

A vibrant field of sunflowers under a blue sky with white clouds. The sunflowers are in full bloom, with bright yellow petals and dark brown centers. The sky is a clear, bright blue with scattered white clouds. The overall scene is bright and cheerful.

Charitable Health Care Provider Program

KDHE

1000 SW Jackson, Suite 340

Topeka, KS 66612

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Charitable Health Care Provider Program Manual

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Purpose

The Charitable Health Care Provider (CHCP) Program began in 1991 in order to increase the provision of health care to the medically indigent. The CHCP allows health care providers who provide care to the medically indigent to be indemnified for liability purposes under the Kansas Tort Claims Act.

Health care providers as defined in KSA 75-6102, 65-4921, and 40-3401 are eligible to enter into an agreement with the Secretary of the Kansas Department of Health and Environment (KDHE) to serve as a charitable health care provider when gratuitously providing health services to medically indigent individuals. A list of eligible professions is included in the appendix to this document. The application form for the provider agreement is Form A in the appendix.

Medically Indigent

An individual is medically indigent if they are either:

- (1) a member of a family unit at or below 200 percent of the current federal poverty level and not indemnified against medical or dental costs by accident and sickness insurance, an employee health benefits plan, or similar coverage; or
- (2) eligible for publicly funded health care programs administered by KDHE or Indian Health Services (IHS) (KAR 28-53-3).

Care is covered under the CHCP program as long as the charitable health care provider has made a "good faith assumption" that the person to whom they are providing care meets the definition for being medically indigent (KSA 75-6102(e)(1)).

Provision of Care

There are three ways that a charitable health care provider may provide care to medically indigent individuals.

- (1) Charitable health care providers may gratuitously provide care to the medically indigent on their own (KSA 75-6102(e)(1)); or
- (2) Charitable health care providers may also provide care to the medically indigent through a point of entry, including participating local health departments or indigent health care clinics. If providing care through a local health department or indigent health care clinic, the charitable health care provider may receive a fee paid by the health department or indigent health care clinic (KSA 75-6102(e)(3)); or
- (3) Dental professionals may also enter into agreements to provide gratuitous dentistry and dental hygienist services at an event targeted but not limited to medically indigent individuals sponsored by a not-for-profit organization, such as the annual Kansas Mission of Mercy event sponsored by the Kansas Dental Foundation. These dental services may not include oral and maxillofacial surgery or use deep sedation or general anesthesia (KSA 75-6102(e)(4)).

Points of Entry

Indigent health care clinics, local health departments, and federally qualified health centers may apply to be points of entry through which charitable health care providers provide care. For a clinic to qualify as a point of entry, it must use a sliding scale. The sliding scale must charge uninsured patients a reasonable fee based on the patient's ability to pay (sliding scale). The discounted fee schedule must be in writing, and information must be publicly posted to ensure that patients are aware of its availability. Patients below 100 percent of the federal poverty level should be charged only a nominal fee, if at all. Patients above 200% of the federal poverty level may be charged the full fee for services. Information on developing a discount fee schedule is available at the following website:

<http://nhsc.hrsa.gov/communities/discountedfee.pdf>.

The point of entry must also determine the patients' eligibility for care, maintain patient records, submit a completed application (Form B2) to KDHE, and submit an annual report to KDHE. Form B2 may be found in the appendix. If a charitable health care provider is providing gratuitous care through a point of entry, the provider is not required to submit an annual reporting form to KDHE.

Coverage Under the Kansas Tort Claims Act

The Kansas Tort Claims Act is applicable to claims arising from services performed while acting as a charitable health care provider (KSA 75-6115(a)(1)). When acting as a charitable health care provider, a health professional is considered an employee of the state (KSA 75-6120(a)). Any claim against a charitable health care provider that results from the provision of gratuitous care to medically indigent individuals will be paid from the Kansas tort claims funds (75-6117(b)(1)(A)). Claims against charitable health care providers pursuant to the Kansas Tort Claims Act may not be considered by an insurance company in determining the rate charged for professional liability insurance for health care providers or in the determination to cancel any such policy (KSA 75-6120(c)).

Participants in the Charitable Health Care Provider Program with specific questions about their professional liability or the liability of their clinical program, employees, officers or directors, should contact their attorney.

Reporting

Charitable Health Care Providers: Charitable health care providers that provide care on their own must submit an annual report to KDHE that includes the following information:

1. Total number of uninsured patients in households earning under 200 percent of poverty that the provider gratuitously provided care for, and
2. Total number of patients with public insurance (Medicaid/HealthWave) the provider saw gratuitously.

The annual reporting form is Form C in the appendix. Failure to submit this annual report by March 31 of each year by the charitable health care provider or the point of entry through which care is provided will result in cancellation of the provider's agreement with the Secretary of KDHE to serve as a Charitable Health Care Provider (KAR 28-53-4).

Points of Entry: Charitable health care providers that provide care through a point of entry or dental event do not need to submit an individual annual report.

Points of entry must submit Form D, the annual reporting form, each year by March 31. Form D is in the appendix.

Points of entry that receive Kansas community-based primary-care clinic funding do not need to submit Form D, as they provide this information through the online clinic data reporting process.

If a charitable provider is sued by the recipient of his or her charitable care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Charitable providers served with a summons or petition should immediately contact the Kansas Attorney General's office at 785-296-2215.

Indigent Health Care Clinics

An indigent health care clinic is an outpatient medical care clinic operated on a not-for-profit basis that has an agreement in place with the Secretary of KDHE (KSA 75-6102(g)). Indigent health care clinics must charge uninsured patients a reasonable fee based on the patient's ability to pay (sliding scale). The discounted fee schedule must be in writing, and information must be publicly posted to ensure that patients are aware of its availability. Patients below 100 percent of the federal poverty level should be charged only a nominal fee, if at all. Patients above 200% of the federal poverty level may be charged the full fee for services. Information on developing a discount fee schedule is available at the following website: <http://nhsc.hrsa.gov/communities/discountedfee.pdf>.

