

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

**Kansas Board of Nursing
Landon State Office Building, Room 509
APRN Committee Agenda
December 13, 2016**

**NOTE: The meeting will be held by conference call. To participate in
the conference call, dial 1-877-278-8686, Access 612647**

Time: 1:30 p.m. – 2:30 p.m.

Committee Members:

Carol Bragdon, PhD, APRN, Chair
Patsy Zeller, MSN, APRN, NP-C, V. Chair
Jennifer Szambecki, Public Member
Cara Busenhart, PhD, CNM, APRN
Paul Hertel, CRNA, DNP
Leanne Grauerholz, MSN, APRN
Brenda Moffitt, APRN, CNS-BC

Staff: Carol Moreland, MSN, RN – Education Specialist
Jill Simons – Senior Administrative Assistant

- I. Call to Order
- II. Review of on-site packet
- III. Additions/Revisions to the agenda
- IV. Approval of minutes – September 2016
- V. Unfinished Business
 1. Updates for the Certified Nurse Midwife Council
- VI. New Business
 1. APRN Program approvals
 - a. Florida Gulf Coast University - RNA
 - b. Ohio State University – Post Master’s Certificate in FNP
 - c. Rush University – Psych-Mental Health NP
 - d. University of North Carolina – Family NP
 - e. Winston Salem State University – Family NP
 2. Prescription Monitoring Program (PMP) Committee Report
 3. Health Care Stabilization Regulation
- VII. Agenda for March 2017 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 30th 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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Advanced Practice Program Summary December 2016

Program	Role/Specialty	Advanced Pathophysiology Credit Hrs	Advanced Health Assessment Credit Hours	Advanced Pharmacology Credit Hours	Total Clinical Hrs	Accreditation	Meets Requirements
Florida Gulf Coast University	RNA	4	4	8	1920	COA	Yes
Ohio State University	Post Master's Certificate in FNP	5	4	4	1980	CCNE	Yes
Rush University	Psych-Mental Health NP	3	3	3	620	CCNE	Yes
University of North Carolina	Family NP	6	8	6	600	CCNE	Yes
Winston Salem State University	Family NP	3	5	3	840	CCNE	Yes

NEW REGULATION:

Any prescriber or dispenser registered to access information in the PMP database may delegate such authority to a delegate as defined in KSA 65-XXXX, subject to approval by the board. The prescriber or dispenser shall:

- Request approval from the board for each delegate to access the PMP database and obtain secure login and password information;
- Remain responsible for the actions of each delegate, including any negligent or willful breach of confidentiality of information obtained from the PMP database;
- Ensure that each delegate's access to the PMP database is limited to the purposes authorized in KSA 65-1685(c)(3) and occurs in a manner that protects the confidentiality of the information obtain from the PMP database in accordance with KSA _____;
- Make reasonable efforts, including regularly reviewing and auditing any available logs of system access and use, to ensure the delegate is requesting or otherwise accessing the PMP database in compliance with this act;
- Ensure that each delegate is knowledgeable of the laws related to confidentiality of information in the PMP database and is sufficiently competent to access the PMP database;
- Provide the board with quarterly verifications of each delegate's continued access; and
- Notify the board in writing within 30 days of any request to revoke a delegation, including discontinuation of supervision or authorization by the prescriber or dispenser.

If a review of information appears to indicate that a prescriber or dispenser has failed to comply with this section, the board shall report to the professional licensing, certification or regulatory agencies charged with administrative oversight of the prescriber or dispenser for investigation and potential disciplinary action.

NEW REGULATION

(a) Prior to being granted access to the PMP database, a delegate shall submit an individual request for registration and program access on a form prescribed by the board, which shall include approval from the authorizing prescriber or dispenser and the delegate's:

- (1) full legal name;
- (2) driver's license number and state of issuance;
- (3) email address;
- (4) phone number;
- (5) complete home address; and
- (6) date of birth.

(b) The board shall take reasonable steps to verify the identity and qualifications of a delegate prior to providing a secure login and initial password.

