1.8 million; and transfers to the Availability Plan and the Kansas Department of Health and Environment assumed to be \$200,000 (assumes no Availability Plan transfer). In total, the cost for the HCSF to "break even" is \$37.7 million. The actuary stated the HCSF has two sources of revenue: investment income assumption of \$8.8 million based on a 3.05 percent yield on those assets and surcharge payments from

providers of \$28.2 million. The actuary explained the Board of Governors would need to collect \$28.8 million in surcharge revenue to meet the break-even scenario and indicated his company's advice to the Board of Governors was, in order to maintain the same level of unassigned reserves, the HCSF should raise rates by 2.2 percent.

The actuary discussed trends in the HCSF's loss experience and investment income, highlighting the key component to the HCSF's favorable financial performance—the spread of investment yield relation to inflation. The actuary explained the current assumption is a 205 basis point spread (assumes an investment yield of 3.05 percent; inflation of 1.00 percent) and commented as long as the spread is in that neighborhood or better, it is believed the HCSF's rates will be able to stay at or near its current level for a few years with possible modest increases. If that spread narrows significantly either due to increased inflation or a decline in the investment yield, the actuary commented, there will be more pressure on the HCSF's income statement. The actuary also reported on trends in the HCSF's experience for active and inactive providers by program year from 2005 through 2018, noting over the long term, it looks pretty close to 0 percent inflation rate in the cost to insure active providers. The actuary indicated inactive providers have shown some positive inflation, stating this may be due to the legislative change where the inactive providers do not have to buy additional coverage upon leaving the HCSF (2014 law). The actuary also reported on the HCSF's investment yield over the last eight years, indicating it continues to have a gradual decline and his company lowered its assumed future yield rate from 3.10 percent in the 2017 study to 3.05 percent in its 2018 review.

The actuary provided an overview on the rating by YOC. With the passage of 2014 HB 2516, the HCSF provides tail coverage at no additional cost to all providers upon becoming inactive; this law, the actuary commented, made rating by YOC unnecessary. The actuary indicated the advice to the Board of Governors was to narrow that spread and condense the table (the Board of Governors adopted this policy). The actuary provided an example of this policy, noting, in CY 2019, a provider who has participated in the HCSF for three years used to receive a 19.0 percent discount, but now pays the full rate, and a

provider who is in the HCSF for the first year is now up to 35.0 percent instead of 20.0 percent. The actuary indicated the Board of Governors decided with CY 2019 to further compress the table and adjust the first-year rate up to 50.0 percent; the actuary noted his company is pleased with these decisions (e.g., lessening the difference in rates by YOC) from an internal equity standpoint.

The actuary provided an overview regarding indications by provider class. The actuary explained every year his company evaluates the internal equity of these rates in order to minimize subsidization from one class to another and this analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary highlighted Class 11 (neurosurgeons) and indicated it was gratifying to see Class 11 finally move from the right-hand column (indicating a need to increase rates by greater than 15 percent) to the middle column where, in theory, his company would like all participating health care providers (no subsidization). Classes with decreases or increases greater than 15 percent are noted below:

- Decrease greater than 15 percent [first class listed had the greatest decrease]: Class 8 (surgery – general, plastic, ER with major); Class 3 (physicians, minor surgery); Class 13 (registered nurse anesthetists); Class 18 (mental health centers); Class 20 (residency training program); Class 21 (physician assistants); and Class 24 (nursing facilities); and
- Increase greater than 15 percent [last class listed had the greatest decrease]: Class 22 (nurse midwives); Class 1 (physicians, no surgery – dermatology, pathology, psychiatry); Class 9 (surgery specialty – cardiovascular, orthopedic, traumatic); and Class 15 (Availability Plan insureds).