The application form to serve as an indigent health care clinic is Form B1 in the appendix. If an indigent health care clinic also serves as a point of entry, they must submit Form B2 found in the appendix. The Kansas Tort Claims Act is applicable to claims arising from services provided by an indigent health care clinic and its employees (KSA 75-6115(a)(4)). Any claim against an indigent health care clinic or its employees will be paid out from Kansas tort claims funds (75-6117(b)(1)(C)).

Indigent health care clinics with specific questions related to the liability of their clinic, employees, volunteers, contractors, officers or directors, should contact their attorney.

Kansas statute (65-1648) requires that the distribution and control of prescription medications at indigent health care clinics occur under the supervision of a pharmacist in charge. Information about these requirements and the necessary forms and materials can be obtained from the Kansas State Board of Pharmacy.

Reporting

Indigent health care clinics must submit an annual report (Form D) to KDHE that includes the following information:

1. Total number of overall patients seen through the point of entry/indigent health care clinic during the past calendar year;
2. Total number of uninsured patients earning below 200 percent of the federal poverty level that received care at a reduced rate based on income (sliding scale) in the past calendar year;
3. Total number of patients with public insurance seen in the past calendar year.

Failure to submit this annual report will result in cancellation of the agreement with the Secretary of KDHE to serve as an indigent health care clinic.

Indigent health care clinics that receive Kansas community-based primary-care clinic funding do not need to submit the Annual Reporting Form (Form D), as they provide this information through the online clinic data reporting process.

If an indigent health care clinic or its employee(s) is sued by the recipient of care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Indigent health care clinics or their employee(s) served with a summons or petition should immediately contact the Kansas Attorney General's office at 785-296-2215.

Program Contact

Sonita Loyd
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612
785-296-3135
sloyd@kdheks.gov

Charitable Health Care Provider Agreement

License or Registration Number: _____ Profession (MD, RN, DDS, etc.): _____

Name: _____ Date of Birth: ____/____/____
First MI Last

Address: _____ County: _____
Street Address
City State Zip Phone Number: _____

Email Address: _____ Fax Number: _____

My signature on this agreement constitutes my intention to provide care to medically indigent patients. I understand that in order to be considered gratuitous, I may not charge the patient or individually submit a claim for those patients with public or private insurance. I understand that if I provide charitable care through an indigent health care clinic or local health department, they may charge uninsured patients a reasonable fee based on patients' ability to pay (sliding scale), may submit claims to public or private insurance, and I may receive a fee for my services from the indigent health care clinic or local health department.

Nothing in this agreement waives my right to bill insurance or an individual patient for services provided when that care is not provided as part of my participation in the Charitable Health Care Provider Program.

I understand it is my responsibility to maintain patient records for services I provide as a Charitable Health Care Provider and that either I or the indigent health care clinic or local health department through which I will provide care must:

- (1) determine that individuals seen as part of my participation in the charitable health care provider program are medically indigent; and
- (2) submit an annual activity report to KDHE.

I agree that failure to fulfill any of these duties will result in cancellation of the agreement by the Secretary of the Kansas Department of Health and Environment to serve as a charitable health care provider.

Signature of Provider Date

I will be providing care through the following indigent health care clinic or health department, which will provide an annual report of the charity care I have provided. _____
Name of indigent health care clinic or health department

I will be providing care independently and will report my activities annually on Form C.

Please send a copy of my letter of agreement to the following indigent health care clinic or health department:

Name and address of indigent health care clinic or health department

If a charitable provider is sued by the recipient of his or her charitable care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Charitable providers served with a summons or petition should immediately contact the Kansas Attorney General's office at 785-296-2215.

Please return to:
Charitable Health Care Provider Program
Kansas Department of Health and Environment
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612

Phone: 785-296-3135
Fax: 785-296-1231

Indigent Health Care Clinic Agreement

Clinic Name: _____

Address: _____
Street Address

City

State

Zip

Contact Name: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

The authorized signature on this agreement constitutes the intent of this clinic to serve as an indigent health care clinic and affirms that the clinic is an outpatient medical care clinic operated on a not-for-profit basis.

I understand an indigent health care clinic must charge uninsured patients living in a household earning less than 200 percent of the federal poverty level a discounted fee based on patients' ability to pay (sliding scale) and may submit claims to public or private insurance. The discounted fee schedule must be in writing, and information must be publicly posted to ensure that patients are aware of its availability.

As an indigent health care clinic, the clinic agrees to:

- (1) determine whether individuals seen through the indigent health care clinic are medically indigent;
- (2) either directly provide care through its employees or refer medically indigent individuals to a charitable health care provider providing care either at the clinic or in another location; and
- (3) maintain patient and program records and submit an annual activity report to KDHE (KAR 28-53-1).

I agree that failure to fulfill any of these duties will result in cancellation of the agreement by the Secretary of the Kansas Department of Health and Environment with the above-named indigent health care clinic.

Authorized Signature

Date

If an indigent health care clinic, its employee(s), or a charitable health care provider is sued by the recipient of care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Indigent health care clinics, their employee(s), or charitable health care providers served with a summons or petition should immediately contact the Kansas Attorney General's office at 785-296-2215.