DRAFT 2017 PMP ACT UPDATES**65-1682. Same; definitions.**

As used in this act, unless the context otherwise requires:

(a) "Board" means the state board of pharmacy

(b) "~~DEA~~" means the U.S. department of justice, drug enforcement administration.

(c) "~~Delegate~~" means an individual who is under the direct supervision of a prescriber or dispenser registered to access the PMP database, is approved to access the PMP database for the purpose of assisting the authorizing prescriber or dispenser, has a signed patient confidentiality agreement and is either:

(1) Licensed, registered, or certified with the board of healing arts, state board of nursing, dental board, board of pharmacy, department for aging and disability services, board of emergency medical services, behavioral sciences regulatory board, board of veterinary examiners, or a similar agency in another jurisdiction; or

(2) certified to access the PMP database after completing patient confidentiality training provided by the board.

(~~bd~~) "Dispenser" means a ~~praetitioner-prescriber~~ or pharmacist who delivers a scheduled substance or drug of concern to an ultimate user, but does not include:

(1) A licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a medical care facility as defined in K.S.A. 65-425 and amendments thereto, ~~praetitioner prescriber~~ or other authorized person who administers such a substance;

(3) a registered wholesale distributor of such substances;

(4) a veterinarian licensed by the Kansas board of veterinary examiners who dispenses or prescribes a scheduled substance or drug of concern;

(5) a ~~praetitioner-prescriber~~ who has been exempted from the reporting requirements of this act in rules and regulations promulgated by the board.

(~~ee~~) "Drug of concern" means any drug that demonstrates a potential for abuse and is designated as a drug of concern in rules and regulations promulgated by the board.

(~~df~~) "Patient" means the person who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

(~~eg~~) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(~~h~~) "PMP" means the prescription monitoring program.

(~~fi~~) "~~PraetitionerPrescriber~~" means a person licensed to practice medicine and surgery, dentist, podiatrist, optometrist, physician assistant, nurse practitioner, midwife, nurse anesthetist, clinical nurse specialist or other person authorized by law to prescribe or dispense scheduled substances and drugs of concern.

(~~j~~) "~~Prescription monitoring information~~" means information collected, recorded, transmitted, and maintained by the PMP.

(~~gk~~) "Scheduled substance" means controlled substances included in schedules II, III, or IV of the schedules designated in K.S.A. 65-4107, 65-4109 and 65-4111, and amendments thereto, respectively, or the federal controlled substances act (21 U.S.C. § 812).

History: L. 2008, ch. 104, § 2; July 1.

65-1683 Same; required information to be submitted by dispenser; rules and regulations; waiver; acceptance of gifts and grants.

(a) The board shall establish and maintain a prescription drug monitoring program for the monitoring of scheduled substances and drugs of concern dispensed in this state or dispensed to an address in this state.

(b) Each dispenser shall submit to the board by electronic means information required by the board regarding each prescription dispensed for a substance included under subsection (a). The board shall promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for submission of information that each dispenser shall submit to the board. Such information may include, but not be limited to:

- (1) The dispenser identification number;
- (2) the date the prescription is filled;
- (3) the prescription number;
- (4) whether the prescription is new or is a refill;
- (5) the national drug code for the drug dispensed;
- (6) the quantity dispensed;
- (7) the number of days supply of the drug;
- (8) the patient identification number;
- (9) the patient's name;
- (10) the patient's address;
- (11) the patient's date of birth;
- (12) the prescriber identification number;
- (13) the date the prescription was issued by the prescriber; and
- (14) the source of payment for the prescription.

(c) The board shall promulgate rules and regulations specifying the transmission methods and frequency of the dispenser submissions required under subsection (b).

(d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required by rules and regulations is submitted in this alternative format.

(e) The board is hereby authorized to apply for and to accept grants and may accept any donation, gift or bequest made to the board for furthering any phase of the prescription monitoring program.

(f) The board shall remit all moneys received by it under subsection (e) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-federal gifts and grants fund. All expenditures from such 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 a person designated by the president.

(g) In the event the board receives full funding for the PMP from grants, donations, gifts or bequests, no fees shall be levied as provided in K.S.A. 65-1684, and amendments thereto.