The actuary provided a history of surcharge rate changes since 2007, noting there has been a fair amount of stability in these rates, which indicates the low inflation or no inflation in some cases has helped. The actuary also provided an overview of the three options for CY 2019 surcharge rates that were provided to the Board of

Governors and highlighted the Board of Governors' decision, stating the Board chose to raise the YOC factor for Group 1 from 35.0 percent to 50.0 percent, and for Group 2 from 70.0 percent to 90.0 percent. The actuary indicated the estimated overall impact of these changes to equate to a 2.4 percent increase in surcharge revenue. The actuary concluded by stating his company will be updating this analysis and reporting to the Board of Governors in March 2019 with further recommendations for the 2020 rates.

Committee discussion topics included the rate level indication for the Availability Plan insureds (the report suggested a 50.0 percent increase is indicated to get to a rate-neutral situation and the Board of Governors decided to leave rates unchanged); the rate level indication for nursing facilities (sufficient experience in the HCSF is needed to determine if the present percentage rate should be changed); and the historical changes in active provider experience (none were sustained).

[*Note:* Numbers presented in this committee report may be rounded to provide consistent data; exact figures, when provided, are included in the Committee's November minutes.]

## Comments

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for its consideration, including a memorandum from the Kansas Legislative Research Department (KLRD) outlining recent changes to law and legislation considered during the 2018 Session that was relevant to the HCSF Board of Governors or to health care providers in general (the KLRD analyst noted SB 217 includes clarification that the Board of Governors provide its statutory report to this committee, and in turn the Committee has a responsibility to report to the LCC and the members of the Legislature at large on this Committee's activities); information from the KLRD *FY 2019 Appropriations Report* detailing the actual and approved Board of Governors' expenditures, including the related subcommittee reports; and the Committee's conclusions and recommendations contained in its most recent annual report.

## Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2018 medical professional liability experience (based on all claims resolved in FY 2018, including judgments and settlements). Of the 12 cases involving 19 Kansas health care providers tried to juries during FY 2018, 10 were tried in Kansas courts and 2 cases were tried in Missouri courts. The trials were held in the following jurisdictions: Johnson County (3); Sedgwick County (2); Cowley County (1); Douglas County (1); Lyon County (1); Riley County (1); Saline County (1); Clay County, Missouri (1); and Jackson County, Missouri (1). Of the 12 cases tried, 9 resulted in complete defense verdicts and 3 cases resulted in a verdict for the plaintiff. The HCSF became liable for the entire amount of the first jury verdict of \$260,000 because it involved an inactive health care provider with tail coverage from the HCSF. The second case was \$920,370; the primary coverage paid the first \$200,000 and the HCSF's responsibility was \$720,370. The third case was \$174,145, all paid by the primary coverage.

The Chief Counsel noted this year's 12 jury trials set a new record as the fewest cases ever tried in the history of the 42 years of the HCSF and highlighted the possible reasons for the decrease in the number of cases that are going to trial, including fewer claims being made and economic issues (e.g., medical expenses, cost of future care).

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2018, 73 claims in 58 cases were settled involving HCSF moneys and describing FY 2018 as an "average year." Settlement amounts incurred by the HCSF totaled \$24.2 million (these figures do not include settlement contributions by primary or excess insurance carriers). The Chief Counsel noted this fiscal year data represents nine more settlements than the previous year, incurring a \$2.5 million increase, but the settlement average was a decrease of about \$7,000; overall, FY 2018 in regard to the number of claims and settlements was very similar to 2017. The Chief Counsel indicated the Board of Governors has noticed an increased severity of cases especially because of medical costs, in terms of both large past medical bills and the anticipated future cost of care, and also cited 2014 law that

increased the cap on non-economic damages from \$250,000 to \$300,000 on July 1, 2014; this past July 1, the cap increased to \$325,000, increasing potential severity. Of the 73 claims involving HCSF moneys, the primary insurance carriers contributed \$12.8 million to these claims. In addition, excess insurance carriers provided coverage for two of these claims for an estimated \$2.9 million. For these 73 claims involving the HCSF, the total settlement amount was \$39.9 million. Further testimony also indicated, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 110 claims in 97 cases. The total amount of these reported settlements was \$10.5 million. The testimony also included a historical report of HCSF total settlements and verdicts, FY 1977 to FY 2018. For FY 2018, the 73 settlements and 2 jury verdict awards (where the HCSF was liable) added together for a total amount incurred by the HCSF of \$25.2 million.

