

HOUSE BILL No. 2567

By Special Committee on Medicaid Reform

1-5

9 AN ACT enacting the adult care home group-funded pool act; author-
10 izing adult care homes to pool liabilities; providing certificate of au-
11 thority to operate pools and providing for the regulation thereof.
12

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

14 Section 1. (a) Five or more adult care homes, regardless of domicile,
15 who are members of the same bona fide trade, merchant or professional
16 association, regardless of domicile, which has been in existence for not
17 less than five years and who are engaged in the same, similar or closely
18 related type of business may enter into agreements to pool their liabilities
19 for general liability and professional liability.

20 (b) All such arrangements shall be known as adult care home group-
21 funded liability pools, which shall not be deemed to be insurance or in-
22 surance companies and shall not be subject to the provisions of chapter
23 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

24 (c) For purposes of this section:

25 (1) Adult care home means an entity licensed under K.S.A. 39-923
26 (a)(1), and amendments thereto, and contiguous independent living units
27 owned by the adult care home licensee.

28 Sec. 2. Application for certificate of authority to operate an adult care
29 home group-funded liability pool shall be made to the commissioner of
30 insurance not less than 60 days prior to the proposed inception date of
31 the pool. The application shall include the following:

32 (a) A copy of the bylaws of the proposed pool, a copy of the articles
33 of incorporation, if any, and a copy of all agreements and rules of the
34 proposed pool. If any of the bylaws, articles of incorporation, agreements
35 or rules are changed, the pool shall notify the commissioner within 30
36 days after such change;

37 (b) a copy of the trust agreement indemnifying general liability and
38 professional liability coverage. If the trust agreement is changed, the pool
39 shall notify the commissioner within 30 days after such change;

40 (c) designation of the initial board of trustees and administrator.
41 When there is a change in the membership of the board of trustees or
42 change of administrator, the pool shall notify the commissioner within 30
43 days after such change;

- 1 (d) the address where the books and records of the pool will be main-
2 tained at all times. If this address is changed, the pool shall notify the
3 commissioner within 30 days after such change;
- 4 (e) an individual application for each initial member of the pool. Each
5 individual application shall include a current certified financial statement
6 on a form approved by the commissioner;
- 7 (f) a current certified financial statement on a form approved by the
8 commissioner showing that the combined net worth of all members ap-
9 plying for coverage on the inception date of the pool is in an amount not
10 less than \$1,000,000;
- 11 (g) a current certified financial statement on a form approved by the
12 commissioner showing the financial ability of the pool to meet its
13 obligations;
- 14 (h) evidence that the annual Kansas gross premium of the pool will
15 be not less than \$250,000;
- 16 (i) an indemnity agreement jointly and severally binding the group
17 and each member thereof to comply with the provisions of the trust agree-
18 ment. The indemnity agreement shall be in a form acceptable to the
19 commissioner;
- 20 (j) proof of payment by each member of a pool of not less than 25%
21 of the estimated annual premium into a designated depository;
- 22 (k) a copy of the procedures adopted by the pool to provide services
23 with respect to underwriting matters and risk management;
- 24 (l) a copy of the procedures adopted by the pool to provide claims
25 adjusting and reporting of loss data;
- 26 (m) a confirmation of specific and aggregate excess insurance; and
- 27 (n) any other relevant factors the commissioner may deem necessary.
- 28 Sec. 3. Every adult care home group-funded liability pool applying
29 for authority to operate a pool in this state, as a condition precedent to
30 obtaining such authority, shall file in the insurance department a written
31 irrevocable consent, that any action may be commenced against such pool
32 in the proper court of any county in this state in which the cause of action
33 shall arise or in which the plaintiff may reside by the service of process
34 on the commissioner of insurance of this state and stipulating and agree-
35 ing that such service shall be taken and held in all courts to be as valid
36 and binding as if due service had been made upon the trustees or the
37 administrator of such pool. The consent shall be executed by the board
38 of trustees and shall be accompanied by a duly certified copy of the res-
39 olution passed by the trustees to execute such consent.
- 40 Sec. 4. (a) The application for a new certificate shall be signed by
41 the trustees of the trust fund created by the pool. After evaluating the
42 application the commissioner shall notify the applicant that the plan sub-
43 mitted is approved or conversely, if the plan submitted is inadequate, the