History: L. 2008, ch. 104, § 3; L. 2012, ch 107, § 4; May 17.

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65-1684. Same; charges and fees ~~prohibited~~.

~~The board shall not impose any charge for the establishment or maintenance of the prescription monitoring program database on a registered wholesale distributor, pharmacist, dispenser or other person authorized to prescribe or dispense scheduled substances and drugs of concern.~~
~~(a) Each professional licensing, certification and regulatory agency charged with administrative oversight of those persons licensed to prescribe or dispense controlled substances shall assess a fee prescribed by the board on all prescriber and dispenser applications and renewals to fund the maintenance, enhancement and ongoing operation of the PMP and database. The fee shall be fixed by the board by rules and regulations such that the fees are the same for all prescribers and dispensers, subject to the following:~~

~~(1) Initial application, not more than \$25;~~

~~(2) annual renewal, not more than \$30;~~

~~(3) biennial renewal, not more than \$60.~~

~~(b) In lieu of assessing the fee in subsection (a), each agency may choose to pay the fee on behalf of the prescriber or dispenser out of each respective fee fund.~~

~~(c) Each agency shall remit all moneys received from fees under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury. One hundred percent of each such deposit shall be credited to the pharmacy fee fund. All expenditures from such fund shall be made in accordance with K.S.A. 74-1609, and amendments thereto.~~

~~(d) The board shall determine biennially the amount reasonable and necessary to carry out and enforce the provisions of this act for the next two ensuing fiscal years and shall fix by rules and regulations the fees at the amount deemed necessary for such purposes, subject to the limitations provided in this section.~~

~~(e) In the event the legislature provides full funding for the PMP from the state general fund, no fees shall be levied as provided in this section.~~

~~(f) The board shall not charge any fees for the transmission of data to the database or for the receipt of information from the database, except that the board may charge a fee to an individual who requests the individual's own prescription monitoring information in accordance with procedures adopted by the board.~~

~~History: L. 2008, ch. 104, § 4; July 1.~~

Commented [AB1]: All license types regardless of active or inactive status, including MD, DO, DPM, PA, NP, CNS, Midwife, Nurse Anesthetist, RPh, PharmD, DDS

Commented [AB2]: Statutory cap, exact amount to be set by Board of Pharmacy regulation specifically calculated to fund program based on total number of prescribers and dispensers

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65-1685 Same; database information privileged and confidential; persons authorized to receive data; advisory committee review of information.

(a) The prescription monitoring program database, all information contained therein and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as a part of the database, shall be privileged and confidential, shall not be subject to subpoena or discovery in civil proceedings and may only be used for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities of entities charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern, shall not be a public record and shall not be subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except as provided in subsections (c) ~~and~~, (d) ~~and~~ (e).

(b) The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted and maintained is not disclosed to persons except as provided in subsections (c) ~~and~~, (d) ~~and~~ (e).

(c) The board is hereby authorized to provide data in the prescription monitoring program to the following persons:

- (1) Persons authorized to prescribe or dispense scheduled substances and drugs of concern, or a delegate who is authorized by the prescriber or dispenser, for the purpose of providing medical or pharmaceutical care for their patients;
 - (2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;
 - (3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of scheduled substances and drugs of concern;
 - (4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502 and amendments thereto;
 - (5) designated representatives from the department of health and environment regarding authorized Medicaid program recipients, the injury prevention and disability program, the violent death reporting program, or the office of vital statistics;
 - (6) persons authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;
 - (7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program;
 - (8) personnel of the board for purposes of administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto.
 - (9) persons authorized to prescribe or dispense scheduled substances and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern; **and**
 - (10) medical examiners, coroners or other persons authorized under law to investigate or determine causes of death; **and**
 - (11) persons operating an impaired provider program on behalf of the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of scheduled substances and drugs of concern, when a prescriber or dispenser is enrolled in the impaired provider program;
- (d) The board is hereby authorized to designate and train representatives from the state board of nursing, the dental board, the board of healing arts and the department of health and environment, to access and provide data in the prescription monitoring program to those persons listed in sections (c)(3), (c)(5) and (c)(11). The board shall adopt rules and regulations outlining the requirements for designating representatives, the frequency and content of training and verification process for all data provided under this section.
- (e) The board shall work in conjunction with the various professional licensing, certification and regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing, to annually determine each prescriber or dispenser's licensure status and authority to access to the PMP database.
- (~~e~~) The board or the prescription monitoring program advisory committee established pursuant to K.S.A. 65-1689, and amendments thereto, is authorized to review and analyze the data for purposes of identifying patterns and activity of concern.
- (1) If a review of information appears to indicate a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances and drugs of concern, the