The Chief Counsel also reported 300 new cases during FY 2018 and cited 2014 law, which added 5 categories of new health care providers to the HCSF effective January 1, 2015: physician assistants, nurse midwives, nursing facilities, assisted living facilities, and residential care facilities. The Chief Counsel stated in FY 2017, there was an increase of 28 claims, but there were 27 claims against new health care providers, so there really was not an increase in the number of claims against the traditional health care providers. The Chief Counsel continued, commenting the same holds true for FY 2018 that there was an increase of 52 claims; however, 53 claims were against the new health care providers. The Chief Counsel noted there had been two cases that went to trial in Missouri this past fiscal year and further explained a previous prediction that there would be more claims filed in Missouri because there are more Kansas health care providers rendering services on the Missouri side has not yet come true. (Generally, it was noted, 15.0 percent of cases are filed on the Missouri side.)

In response to a Committee question, the Chief Counsel indicated in regard to the 73 cases involving HCSF moneys, there has not been any type of claim or a practice that is leading to more claims than others that would indicate a trend or an issue. In response to a question regarding

whether electronic health records have been helping in the defense of claims, noting there were nine defense verdicts versus three plaintiff verdicts in FY 2018, the Chief Counsel indicated it has helped and cited fewer discovery issues.

The Chief Counsel next addressed the self-insurance programs and reimbursement for the KU Foundations and Faculty and residents. She stated the FY 2018 KU Foundations and Faculty program incurred \$1.6 million in attorney fees, expenses, and settlements; \$500,000 came from the Private Practice Reserve Fund and \$1.1 million came from the State General Fund (SGF). The Chief Counsel indicated the program incurred about \$1.0 million less than in FY 2017 due to the number of settlements and noted in the previous year there were ten settlements involving KU full-time faculty members and, in FY 2018, there were four. The Chief Counsel's report included additional information, requested during the prior year's Committee meeting, which detailed the number of settlements and the number of pending claims at the end of the fiscal year.

In regard to the self-insurance programs for the KU and WCGME resident programs (includes the Smoky Hill residents in Salina), there was an increase of \$1.0 million (settlement costs). The Chief Counsel noted over the past few years there have not been any settlements against residents; however, this year, there have been three settlements against residents—two from Wichita and one from Kansas City. The Chief Counsel further explained defense costs went up and noted there were 30 claims at the end of FY 2017. A big reason for the large increase in defense costs was due to a case that went to trial in Wichita, as it was a seven-week trial with seven defendants involving three residents. The Chief Counsel indicated it was a compete verdict for all the defendants, including the residents, but it was a very expensive case to try. The Chief Counsel stated the report also lists the historical expenditures by fiscal year for the KU Foundations and Faculty and the residents in training. She indicated the ten-year average for the faculty self-insurance program is about \$1.7 million; this past fiscal year, it was about \$1.6 million, which is slightly below average. For the residency program, the ten-year average is about \$800,000, which was greatly exceeded. The Chief Counsel noted the report also includes the total

number of faculty and the total number of residents to illustrate how the program has grown over the last almost 30 years. The Chief Counsel also provided information about moneys paid by the HCSF as an excess carrier, stating there was a claim against a resident involving \$8.8 million and four claims against faculty members involving \$1.2 million. These amounts were paid by the HCSF out of its excess coverage and that amount is not reimbursed.

Committee discussion included the increase in faculty members educating future physicians and the expansion of medical training and KU facilities statewide. The Chief Counsel commented she believed there are six physicians employed by KU/St. Francis in Topeka who are full-time faculty members, with no full-time faculty members at either the Great Bend or Hays' facilities. She further explained when there is a new physician from KU coming into compliance with the HCSF as full-time faculty with self-insurance, the physician has to provide confirmation of three items before they are put into compliance: a full-time faculty appointment; employment by the University of Kansas Medical Center; and membership in the University of Kansas Physicians Foundation.