Please return to: Charitable Health Care Provider Program
Kansas Department of Health and Environment
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612
FAX: 785-296-1231

Point of Entry Agreement

Point of Entry Name: _____

Address: _____
Street Address

City

State

Zip

Contact Name: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

The authorized signature on this agreement constitutes the intent of this health department/clinic/center to serve as a point of entry for the Charitable Health Care Provider Program.

I understand to participate that the point of entry must charge uninsured patients living in a household earning less than 200 percent of the federal poverty level a discounted fee based on patients' ability to pay (sliding scale) and may submit claims to public or private insurance. The discounted fee schedule must be in writing, and information must be publicly posted to ensure that patients are aware of its availability.

I also understand that in order to be considered gratuitous, any charitable health care provider that provides care through the point of entry may **not** directly charge the medically indigent patient or submit a claim for those patients that are publicly insured.

As a point of entry, the clinic/health department agrees to:

- (1) determine whether individuals seen through the point of entry are medically indigent;
- (2) refer medically indigent individuals to a charitable health care provider providing care either at the point of entry or in another location; and
- (3) maintain patient and program records and submit an annual activity report to KDHE (KAR 28-53-1).

I agree that failure to fulfill any of these duties will result in cancellation of the agreement by the Secretary of the Kansas Department of Health and Environment with the above-named point of entry.

Authorized Signature

Date

If a charitable provider is sued by the recipient of his or her charitable care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Charitable providers served with a summons or petition should immediately contact the Kansas Attorney General's office at 785-296-2215.

Please return to: Charitable Health Care Provider Program
Kansas Department of Health and Environment
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612
FAX: 785-296-1231

Charitable Health Care Provider Annual Reporting Form

Note: Charitable Health Care Providers may choose to provide their care through a point of entry. If providing care through a point of entry, the individual provider does not need to file an annual report so long as the point of entry through which care is provided does so.

If you are not providing your services as a charitable health care provider through a point of entry, you must provide the appropriate data below and fax it to Sonita Loyd at 785-296-1231 or email to sloyd@kdheks.gov by March 31st of each year.

Annual reports are due by *March 31st* for the previous calendar year. Failure to submit an annual report will result in termination of your agreement with the Secretary of the Kansas Department of Health and Environment to serve as a charitable health care provider.

Charitable Health Care Provider Name:

Data provided for year:

20_____

1. Total number of uninsured patients earning below 200 percent of the federal poverty level seen at no charge by the charitable health care provider.

2. Total number of patients with public insurance seen at no charge by the charitable health care provider.

Authorized Signature

Date

If a charitable provider is sued by the recipient of his or her charitable care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Charitable providers served with a summons or petition should immediately contact the Attorney General's office at 785-296-2215.

Please return to: Charitable Health Care Provider Program
Kansas Department of Health and Environment
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612
FAX: 785-296-1231

**Point of Entry/Indigent Health Care Clinic
Annual Reporting Form**

Note: Entities that receive Kansas community-based primary care clinic program funding do not need to complete this form, as the information is provided through the online clinic data reporting process. If your clinic/health department does not receive community-based primary care clinic funding, please provide the appropriate data below and fax it to 785-296-1231 or email to sloyd@kdheks.gov.

Annual reports are due by *March 31st* for the previous calendar year. Failure to submit an annual report will result in termination of your agreement with the Secretary of the Kansas Department of Health and Environment.

Point of Entry/Indigent Health Care Clinic : Data provided for year:
_____ 20_____

1. Total number of overall patients seen through the point of entry/indigent health care clinic during the past calendar year?

2. Total number of uninsured patients earning below 200 percent of the federal poverty level that received care at a reduced rate based on income (sliding scale) in the past calendar year?

3. Total number of patients with public insurance seen in the past calendar year.

Authorized Signature

Date

If an indigent health care clinic, its employee(s), or a charitable health care provider is sued by the recipient of care, they must request representation from the state in writing within 15 days after service of process or subpoena (KSA 75-6108(e)). Indigent health care clinics, their employee(s), or charitable health care providers served with a summons or petition should immediately contact the Attorney General's office at 785-296-2215.

Please return to: Charitable Health Care Provider Program
Kansas Department of Health and Environment
Bureau of Community Health Systems
1000 SW Jackson, Suite 340
Topeka, KS 66612
FAX: 785-296-1231

Professions currently eligible for Agreements with the Secretary of the Kansas Department of Health and Environment to serve as Charitable Health Care Providers—named in KSA 75-6102, KSA 65-4921, or KSA 40-3401

Kansas Board of Healing Arts

Individuals with exempt, federally active, limited permit or other licensure or enrolled in a postgraduate training program:

- Medical Doctors
- Osteopathic Doctors
- Chiropractic Doctors
- Podiatric Doctors
- Physicians' Assistants
- Physical Therapists
- Physical Therapist Assistants
- Occupational Therapists
- Occupational Therapy Assistants
- Respiratory Therapists
- Athletic Trainers
- Naturopathic Doctors
- Radiologic Technologists

Kansas State Board of Nursing

- Professional Nurses (RN, ARNP, CRNA)
- Practical Nurses (LPN)
- Mental Health Technicians

Kansas Board of Examiners in Optometry

- Optometrists

Kansas State Board of Pharmacy

- Pharmacists

Kansas Dental Board

- Dentists
- Dental Hygienists

Kansas Behavioral Sciences Regulatory Board

- Psychologists
- Masters Level Psychologists
- Licensed Clinical Psychotherapists
- Licensed Associate Social Workers
- Licensed Baccalaureate Social Workers
- Licensed Master Social Workers
- Licensed Clinical Social Workers
- Professional Counselors
- Licensed Clinical Professional Counselors
- Marriage and Family Therapists
- Licensed Clinical Marriage and Family Therapists

An ultrasound technologist currently registered in any area of sonography credentialed through the American Registry of Radiology Technologists, the American Registry for Diagnostic Medical Sonography or Cardiovascular Credentialing International and working under the supervision of a person licensed to practice medicine and surgery

Other "Health Care Providers" named in KSA 40-3401

- Medical care facilities licensed by KDHE, HMOs with a certificate of authority issued by the commissioner of insurance, professional corporations formed by health care providers, limited liability companies organized to render professional services by member health care providers, health care provider partnerships, not-for-profit corporations organized to render professional services by health care providers, nonprofit corporations organized to administer graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine, psychiatric hospitals, and mental health centers/clinics licensed by the Secretary of Social and Rehabilitation Services.