board or advisory committee is authorized to notify the prescribers and dispensers who prescribed or dispensed the prescriptions. If the review identifies patterns or other evidence sufficient to create a reasonable suspicion of criminal activity, the board or advisory committee is authorized to notify the appropriate law enforcement agency.

(2) If the review of information appears to indicate a is potentially addicted to a controlled substance or drug of concern, the board or advisory committee is authorized to refer such persons to the department for aging and disability services or an alcohol or drug addiction program for treatment.

(23) If a review of information appears to indicate that a violation of state or federal law relating to prescribing controlled substances and drugs of concern may have occurred, or that a prescriber or dispenser has knowingly prescribed, dispensed or obtained controlled substances and drugs of concern in a manner that is inconsistent with recognized standards of care for the profession, the board or advisory committee shall determine whether a report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing of controlled substances and drugs of concern or to the appropriate law enforcement agency is warranted.

(A) For purposes of such determination the advisory committee may, in consultation with the appropriate regulatory agencies and professional organizations, establish criteria regarding appropriate standards and utilize volunteer peer review committees of professionals with expertise in the particular practice to create such standards and review individual cases.

(B) The peer review committee or committees appointed herein shall have authority to request and receive information in the prescription monitoring program database from the director of the prescription monitoring program.

(C) If the determination is made that a referral to a regulatory or law enforcement agency is not warranted but educational or professional advising might be appropriate, the advisory committee may refer the prescribers or dispensers to other such resources.

(e) The board is hereby authorized to provide data in the prescription monitoring program to public or private entities for statistical, research or educational purposes after removing information that could be used to identify the individual ~~practitioners~~prescribers, dispensers, patients, or persons who received prescriptions from dispensers. Data provided under this section shall not be sold to any third party.

(g) The board may, in its discretion, block access to the prescription monitoring program database if the board has reason to believe that access to the data is or may be used illegally.

History: L. 2008, ch. 104, § 5; L. 2012, ch. 102, § 24; L. 2012, ch 107, § 5; May 17.

65-1687 Same; maintenance of records.

All information collected for the ~~prescription monitoring program~~PMP database and any records maintained by the board, or by any entity contracting with the board, submitted to, maintained or stored as part of the database, shall be retained ~~for five years until such time as the information is no longer useful or necessary.~~ Such information and records shall then be destroyed or returned to the board unless a law enforcement entity or an entity charged with administrative oversight of those persons engaged in the prescribing or dispensing of scheduled substances and drugs of concern has submitted a written request to the board for retention of the specific information or records in accordance with procedures adopted by the board.

History: L. 2008, ch. 104, § 7; July 1.

65-1689 Same; advisory committee created; members; terms.

(a) There is hereby created the Prescription Monitoring Program Advisory Committee which, subject to the oversight of the Board, shall be responsible for the operation of the Prescription Monitoring Program. The advisory committee shall consist of at least ~~nine~~ **fourteen** members appointed by the board as follows:

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(1) Two licensed physicians, one nominated by the Kansas medical society and one nominated by the Kansas Association of Osteopathic Medicine;

(2) two licensed pharmacists nominated by the Kansas Pharmacists Association;

(3) one person representing the Kansas Bureau of Investigation nominated by the Attorney General;

(4) one person representing the University of Kansas School of Medicine nominated by the dean of such school;

(5) one person representing the university of Kansas School of Pharmacy nominated by the dean of such school;