1 commissioner shall then fully explain to the applicant what additional
2 requirements must be met. If the application is denied, the applicant shall
3 have 15 days to make an application for hearing by the commissioner
4 after service of the denial notice. The hearing shall be conducted in ac-
5 cordance with the provisions of the Kansas administrative procedure act.

6 (b) An approved certificate of authority shall remain in full force and
7 effect until such certificate is suspended or revoked by the commissioner.
8 An existing pool operating under an approved certificate of authority must
9 file with the commissioner, within 120 days following the close of the
10 pool's fiscal year, a current financial statement on a form approved by the
11 commissioner showing the financial ability of the pool to meet its obli-
12 gations and confirmation of specific and aggregate excess insurance as
13 required by law for the pool. If an existing pool's certificate of authority
14 is suspended or revoked, such pool shall have the same rights to a hearing
15 by the commissioner as for applicants for new certificates of authority as
16 set forth in subsection (a) above.

17 (c) Whenever the commissioner shall deem it necessary the commis-
18 sioner may make, or direct to be made, an examination of the affairs and
19 financial condition of any pool in accordance with K.S.A. 40-222 and 40-
20 223, and amendments thereto, except that once every five years the com-
21 missioner shall conduct an examination of the affairs and financial con-
22 dition of each pool. Each pool shall submit a certified independent
23 audited financial statement no later than 90 days after the end of the
24 pool's fiscal year. The financial statement shall include outstanding re-
25 serves for claims and for claims incurred but not reported. Each pool
26 shall file such reports and statements at such times and in such manner
27 as the commissioner shall require. Whenever it appears to the commis-
28 sioner from such examination or other satisfactory evidence that the sol-
29 vency of any such pool is impaired, or that it is doing business in violation
30 of any of the laws of this state, or that its affairs are in an unsound con-
31 dition so as to endanger its ability to pay or cause to be paid, the com-
32 missioner shall, before filing such report or making the same public, grant
33 such pool upon reasonable notice a hearing in accordance with the pro-
34 visions of the Kansas administrative procedure act, and, if on such hearing
35 the report be confirmed, the commissioner shall suspend the certificate
36 of authority for such pool until its solvency shall have been fully restored
37 and the laws of the state fully complied with. The commissioner may, if
38 there is an unreasonable delay in restoring the solvency of such pool and
39 in complying with the law, revoke the certificate of authority of such pool
40 to do business in this state. Upon revoking any such certificate the com-
41 missioner shall communicate the fact to the attorney general, whose duty
42 it shall be to commence and prosecute an action in the proper court to
43 dissolve such pool or to enjoin the same from doing or transacting busi-

1 ness in this state. The commissioner of insurance may call a hearing under
2 K.S.A. 40-222b, and amendments thereto, and the provisions shall apply
3 to adult care home group-funded liability pools.

4 Sec. 5. (a) Premium contributions to the pool shall be based upon
5 appropriate rates, plus or minus applicable experience credits or debits.
6 The pool must develop rates based upon an actuarial study and submit
7 both to the commissioner for approval prior to use. Such rates shall in-
8 clude expenses necessary to administer the pool.

9 (b) At least 70% of the annual premium shall be placed into a des-
10 ignated depository for the sole purpose of paying claims. If so approved
11 by the commissioner of insurance, the annual premium to be designated
12 to such depository may be determined to be the net amount of premium
13 after all or a portion of the specific and aggregate excess insurance pre-
14 mium costs have been paid. This shall be called the claims fund account.
15 The remaining annual premium shall be placed into a designated depos-
16 itory for the payment of taxes, fees and administrative costs. This shall be
17 called the administrative fund account. If a pool has been in operation
18 for more than five years, the commissioner may authorize allocation of a
19 different amount to the claims fund account, if solvency of the pool would
20 not be endangered.