Kansas Charitable Health Care Provider Statute

75-6101

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6101. Citation of act; claims to which act applicable; act applicable to municipalities. (a) K.S.A. 75-6101 to 75-6115, inclusive, shall be known and may be cited as the Kansas tort claims act.

(b) The Kansas tort claims act shall be applicable to claims arising from acts or omissions occurring on and after the effective date of this act.

(c) Municipalities may not exempt themselves from the provisions of the Kansas tort claims act by charter ordinance, charter resolution or other action.

History: L. 1979, ch. 186, § 1; July 1.

75-6102

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6102. Definitions. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) (1) "Employee" means: (A) Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider;

(B) any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor;

(C) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor;

(E) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator;

- (G) an employee of an indigent health care clinic;
- (H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;
- (I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and
- (J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) "Employee" does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts, a mental health practitioner licensed by the behavioral sciences regulatory board, an ultrasound technologist currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and working under the supervision of a person licensed to practice medicine and surgery, or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 et seq., and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include "oral and maxillofacial surgery" as defined by Kansas administrative regulation 71-2-2, or use sedation or general

anesthesia that result in "deep sedation" or "general anesthesia" as defined by Kansas administrative regulation 71-5-1.

(f) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(h) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241, and amendments thereto.

(i) "Fire control, fire rescue or emergency medical services equipment" means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 164, § 1; L. 2002, ch. 46, § 1; L. 2003, ch. 2, § 1; L. 2003, ch. 158, § 9; L. 2004, ch. 122, § 1; L. 2005, ch. 139, § 2; L. 2009, ch. 44, § 1; Apr. 16.

75-6102a

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6102a.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 162, § 26; Repealed, L. 2002, ch. 46, § 2; Repealed, L. 2002, ch. 149, § 8; July 1.

75-6102b

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6102b.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994, ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 164, § 1; L. 2002, ch. 149, § 7; Repealed, L. 2003, ch. 158, § 11; July 1.

75-6103

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6103. Liability of governmental entities for damages caused by employee acts or omissions, when; applicable procedure. (a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under

circumstances where the governmental entity, if a private person, would be liable under the laws of this state.

(b) (1) Except as otherwise provided in this act, either the code of civil procedure or, subject to provision (2) of this subsection, the code of civil procedure for limited actions shall be applicable to actions within the scope of this act. Actions for claims within the scope of the Kansas tort claims act brought under the code of civil procedure for limited actions are subject to the limitations provided in K.S.A. 61-2802, and amendments thereto.

(2) Actions within the scope of the Kansas tort claims act may not be brought under the small claims procedure act.

History: L. 1979, ch. 186, § 3; L. 1980, ch. 294, § 1; L. 2000, ch. 161, § 116; Jan. 1, 2001.

75-6104

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6104. Same; when; exceptions from liability. A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) judicial function;

(c) enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, rule and regulation, ordinance or resolution;

(d) adoption or enforcement of, or failure to adopt or enforce, any written personnel policy which protects persons' health or safety unless a duty of care, independent of such policy, is owed to the specific individual injured, except that the finder of fact may consider the failure to comply with any written personnel policy in determining the question of negligence;

(e) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the discretion is abused and regardless of the level of discretion involved;

(f) the assessment or collection of taxes or special assessments;

(g) any claim by an employee of a governmental entity arising from the tortious conduct of another employee of the same governmental entity, if such claim is (1) compensable pursuant to the Kansas workers compensation act or (2) not compensable pursuant to the Kansas workers compensation act because the injured employee was a firemen's relief association member who was exempt from such act pursuant to K.S.A. 44-505d, and amendments thereto, at the time the claim arose;

(h) the malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs, signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(i) any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages;

(j) any claim based upon emergency management activities, except that governmental entities shall be liable for claims to the extent provided in article 9 of chapter 48 of the Kansas Statutes Annotated;

(k) the failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or rule and regulation or contains a hazard to public health or safety;

(l) snow or ice conditions or other temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the governmental entity;

(m) the plan or design for the construction of or an improvement to public property, either in its original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared;

(n) failure to provide, or the method of providing, police or fire protection;

(o) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury;

(p) the natural condition of any unimproved public property of the governmental entity;

(q) any claim for injuries resulting from the use or maintenance of a public cemetery owned and operated by a municipality or an abandoned cemetery, title to which has vested in a governmental entity pursuant to K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing the injury;

(r) the existence, in any condition, of a minimum maintenance road, after being properly so declared and signed as provided in K.S.A. 68-5,102, and amendments thereto;

(s) any claim for damages arising from the operation of vending machines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and amendments thereto;

(t) providing, distributing or selling information from geographic information systems which includes an entire formula, pattern, compilation, program, device, method, technique, process, digital database or system which electronically records, stores, reproduces and manipulates by computer geographic and factual information which has been developed internally or provided from other sources and compiled for use by a public agency, either alone or in cooperation with other public or private entities;