(6) one licensed dentist nominated by the Kansas Dental Association; and

(7) one person representing the Kansas Hospital Association nominated by such association;

(8) one licensed physician assistant nominated by the Kansas Academy of Physician Assistants;

(9) one licensed advanced registered nurse practitioner nominated by the Kansas State Board of Nursing;

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(10) one licensed dentist nominated by the dental board;

(11) one licensed physician nominated by the board of healing arts; and

(11) one licensed pharmacist nominated by the board of pharmacy;

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The board may also appoint other persons authorized to prescribe or dispense ~~scheduled~~ **controlled** substances and drugs of concern, recognized experts and representatives from law enforcement, ~~not to exceed a total of nineteen members.~~

(b) The appointments to the advisory committee shall be for terms of three years. ~~No person who has been appointed to the advisory committee for three terms shall be eligible for reappointment.~~

(c) The advisory committee shall elect a chairperson from among its members who shall serve a one-year term. The chairperson may serve consecutive terms. The advisory committee shall be chaired by an executive committee, which shall consist of the four members appointed by the board of nursing, board of healing arts, dental board, and board of pharmacy. The executive committee shall meet at least four times each year, shall set the agenda for the advisory committee, and shall review and make written recommendations to the board concerning:

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(1) the PMP budget and expenditures;

(2) the PMP director's performance;

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(3) any potential grant applications;

(4) the annual report described in K.S.A. 65-1691, and amendments thereto; and

(5) the fees set by the board by rule and regulation, as described in K.S.A. 65-1684, and amendments thereto.

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(d) The advisory committee, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting when it is considering matters relating to identifiable patients or providers.

(e) Upon the expiration of the term of office of any member of the advisory committee on or after the effective date of this act, and in any case of a vacancy existing on or after the effective date of this act, a successor shall be appointed by the board pursuant to this section.

(f) All members of the advisory committee shall serve without compensation.

History: L. 2008, ch. 104, § 9; July 1.

65-1692 Same; rules and regulations.

(a) The board is hereby authorized to promulgate rules and regulations necessary to carry out the provisions of this act.

(b) In addition to subsection (a), the board may set forth the following by rules and regulations:

(1) the procedures for a prescriber or dispenser registered to access the PMP database to authorize delegates;

(2) the authorizing prescriber's or dispenser's responsibility for any delegate;

(3) the requirements and qualifications for becoming a delegate and obtaining access to the PMP database; and

(4) any limitation on the number of delegates whom each prescriber or dispenser may authorize.

History: L. 2008, ch. 104, § 12; July 1.

65-1693 Same; penalties.

(a) A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this act or knowingly submits incorrect prescription monitoring information shall be guilty of a severity level 10 non-person felony.

(b) A person authorized to have prescription monitoring information pursuant to this act who knowingly discloses such information in violation of this act shall be guilty of a severity level 10, non-person felony.

(c) A person authorized to have prescription monitoring information pursuant to this act who knowingly uses such information in a manner or for a purpose in violation of this act shall be guilty of a severity level 10 non-person felony.

(d) A person who knowingly, and without authorization, obtains or attempts to obtain prescription monitoring information shall be guilty of a severity level 10, nonperson felony.

(e) It shall not be a violation of this act for a ~~practitioner-prescriber~~ or dispenser to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of such ~~practitioner's-prescriber's~~ or dispenser's care of the patient who is the subject of the information.

(f) It shall not be a violation of this act for a delegate to disclose or use information obtained pursuant to this act when such information is disclosed or used solely in the course of assisting the authorizing prescriber or dispenser in caring for the patient who is the subject of the information.

(g) If a review of information appears to indicate that a prescriber, dispenser or delegate has accessed or disclosed prescription monitoring information in a manner that is inconsistent with this act, or violated any other provision of this act or any rule or regulation adopted by the board pursuant to the provisions of this act, the board shall report to the professional licensing, certification or regulatory agencies charged with administrative oversight of those persons.

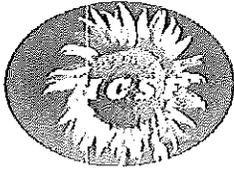
History: L. 2008, ch. 104, § 13; L. 2012, ch 107, § 6; May 17.