21 (c) At the end of a fund year or any time thereafter, the trustees may
22 declare a refund of any surplus moneys for the fund year in excess of the
23 amount necessary to fulfill all obligations. Such refund shall not be dis-
24 tributed, in whole or in part, less than 12 months after the end of the
25 fund year for which the refund was declared. After receipt from the pool
26 of the notice of declared refund and satisfactory evidence that sufficient
27 funds remain on deposit for the payment of all outstanding claims and
28 expenses, including incurred but not reported claims, the commissioner
29 shall approve distribution of the declared refund. Any such refund shall
30 be paid only to those members who remained participants in the pool for
31 an entire year. Payment of previously earned refunds shall not be contin-
32 gent on continued membership in the pool.

33 Sec. 6. The trustees shall not utilize any of the moneys collected as
34 premiums for any purpose unrelated to the provisions of the trust agree-
35 ment. Moneys not needed for current obligations may be invested by the
36 trustees. Unless authorized elsewhere in this act, all funds of a pool shall
37 be invested only in securities or other investments permitted by article
38 2a of chapter 40 of the Kansas Statutes Annotated, or such other securities
39 or investments as the commissioner may permit.

40 Sec. 7. The expense of the administration of adult care home group-
41 funded liability pools shall be financed in the following manner:

42 (a) There is hereby created in the state treasury a fund to be called
43 the adult care home group-funded liability pools fee fund. All amounts

1 which are required to be paid from the adult care home group-funded
2 liability pools fee fund for the operating expenditures incident to the
3 administration of adult care home group-funded liability pools shall be
4 paid from the adult care home group-funded liability fee fund. The com-
5 missioner of insurance shall be responsible for administering the adult
6 care home group-funded liability pools fee fund, and all payments from
7 the fund shall be upon warrants of the director of accounts and reports
8 issued pursuant to vouchers approved by the commissioner of insurance
9 or a person or persons designated by the commissioner;

10 (b) the commissioner of insurance shall estimate as soon as practical
11 after January 1 of each year the expenses necessary for the administration
12 of the adult care home group-funded liability pools for the fiscal year
13 beginning on July 1 thereafter. Not later than June 1 of each year, the
14 commissioner of insurance shall notify all such adult care home group-
15 funded liability pools of the amount of each assessment imposed under
16 this subsection on such adult care home group-funded liability pools and
17 the same shall be due and payable to the commissioner on the July 1
18 following; and

19 (c) the commissioner of insurance shall remit all moneys received by
20 or for such commissioner under this section to the state treasurer in ac-
21 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
22 Upon receipt of each such remittance, the state treasurer shall deposit
23 the entire amount in the state treasury to the credit of the adult care
24 home group-funded liability pools fee fund.

25 Sec. 8. In addition to the fees required to be paid in and as a con-
26 dition precedent to the continuation of the certificate of authority pro-
27 vided in this act adult care home group-funded liability pools shall pay a
28 tax annually upon the annual Kansas gross premium based upon the net
29 pool premiums in effect at the date of renewal at the rate of 1% per
30 annum applied to the collective payroll of the pool for the preceding
31 calendar year. In the computation of the tax, all pools shall be entitled to
32 deduct any annual Kansas gross premiums returned on account of can-
33 cellation or dividends returned to members of such pools or expenditures
34 used for the purchase of specific and aggregate excess insurance.

35 Sec. 9. (a) After the inception date of the adult care home group-
36 funded liability pools prospective new members of the pool shall submit
37 an application for membership to the board of trustees or its administra-
38 tor. The trustees may approve the application for membership pursuant
39 to the bylaws of the pool. The application for membership and approval
40 shall then be filed with the commissioner. Membership takes effect after
41 approval.