(u) any claim arising from providing a juvenile justice program to juvenile offenders, if such juvenile justice program has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice. The provisions of this section do not apply to community service work within the scope of K.S.A. 60-3614, and amendments thereto;

(v) performance of, or failure to perform, any activity pursuant to K.S.A. 74-8922, and amendments thereto, including, but not limited to, issuance and enforcement of a consent decree agreement, oversight of contaminant remediation and taking title to any or all of the federal enclave described in such statute;

(w) any claim arising from the making of a donation of used or excess fire control, fire rescue, or emergency medical services equipment to a fire department, fire district, volunteer fire department, medical emergency response team or the Kansas forest service if at the time of making the donation the donor believes that the equipment is serviceable or may be made serviceable. This subsection also applies to equipment that is acquired through the Federal Excess Personal Property Program established by the Federal Property and Administrative Services Act of 1949 (P.L. 81-152; 63 stat. 377; 40 United States Code

Section 483). This subsection shall apply to any breathing apparatus or any mechanical or electrical device which functions to monitor, evaluate, or restore basic life functions, only if it is recertified to the manufacturer's specifications by a technician certified by the manufacturer; or

(x) any claim arising from the acceptance of a donation of fire control, fire rescue or emergency medical services equipment, if at the time of the donation the donee reasonably believes that the equipment is serviceable or may be made serviceable and if after placing the donated equipment into service, the donee maintains the donated equipment in a safe and serviceable manner.

The enumeration of exceptions to liability in this section shall not be construed to be exclusive nor as legislative intent to waive immunity from liability in the performance or failure to perform any other act or function of a discretionary nature.

History: L. 1979, ch. 186, § 4; L. 1981, ch. 358, § 2; L. 1981, ch. 357, § 1; L. 1981, ch. 359, § 1; L. 1987, ch. 353, § 3; L. 1991, ch. 209, § 3; L. 1994, ch. 248, § 30; L. 1995, ch. 56, § 1; L. 1995, ch. 260, § 10; L. 1996, ch. 131, § 1; L. 1997, ch. 156, § 92; L. 1998, ch. 142, § 20; L. 2000, ch. 99, § 1; L. 2003, ch. 107, § 2; L. 2005, ch. 139, § 3; July 1.

75-6105

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6105. Same; maximum liability for claims; apportionment of multiple claims; no liability for punitive or exemplary damages or interest. (a) Subject to the provisions of K.S.A. 75-6111 and amendments thereto, the liability for claims within the scope of this act shall not exceed \$500,000 for any number of claims arising out of a single occurrence or accident.

(b) When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant the proper share of the total amount limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence or accident.

(c) A governmental entity shall not be liable for punitive or exemplary damages or for interest prior to judgment. An employee acting within the scope of the employee's employment shall not be liable for punitive or exemplary damages or for interest prior to judgment, except for any act or omission of the employee because of actual fraud or actual malice.

History: L. 1979, ch. 186, § 5; L. 1980, ch. 294, § 2; L. 1987, ch. 353, § 4; July 1.

75-6106

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6106. Same; settlement of claims, procedure; effect of settlement. (a) Subject to the terms of an insurance contract, if any, a claim against the state or employee thereof acting within the scope of the employee's office or employment may be compromised or settled for and on behalf of the state and any such employee by the attorney general, with the approval of the state finance council. The approval of settlements and compromises by the state finance council is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, except that such approval also may be given when the legislature is in session.

(b) Subject to the terms of the insurance contract, if any, claims against a municipality or employee thereof acting within the scope of the employee's office or employment may be

compromised or settled by the governing body of the municipality, or in such manner as such governing body may designate.

(c) The acceptance by a claimant of any such compromise or settlement hereunder shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the governmental entity involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

History: L. 1979, ch. 186, § 6; L. 1981, ch. 360, § 1; July 1.

75-6107

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6107. Same; judgment against governmental entity, effect; judgment against employee, effect. (a) The judgment in an action subject to the provisions of this act against a governmental entity shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

(b) Any judgment against an employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a governmental entity.

History: L. 1979, ch. 186, § 7; July 1.

75-6108

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6108. Same; defense of governmental entity or employee, when; provision of legal counsel to employee summoned to appear before grand jury or inquisition, when; refusal by governmental entity to provide defense, when; recovery of defense or legal counsel costs, when; requests to provide defense, procedure; reimbursement of defense costs, when. (a) Upon request of an employee in accordance with subsection (e), a governmental entity shall: (1) Provide for the defense of any civil action or proceeding against such employee, in such employee's official or individual capacity or both, on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c); and (2) provide legal counsel to such employee when such employee is summoned to appear before any grand jury or inquisition on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c).

(b) A governmental entity may provide for a defense or representation by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. A governmental entity has no right to recover such expenses from the employee defended or represented, except as provided in K.S.A. 75-6109 and amendments thereto.

(c) Except as provided in K.S.A. 75-4360 and amendments thereto, a governmental entity may refuse to provide for the defense of an action against an employee or representation of the employee if the governmental entity determines that:

- (1) The act or omission was not within the scope of such employee's employment;
- (2) such employee acted or failed to act because of actual fraud or actual malice;
- (3) the defense of the action or proceeding by the governmental entity would create a conflict of interest between the governmental entity and the employee; or
- (4) the request was not made in accordance with subsection (e).

(d) If after a timely request in accordance with subsection (e), a governmental entity fails or refuses to provide an employee with a defense and the employee retains the employee's

own counsel to defend the action or proceeding, or provide representation, such employee is entitled to recover from the governmental entity such reasonable attorney fees, costs and expenses as are necessarily incurred in defending the action or proceeding or providing representation if the action or proceeding or representation arose out of an act or omission in the scope of employment as an employee of the governmental entity and the trier of fact does not find that such employee acted or failed to act because of actual fraud or actual malice.