New Section. Same; mandatory enrollment.

(a) A prescriber who holds a current registration issued by the DEA shall, before September 1, 2017, or upon licensure or reinstatement, whichever occurs later, register with the board for access to the PMP database and shall maintain such registration continuously during the prescriber's term of active licensure.

(b) A pharmacist shall, before September 1, 2017, or upon licensure or reinstatement, whichever occurs later, register with the board for access to the PMP database and shall maintain such registration continuously during the pharmacist's term of active licensure.

(c) Registration for access to the PMP database shall be in a manner prescribed by the board.



Kansas Health Care Stabilization Fund

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Phone 785-291-3777
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November 17, 2016

Mary Blubaugh, Executive Administrator
Kansas State Board of Nursing
Via Electronic Mail to mary.blubaugh@ksbn.state.ks.us

Re: Draft Amendments

Dear Ms. Blubaugh:

Attached to this letter is a preliminary draft bill designed to address a few statutory problems. In order to make sense of the first two amendments, it is important to review the principal features of K.S.A. 40-3402. The pertinent part of K.S.A. 40-3402 says (with emphasis added),

(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 of active licensure or other statutory authorization to render professional service as a health care provider in this state, unless such health care provider is a self-insurer.

You may be acquainted with this section in the Health Care Provider Insurance Availability Act. In order to assure proper interpretation of this section, we corresponded with the Director of the Property and Casualty Division in the Kansas Insurance Department and inquired whether an insurer could limit coverage in a policy issued to a health care provider. In a letter dated June 30, 2016 the General Counsel for the Kansas Insurance Department opined as follows:

K.S.A. 40-3402(a) requires each Kansas resident health care provider maintain in effect a MPLI policy approved by the Commissioner of Insurance. The policy must provide minimum coverage limits for all claims made during the policy period. This includes coverage for any claims that may be attributable to patient care rendered during the term of the policy or during the prior term of a similar policy. A policy that covers only occurrences during the policy term does not meet the requirements of K.S.A. 40-3402(a). Coverage cannot be limited to a particular scope of employment nor can it be limited to practice in a particular facility or location. During the term of the policy, it must cover the Kansas resident health care provider anytime and anywhere that he or she renders professional services.

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Normally this “all claims made during the policy period” requirement is sound public policy that protects both the insured health care provider and the health care provider’s patients. But there are circumstances that may result in duplication of coverage under either the Kansas Tort Claims Act or the Federal Tort Claims Act.

Generally, the Kansas Tort Claims Act does not provide coverage for health care providers, but there are exceptions. One of those exceptions is a “charitable health care provider.” A charitable health care provider is a health care provider who has agreed to provide gratuitous health care services to medically indigent patients. The health care provider must sign a formal agreement with the Secretary of Health and Environment and when that is done, the charitable health care provider is considered an employee of the State of Kansas when he or she provides charity care. This means that in the event of an unintended outcome and a malpractice claim against the charitable health care provider, he or she is defended by the Kansas Attorney General and any settlements or jury awards are paid by the State of Kansas.

If the charitable health care provider is retired, has an exempt license, and has no professional liability insurance, there is no doubt who is responsible for defending the health care provider or who is liable for payment of any claims. If, however, the health care provider has an active license, has professional liability insurance, and occasionally serves as a charitable health care provider, it can be argued that because his or her insurance policy must cover “all claims made during the policy period” the policy must also cover any claim that arises from his or her practice as a charitable health care provider. I believe this is inconsistent with legislative intent and deserves clarification.

A very different situation arises when a health care provider is an employee of an instrumentality of the federal government and he or she decides to moonlight. If a health care provider is employed exclusively by a federal agency, he or she can obtain a federally active license and thereby become exempt from the usual professional liability insurance requirements. His or her liability exposure is covered under the Federal Tort Claims Act. But oftentimes, employees of a federal agency or a federally qualified health center want to work outside the scope of their federal employment in order to earn additional income. When they moonlight, they are not covered under the Federal Tort Claims Act and therefore they must obtain an active license and comply with the Health Care Provider Insurance Availability Act. Because their insurance policy must cover “all claims made during the policy period,” ostensibly the policy must cover any claims that arise as a result of their federal employment. Again, I believe this is not consistent with legislative intent.