42 (b) Individual members may elect to terminate their participation in
43 a pool or be subject to cancellation by the pool pursuant to the bylaws of

1 the pool.

2 Sec. 10. To ensure the financial stability of the operations of each
3 adult care home group-funded liability pool, the board of trustees of each
4 pool is responsible for all operations of the pool. The board of trustees
5 shall consist of not less than three nor more than 11 persons selected
6 according to the bylaws of the pool for stated terms of office to direct the
7 administration of a pool, and whose duties include approving applications
8 by new members of the pool. The majority of the trustees must be mem-
9 bers of the pool, but a trustee may not be an owner, officer or employee
10 of any service agent or representative. All trustees must be residents of
11 this state or officers of corporations authorized to do business in this state.
12 The board of trustees of each fund shall take all necessary precautions to
13 safeguard the assets of the fund, including all of the following:

14 (a) Designate an administrator to administer the financial affairs of
15 the pool who shall furnish a fidelity bond to the pool in an amount suf-
16 ficient to protect the pool against the misappropriation or misuse of any
17 moneys or securities. The commissioner shall determine the amount of
18 the bond and the administrator shall file evidence of the bond with the
19 commissioner. The bond is one of the conditions required for approval
20 of the establishment and continued operation of a pool;

21 (b) retain control of all moneys collected or disbursed from the pool
22 and segregate all moneys into a claims fund account and an administrative
23 fund account. The amount allocated to the claims fund account shall be
24 sufficient to cover payment of any aggregate loss fund as defined in the
25 aggregate excess policy. Only disbursements that are credited toward the
26 aggregate loss fund are made from the claims fund account. All admin-
27 istrative costs and other disbursements are made from the administrative
28 fund account. The administrator of the pool shall establish a revolving
29 fund for use by the authorized service agent which is replenished from
30 time to time from the claims fund account. The service agent and its
31 employees shall be covered by a fidelity bond, with the pool as obligee,
32 in an amount sufficient to protect all moneys placed in the revolving fund;

33 (c) audit the accounts and records of the pool annually or at any time
34 as required. The commissioner may prescribe the type of audits and a
35 uniform accounting system for use by pool and service agents to deter-
36 mine the solvency of the pool;

37 (d) the trustees shall not extend credit to individual members for
38 payment of a premium;

39 (e) the board of trustees shall not borrow any moneys from the pool
40 or in the name of the pool without advising the commissioner of the
41 nature and purpose of the loan and obtaining approval from the com-
42 missioner; and

43 (f) the board of trustees may delegate authority for specific functions

1 to the administrator of the pool. The functions which the board may
2 delegate include such matters as contracting with a service agent, deter-
3 mining the premium chargeable to and refunds payable to members,
4 investing surplus moneys and approving applications for membership.
5 The board of trustees shall specifically define all authority it delegates in
6 the written minutes of the trustees' meetings. Any delegation of authority
7 is not effective without a formal resolution passed by the trustees.

8 Sec. 11. Any person soliciting the business of general liability and
9 professional liability insurance for an adult care home group-funded li-
10 ability pool must be licensed as provided in K.S.A. 40-240 through 40-243,
11 and amendments thereto, except that no such person shall be required
12 to satisfy the certification requirements regarding insurance companies
13 providing reinsurance, secondary insurance or excess coverage.

14 Sec. 12. All records filed with or maintained by the insurance com-
15 missioner which relate to financial information submitted by a member
16 of an adult care home group-funded liability pools or to maintain mem-
17 bership in a pool, or which relate to financial information about any mem-
18 ber of a pool that is submitted by or on behalf of a pool, shall be confi-
19 dential records and shall not be open to the public.

20 Sec. 13. This act shall take effect and be in force from and after its
21 publication in the statute book.