Nothing in this section shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the governmental entity or the governing body or an employee thereof to perform the duties imposed by this section.

Except as provided in subsection (a)(2), nothing in this section shall be construed to require a governmental entity to provide the defense or representation to any employee in a criminal or civil service proceeding.

(e) An employee's request for a governmental entity to provide for the defense of the employee or representation shall be made in writing within 15 days after service of process or subpoena upon the employee in the action. In actions involving employees of the state, such request shall be filed in the office of the attorney general. In actions involving employees of a municipality, such request shall be filed with the governing body thereof or as otherwise provided by such governing body. A governmental entity, in its discretion, may provide requested defense or representation for any of its employees who failed to make a request within the time prescribed by this subsection.

(f) Notwithstanding any other provision of law to the contrary, a governmental entity may reimburse an employee such reasonable attorney fees, costs and expenses as are necessarily incurred in defending a claim against the employee for punitive or exemplary damages if the governmental entity finds that:

- (1) The action or proceeding arose out of an act or omission in the scope of the employee's employment; and
- (2) the employee reasonably cooperated in good faith in the defense of the claim.

History: L. 1979, ch. 186, § 8; L. 1987, ch. 353, § 5; L. 1999, ch. 72, § 1; July 1.

75-6109

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6109. Same; indemnification of employee acting within scope of employment; no punitive or exemplary damages; recovery or defense costs by governmental entity. Except as otherwise provided in the Kansas [tort] claims act, a governmental entity is liable, and shall indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment. A governmental entity shall not be liable under the provisions of this act for any punitive or exemplary damages against an employee, nor for payment of any costs, judgments or settlements which are paid through an applicable contract or policy of insurance. The governmental entity shall have the right to recover any payments made by it for any judgment, or portion thereof, and costs or fees incurred by or on behalf of an employee's defense if the employee fails to cooperate in good faith in the defense of the claim or action or if the trier of fact finds that the act or omission of the employee was because of such employee's actual fraud or actual malice.

History: L. 1979, ch. 186, § 9; July 1.

75-6110

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6110. Same; costs for defense of municipalities or its employees; special liability expense fund, establishment and maintenance; tax levy. (a) Except as provided for school districts, payments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and indirect costs resulting from the implementation of this act may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose pursuant to subsection (b). School districts shall make such payments from the special liability expense fund of the school district.

(b) Whenever the governing body of any municipality shall determine that it is advisable to establish a special fund for the payment of such costs and to establish a reserve therefor, in lieu of paying the same out of the general or other existing fund of the municipality, such governing body may create and establish a special liability expense fund for the payment of such costs and may place therein any moneys received by the municipality from any source whatsoever which may be lawfully utilized for such purpose including the proceeds of tax levies hereinafter authorized and provided. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In making the budget of such municipality, the amounts credited to and the amount on hand in such special fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of such municipality.

(c) Whenever the governing body of any municipality which is authorized by law to levy taxes upon property has established a special liability expense fund under the provisions of this section and determines that moneys from other sources will be insufficient to pay such costs, the governing body may levy an annual tax upon all taxable tangible property within the municipality in an amount determined by the governing body to be necessary for such purpose and in the case of cities and counties, to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located in such city or county.

History: L. 1979, ch. 186, § 10; L. 1990, ch. 66, § 52; L. 2003, ch. 116, § 17; July 1.

75-6111

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6111. Same; purchase of insurance; interlocal agreements for purchase of insurance or pooling arrangements. (a) A governmental entity may obtain insurance to provide for (1) its defense, (2) for its liability for claims pursuant to this act, including liability for civil rights actions as provided in K.S.A. 75-6116 and amendments thereto, (3) the defense of its employees, and (4) for medical payment insurance when purchased in conjunction with insurance authorized by (1), (2) or (3) above.

Any insurance purchased under the provisions of this section may be purchased from any insurance company or association. In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto, except as provided in K.S.A. 76-749, and amendments thereto. With regard to claims pursuant to the Kansas tort claims act, insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of K.S.A. 75-6105 and amendments thereto shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased or, where the governmental entity has entered into a pooling arrangement or agreement pursuant to subsection (b)(2) and has provided for

coverage in excess of such limitation by ordinance or resolution of its governing body, in which case the limitation on liability shall be fixed at the amount specified in such ordinance or resolution.

(b) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

(1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or

(2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses.

History: L. 1979, ch. 186, § 11; L. 1986, ch. 330, § 4; L. 1987, ch. 74, § 16; L. 1987, ch. 353, § 6; July 1.

75-6112

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6112. Same; judgments against municipalities, payment; periodic payments, conditions; interest; structured annuities. (a) Upon motion of a municipality against whom final judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding 10 years. Any periodic payment upon becoming due and payable under the terms of the judgment shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest as provided in K.S.A. 16-204 and amendments thereto. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of 10 years. Nothing herein shall be construed to prohibit the use of structured annuities to satisfy judgments.

(b) A court may order periodic payments only if the court finds that:

(1) Payment of the judgment is not totally covered by insurance coverage obtained therefor; and

(2) funds for the current budget year and other funds of the municipality which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance obtained therefor.

History: L. 1979, ch. 186, § 12; L. 1987, ch. 353, § 7; July 1.

75-6113

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6113. Moneys for payment of judgments or settlements against municipalities, sources. Payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general

obligation bonds. Warrants or temporary notes issued under the authority of this section may mature serially at such yearly dates as to be payable by not more than 10 tax levies. Bonds issued under the authority of this section shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state.