Section one of the attached preliminary draft would clarify that the HCSF is not liable for any claims that should instead be covered by either the Kansas Tort Claims Act or the Federal Tort Claims Act. Section two would clarify that the primary insurers may issue policies that exclude coverage for claims that should instead be covered by either the Kansas Tort Claims Act or the Federal Tort Claims Act.

Section three of the attached draft would make it clear that when a health care provider retires or otherwise becomes inactive, the aggregate HCSF liability for claims against a single health care provider will never exceed \$3,000,000 in any fiscal year. We have not yet had an inactive health care provider with that many claims, but the possibility exists. Current law is somewhat vague and deserves clarification.

We have received a significant number of requests for temporary exemptions from CRNAs and APRN Nurse Midwives who have either retired or have left Kansas to practice elsewhere. This is because the Nurse Practice Act does not include an inactive license category for advanced practice nurses. This creates a bureaucratic exercise for the CRNAs and Nurse Midwives that can be avoided by creating an inactive license category for APRNs. Section four of the draft bill would accomplish this and would thereby make the APRN licensure provisions more compatible with the Health Care Provider Insurance Availability Act.

We would appreciate any comments or concerns you may have regarding this draft legislation. Any recommendations for improvements would also be welcome. Please respond on or before December 30, 2016 so our Legislation Committee can make any final changes prior to the 2017 Session of the Legislature. Thank you.

Sincerely,



Charles L. Wheelen
Executive Director

AN ACT concerning the health care provider insurance availability act; liability exceptions; health care provider exemptions; inactive health care provider coverage limits; amending K.S.A. 40-3408, 40-3424, and 65-1131, and repealing the existing sections.

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

New Section 1. (a) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall in no event be liable for any claim against a health care provider if:

(1) At the time of the incident giving rise to the claim, the health care provider was serving as a charitable health care provider as defined in K.S.A. 75-6102 and amendments thereto, or

(2) at the time of the incident giving rise to the claim, the health care provider's professional liability was covered under the federal tort claims act pursuant to chapter 171 of title 28 of the United States code.

(b) This section shall be part of and supplemental to the health care provider insurance availability act.

Sec. 2. K.S.A. 40-3408 is hereby amended to read as follows: 40-3408. (a) The insurer of a health care provider covered by the fund or self-insurer shall be liable only for the first \$200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, subject to an annual aggregate of \$600,000 for all such claims against the health care provider. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) If any inactive health care provider has liability insurance in effect which is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

(c) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, an insurer that provides coverage to a health care provider may exclude from coverage any liability incurred by such provider:

(1) From the rendering of or the failure to render professional services by any other health care provider who is required by K.S.A. 40-3402 and amendments thereto to maintain professional liability insurance in effect as a condition to rendering professional services as a health care provider in this state; or

(2) based upon or relating to the health care provider's sexual acts or activity, but in such cases the insurer may provide reasonable and necessary expenses for attorney fees incurred in defending against such claim. The insurer may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

(d) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, an insurer that provides coverage to a health care provider may exclude from coverage:

(1) Any liability incurred by such health care provider when serving as a charitable health care provider as defined in K.S.A. 75-6102 and amendments thereto, or

(2) any liability incurred by such health care provider that is covered under the federal tort claims act pursuant to chapter 171 of title 28 of the United States Code.

Sec. 3. K.S.A. 40-3424 is hereby amended to read as follows: 40-3424. (a) For all claims made on and after July 1, 2014, the amount of fund liability for a judgment or settlement against a resident or nonresident inactive health care provider shall be equal to the minimum professional liability insurance policy limits required pursuant to K.S.A. 40-3402, and amendments thereto, plus the level of coverage selected by the health care provider pursuant to subsection (l) of K.S.A. 40-3403, and amendments thereto, at the time of the incident giving rise to a claim. The aggregate fund liability for all judgements or settlements arising from all claims made in any fiscal year against a resident or nonresident inactive health care provider shall not exceed \$3,000,000 in any fiscal year.