### **Medical Malpractice Insurance Marketplace; Update on Availability Plan**

The President and CEO for the Kansas Medical Mutual Insurance Company (KaMMCO) described the current medical professional liability insurance marketplace as a soft-market cycle, meaning there are a lot of companies writing malpractice insurance in Kansas. He explained this means the marketplace is very active, very competitive, and rates are somewhat at an all-time low, which is good for health care providers. The conferee highlighted the types of providers in the Availability Plan and reasons providers may need to be in the Availability Plan, noting this business moves in cycles and the population of the Availability Plan has a tendency to change over time as well.

The conferee also provided an outlook for the industry, indicating KaMMCO is starting to see an increased frequency of severe claims and stating those are usually pre-cursors to some instability in



the marketplace and claims environment. He noted, with this less favorable environment, A.M. Best has indicated the medical professional liability line of insurance has a negative outlook. The conferee also described some of the things that have an impact on the industry and the HCSF, including accident year and calendar year results and inflation, and highlighted some other factors that could also have an impact on the industry, including the federal Affordable Care Act, federal MACRA (the Medicare Access and CHIP Reauthorization Act), and MIPS (Merit-Based Incentive Payment System) changes in Kansas, such as hospital acquisitions and closings, and the opioid crisis. The conferee indicated there is a lot of pressure on the provider community right now as it relates to a variety of substantive changes at present, which places pressure on providers from both a health care delivery and a professional liability standpoint.

Committee discussion included the role telemedicine could play in the professional liability insurance marketplace, particularly whether its growing use will increase, decrease, or have little effect on liability and whether telemedicine providers should have a unique provider class (surcharge rating). The KaMMCO conferee's response indicated his company is considering how to underwrite the telemedicine risks (e.g., when, where, and how service is being provided) and whether such analysis would likely include the laws governing medical professional liability and tort law generally in the states where telemedicine is being practiced. The conferee considered the question regarding provider class and treatment of the health care practitioner's liability under the Fund and explained rather than a provider class of telemedicine doctors, it might be similar to how orthopedics is now with different rates for orthopedics—no spine versus orthopedics—with spine (e.g., radiology—no telemedicine or radiology—with telemedicine, or pathology—no telemedicine or pathology—with telemedicine). The conferee further spoke to insurer's consideration of risk—would a pricing differential be in place for telemedicine providers (similar to that of the HCSF's Missouri modification factor) because there is an additional risk component to that provider's practice? The Committee and conferee also discussed the status of the reinsurance industry, both globally and the

risk assigned to medical professional liability reinsurance lines.

### **Comments from Health Care Provider Representatives**

The Director of Government Affairs for the Kansas Medical Society (KMS) commented the HCPIAA and the HCSF is performing exactly as it was intended; there is market stability and the adequate *quid pro quo* referenced in the *Miller v. Johnson* decision. The KMS conferee urged the continuation of the Committee and also stated there is no need for an additional independent actuarial analysis of the HCSF.

### **Board of Governors' Statutory Report**

The Executive Director provided a brief history of the HCPIAA and its three principal features that remain intact: a requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability insurance coverage; 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 creation of the HCSF to provide excess coverage above the primary coverage purchased by health care providers and to serve as reinsurer of the Availability Plan.

The Executive Director provided the Board of Governors' statutory report (as required by KSA 2018 Supp. 40-3403(b)(1)(C)). These were among the items detailed in the FY 2018 report:

- Net premium surcharge revenue collections amounted to \$27,708,987. The lowest surcharge rate for a health care professional was \$100 (for a first-year provider, opting for the lowest coverage option) and the highest surcharge rate was \$17,336 for a neurosurgeon with three or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon (if licensed in Missouri) would result in a total premium surcharge of \$22,537 for this health care practitioner. (It was noted, if the same Kansas

neurosurgeon obtained basic professional liability insurance *via* the Availability Plan, the surcharge would have been \$25,615, and if also licensed to practice in Missouri, the surcharge would have been \$33,299.);

- The average compensation per settlement (58 cases involving 73 claims were settled) was \$332,040. These amounts are in addition to compensation paid by primary insurers (typically \$200,000 per claim). The report states amounts reported for verdicts and settlements were not necessarily paid during FY 2018 and total claims paid during the fiscal year amounted to \$27,385,897; and
- The balance sheet, as of June 30, 2018, indicated total assets of \$290,884,992 and total liabilities of \$246,840,942.