History: L. 1979, ch. 186, § 13; L. 1987, ch. 354, § 1; L. 1990, ch. 66, § 53; May 31.

75-6114

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6114.

History: L. 1979, ch. 186, § 14; Repealed, L. 1981, ch. 360, § 5; July 1.

75-6115

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6115. Claims for damages against health care providers. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than:

- (1) A charitable health care provider;
- (2) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; or
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226 and amendments thereto.

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than those health care providers enumerated in subsection (a), arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(c) As used in this section:

(1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(2) "Charitable health care provider" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(3) "Health care provider" shall have the meaning ascribed to such term under K.S.A. 40-3401, and amendments thereto.

(4) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

(5) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

History: L. 1979, ch. 186, § 15; L. 1982, ch. 375, § 1; L. 1989, ch. 143, § 7; L. 1990, ch. 329, § 3; L. 1993, ch. 29, § 3; L. 1993, ch. 276, § 1; July 1.

75-6116

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6116. Defense and payment of liability and defense costs of employee in civil cases; payment of punitive or exemplary damages or reimbursement of related defense costs; compromise or settlement of claim; not a waiver of immunity; certain health care providers considered employees. (a) If an employee of a governmental entity is or could be subject to personal civil liability on account of a noncriminal act or omission which is within the scope of the employee's employment and which allegedly violates the civil rights laws of the United States or of the state of Kansas, the governmental entity:

(1) Shall provide for the defense of any civil action or proceeding which arises out of the act or omission and which is brought against the employee in the employee's official or individual capacity, or both, to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for the defense of actions and proceedings under the Kansas tort claims act; and

(2) may reimburse the employee attorney fees, costs and expenses incurred in defending a claim for punitive or exemplary damages in such action or proceeding to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for reimbursement of such fees, costs and expenses incurred in defending a claim for punitive or exemplary damages under the Kansas tort claims act.

(b) The governmental entity, subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, shall pay or cause to be paid any judgment or settlement of the claim or suit, including any award of attorney fees, and all costs and fees incurred by the employee in defense thereof if:

(1) The governmental entity finds that the employee reasonably cooperated in good faith in the defense of the action or proceeding;

(2) the trier of fact finds that the action or proceeding arose out of an act or omission in the scope of the employee's employment; and

(3) the trier of fact does not find that the employee acted or failed to act because of actual fraud or actual malice.

(c) Notwithstanding any other provision of law to the contrary, a governmental entity may pay any part of a judgment taken against an employee of the governmental entity that is for punitive or exemplary damages for the violation of the civil rights laws of the United States if the governmental entity finds that:

(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment;

(2) the employee reasonably cooperated in good faith in the defense of the claim; and

(3) the employee's act or omission was not the result of actual fraud or actual malice.

(d) The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial.

(e) A municipality may pay for the cost of providing defense, judgments and other costs involving actions for alleged civil rights violations in the same manner as that provided in the Kansas tort claims act.

(f) In actions described in subsection (a), a claim against the state or an employee of the state may be compromised or settled for and on behalf of the state or employee under the conditions and procedures provided by K.S.A. 75-6106 and amendments thereto for settlements of actions pursuant to the Kansas tort claims act.

(g) Nothing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States.

(h) For the purposes of this section only, a health care provider, as defined by K.S.A. 75-6115 and amendments thereto, who provides professional services at a state correctional

institution shall be considered an employee for the purposes of this section, even if such services were rendered pursuant to contract as an independent contractor.

History: L. 1979, ch. 186, § 16; L. 1983, ch. 299, § 2; L. 1985, ch. 293, § 1; L. 1987, ch. 353, § 8; L. 1989, ch. 279, § 1; July 1.

75-6117

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6117. Tort claims fund for payment of claims and defense expenses. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. Payment of a compromise or settlement shall be subject to approval by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired. No payment shall be made from the fund to satisfy a compromise, settlement or final judgment when there exists insurance coverage obtained therefor, except that payment shall be made from the fund to satisfy a compromise settlement or final judgment for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by (A) a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto, (B) a local health department as defined by K.S.A. 65-241 and amendments thereto or an employee thereof, or (C) an indigent health care clinic as defined by K.S.A. 75-6115 and amendments thereto, or an employee thereof, even if there exists insurance coverage obtained therefor.

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) When payment is made from the Kansas tort claims fund on behalf of the university of Kansas hospital authority, the authority shall transfer to the tort claims fund an amount equal to the payment made by the tort claims fund on behalf of the authority.

(e) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1981, ch. 360, § 2; L. 1983, ch. 299, § 3; L. 1990, ch. 329, § 4; L. 1991, ch. 268, § 2; L. 1991, ch. 182, § 6; L. 1993, ch. 29, § 4; L. 1995, ch. 83, § 1; L. 1998, ch. 12, § 16; Feb. 26.

75-6118

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 61.--KANSAS TORT CLAIMS ACT

75-6118. Settlement of claims under other statutes. Nothing in the Kansas tort claims act shall be construed to preclude settlement and payment of a claim pursuant to K.S.A. 46-920 or 46-922, and amendments thereto.

History: L. 1981, ch. 360, § 4; July 1.

75-6119

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6119. Exception from liability for members of governing body, appointive board, commission, committee or council of a municipality. (a) A member of a governing body of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or governing body.

(b) A member of any appointive board, commission, committee or council of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or board, commission, committee or council.

(c) Nothing in this section shall be construed to affect the liability of a municipality for damages caused by the negligent or wrongful act or omission of the governing body, or any appointive board, commission, committee or council, of the municipality, or any member thereof, and the negligence or wrongful act or omission of any member of such a governing body, board, commission, committee or council, when acting as such, shall be imputed to the municipality for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1987, ch. 353, § 2; July 1.