(b) This section shall be part of and supplemental to the health care provider insurance availability act.

Sec. 4. K.S.A. 65-1131 is hereby amended to read as follows: 65-1131. (a) ~~(1)~~ Licensure. (1) Upon application to the board by any professional nurse in this state and upon satisfaction of the standards and requirements established by the board under K.S.A. 65-1130, and amendments thereto, the board may issue a license to such applicant authorizing the applicant to perform the duties of an advanced practice registered nurse as defined by the board under K.S.A. 65-1130, and amendments thereto.

(2) The board may issue a license to practice nursing as an advanced practice registered nurse to an applicant who has been duly licensed or certified as an advanced practice registered nurse under the laws of another state or territory if, in the opinion of the board, the applicant meets the licensure qualifications required of an advanced practice registered nurse in this state. Verification of the applicant's licensure or certification status shall be required from the original state of licensure or certification.

(3) An application to the board for a license, a license with temporary permit, renewal of a license and reinstatement of a license shall be upon such form and contain such information as the board may require and shall be accompanied by a fee, to be established by rules and regulations adopted by the board, to assist in defraying the expenses in connection with the issuance of licenses as advanced practice registered nurses, in an amount fixed by the board under K.S.A. 65-1118, and amendments thereto.

(4) An application for initial licensure or endorsement will be held awaiting completion of meeting qualifications for a time period specified in rules and regulations.

(5) The executive administrator of the board shall remit all moneys received pursuant to this section to the state treasurer as provided by K.S.A. 74-1108, and amendments thereto.

(b) Temporary permit. The board may grant a one-time temporary permit to practice as an advanced practice registered nurse for a period of not more than 180 days pending completion of the application for a license.

(c) Exempt license. The board may issue an exempt license to any advanced practice registered nurse as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-1118, and amendments thereto, and who is not regularly engaged in advanced practice registered nursing in Kansas but volunteers advanced practice registered nursing services or is a charitable health care provider as defined by K.S.A. 75-6102, and amendments thereto. Each exempt advanced practice registered nurse shall be subject to all provisions of the nurse practice act. Each exempt license may be renewed biennially subject to the provisions of this section. To convert an exempt license to an active license, the exempt advanced practice registered nurse shall meet all the requirements of subsection (a) or K.S.A. 65-1132, and amendments thereto. An advanced practice registered nurse who has been granted an exempt license pursuant to this subsection shall be exempt from the requirements of K.S.A. 40-3402, and amendments thereto and shall be exempt from the requirements of K.S.A. 40-3404, and amendments thereto.

(d) Inactive license. The board may issue an inactive license to any advanced practice registered nurse as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-1118, and amendments thereto, and who is not regularly engaged in advanced practice registered nursing in Kansas. The holder of an inactive license shall not be required to submit evidence of satisfactory completion of a program of continuing education required by K.S.A. 65-1117 and 65-1132. An inactive license shall not entitle the holder to engage in advanced practice registered nursing in this state. Each inactive license may be renewed subject to the provisions of this section. An inactive licensee may apply for a license to regularly engage in advanced practice registered nursing upon filing a written reinstatement application with the board. The application shall be on a form provided by the board and shall be accompanied by the license fee established pursuant to K.S.A. 65-1118, and amendments thereto. An applicant for a license to practice as an advanced practice registered nurse who has not been licensed to practice advanced practice registered nursing for five years preceding application shall be required to successfully complete a refresher course as defined by the board. The board shall adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees to become licensed to regularly engage in advanced practice registered nursing in this state. An advanced practice registered nurse who has been granted an inactive license pursuant to this subsection shall be exempt from the requirements of K.S.A. 40-3402, and amendments thereto and shall be exempt from the requirements of K.S.A. 40-3404, and amendments thereto.

(e) The board shall have authority to ~~write~~ adopt rules and regulations to carry out the provisions of this section.

Sec. 5. K.S.A. 40-3408, K.S.A. 40-3424, and K.S.A. 65-1131 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.