Oral testimony also included FY 2008 data for comparative purposes.

The Executive Director addressed the Availability Plan, noting this plan only insures a primary layer of coverage (\$200,000 per claim subject to \$600,000 annual aggregate coverage). Individual health care providers insured by the Availability Plan pay about 33.0 percent more premium for basic coverage than those providers would if they were insured by a commercial insurance company. These providers also pay a higher HCSF surcharge rate than they otherwise would, which compounds the difference. In Kansas, the Executive Director noted, the HCSF reinsures the Availability Plan. When the Availability Plan experiences a surplus at the end of the fiscal year, the surplus is transferred to the HCSF; in those years when losses exceed income, the HCSF transfers that difference to the Availability Plan. At the conclusion of FY 2018, \$551,504 was transferred from the HCSF to the Availability Plan; the Executive Director noted over the most recent ten fiscal years, transfers from the Availability Plan to the HCSF have exceeded transfers from the HCSF to the Availability Plan. The net result has been \$4,883,640 of additional income to the HCSF.

The Executive Director reviewed 2018 law and cited a technical bill (SB 217) updating statutory references, noting future technical updates to the HCPIAA may be needed (*e.g.*, reconciling the term “healthcare”). He indicated at this time, the Board of Governors does not have any recommendations for legislation, and discussed some issues regarding the interstate practice of medicine and telemedicine that may require some updates to the HCPIAA in the future. The Executive Director concluded the Board of Governors believes this is something it needs to study thoroughly before asking the Legislature to make any changes.

### HCPIAA Amendments

No amendments were brought before the Committee.

### CONCLUSIONS AND RECOMMENDATIONS

The Committee considered two items central to its statutory charge: whether this committee should continue its work and whether a second, independent analysis of the HCSF is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors’ representatives, including its required statutory report, the Board of Governors’ actuary, and health care provider and insurance company representatives. The Committee agreed to make the following recommendations and comments:

- **Actuarial report and status of the HCSF; compliance with 2018 law.** The Committee notes the report provided by the Board of Governors’ actuary reviewed the financial performance of the HCSF

and outlined relative stability in rates and improved internal equity in the Fund. The Committee notes the FY 2019 surcharge rate decision by the Board of Governors to further lessen the difference in rates by YOC in the Fund.

The Committee also notes compliance with the requirements of SB 217 (the HCSF Board of Governors is required to submit its annual report to this committee; in turn, the Committee includes review of the statutory report for consideration by the LCC and the Legislature).

- **Contemporary issues and continued oversight.** The Committee notes the need for monitoring of the issue of claims-based versus occurrence-based coverage, as well as the status of the professional liability insurance marketplace.
  - The Committee requests the HCSF Board of Governors prepare a progress report regarding the issue of itinerant practitioners and the problems it creates with coverage and update the Committee at its next meeting.
- **HCPIAA.** The Committee notes no amendments to this act were submitted for its consideration.
- **Fund to be held in trust.** The Committee recommends the following language to the LCC, the Legislature, and the Governor regarding the HCSF:
  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the SGF. The HCSF provides Kansas

doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and

- Further, the Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The Committee requests its report be directed to the standing committees on health and insurance, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.

Finally, the Committee concurs with representatives of the health care provider and insurance industry and recognizes the faithful stewardship and service of Charles “Chip” Wheelen, Executive Director of the Health Care Stabilization Fund Board of Governors. The Committee notes Mr. Wheelen’s testimony and comment to the Legislature on many occasions, always noting the success of the public-private partnership of the HCPIAA and the relationship between health care providers, the insurance industry, the public, and the Legislature. The Committee congratulates Mr. Wheelen on his retirement.