75-6120

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 61.--KANSAS TORT CLAIMS ACT

75-6120. Agreements for provision of gratuitous services by charitable health care providers; providers considered employees under act; rules and regulations; effect of claim on rate or cancellation of policy. (a) The secretary of health and environment may enter into agreements with charitable health care providers in which such charitable health care provider stipulates to the secretary of health and environment that when such charitable health care provider renders professional services to a medically indigent person such services will be provided gratuitously. The secretary of health and environment shall adopt rules and regulations which specify the conditions for termination of any such agreement, and such rules and regulations are hereby made a part of any such agreement. A charitable health care provider for purposes of any claim for damages arising as a result of rendering professional services to a medically indigent person, which professional services were rendered gratuitously at a time when an agreement entered into by the charitable health care provider with the secretary of health and environment under this section was in effect, shall be considered an employee of the state under the Kansas tort claims act.

(b) The secretary of health and environment shall establish by rules and regulations eligibility criteria for determining whether a person qualifies as a medically indigent person.

(c) Any claim arising from the rendering of or failure to render professional services by a charitable health care provider brought pursuant to the Kansas tort claims act shall not be considered by an insurance company in determining the rate charged for any professional liability insurance policy for health care providers or whether to cancel any such policy.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

History: L. 1990, ch. 329, § 1; L. 1991, ch. 268, § 3; April 25.

be approved if the secretary determines that the closure plan is protective of public health, safety, and the environment.

(b) The permittee shall not commence closure activities without the secretary's prior approval.

(c) Each permittee shall include the following information in the brine pond closure plan:

(1) The procedure for deactivating the various brine lines employed at the facility;

(2) the procedures for the remediation, removal, or disposal of brine, accumulated sludge in the brine pond, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the brine pond structure; and

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the brine pond. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

Article 53.—CHARITABLE HEALTH CARE PROVIDERS

28-53-1. Definitions. (a) "Agreement" means a written understanding between the secretary and a "charitable health care provider," as defined in K.S.A. 75-6102 and amendments thereto, regarding the rendering of professional services to a medically indigent person.

(b) "Department" means the Kansas department of health and environment.

(c) "Federally qualified health center" means one of the following:

(1) An entity that meets the requirements for federal funding in 42 USC 1396d(l)(2)(B) and has been designated as a "federally qualified health center" by the federal government; or

(2) an entity that, based on the recommendation of the federal health resources and services administration, is deemed to meet the requirements of the federal grant program and has been designated a "federally qualified health center look-alike" by the federal government but does not receive the federal grant funding specified in 42 USC 1396d(l)(2)(B).

(d) "Indigent health care clinic" has the meaning specified in K.S.A. 75-6102, and amendments thereto.

(e) "Local health department" has the meaning

specified in K.S.A. 65-241, and amendments thereto.

(f) (1) "Point of entry" means an entity that performs the following:

(A) Determines whether an individual meets the criteria for a medically indigent person;

(B) refers any medically indigent person to a charitable health care provider;

(C) has submitted a completed application to the department on forms prescribed by the department; and

(D) agrees to maintain records and submit an annual activity report as prescribed by the secretary.

(2) This term may include either of the following:

(A) An entity meeting the definition of "federally qualified health center" or "federally qualified health center look-alike"; or

(B) an entity meeting the definition of "charitable health care provider" in K.S.A. 75-6102, and amendments thereto.

(g) "Secretary" means the secretary of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009.)

28-53-2. Agreement. (a) Each person or entity applying for an agreement shall submit a completed application to the department on forms prescribed by the department.

(b) An agreement may be terminated by the secretary or the charitable health care provider with 30 days of prior written notice to the department. Failure of the charitable health care provider to maintain the required licensure shall constitute concurrent cancellation of the agreement. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009.)

28-53-3. Eligibility criteria for a medically indigent person. An individual shall qualify as a medically indigent person if a point of entry determines that the individual meets either of the following requirements:

(a) Is determined to be a member of a family unit earning at or below 200% of the current federal poverty level and is not indemnified against costs arising from medical and dental care by a policy of accident and sickness insurance, an employee health benefits plan, or any similar coverage; or

(b) is eligible for publicly funded health care programs administered by the Kansas health policy authority or the department or is qualified for Indian health services. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

28-53-4. Records and reports. (a) Each charitable health care provider shall ensure that each point of entry through which the charitable health care provider delivers care meets the following requirements:

(1) Maintains the completed forms prescribed by the department; and

(2) submits a completed annual activity report to the department on a form prescribed by the department.

(b) Failure of the charitable health care provider or the point of entry to comply with this regulation shall be grounds for termination of the agreement with the charitable health care provider. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

28-53-5. Referrals. Each referral of professional services shall be documented in the records of the point of entry. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

Article 70.—CANCER REGISTRY

28-70-4. Confidential data for follow-up patient studies. (a) For the purposes of this regulation, the following definitions shall apply:

(1) “Institutional review board” means an institutional review board established and conducted pursuant to 45 CFR 46.101 through CFR 46.117, as revised on October 1, 2008.

(2) “Person” shall mean a state university, a state agency, or a county health department.

(b) Each person with a proposal for a follow-up cancer study (“study”) shall submit the proposal to each of the following for approval before the commencement of the study:

(1) The person’s institutional review board;

(2) the department’s health and environmental institutional review board;

(3) the university of Kansas medical center’s institutional review board; and

(4) the cancer registry data release board.

(c) Each study not approved by each board specified in subsection (b) shall be returned to the

person for revisions. Any unapproved study may be resubmitted to each board.

(d) After receiving the approvals required in subsection (b) and before commencing the study, the person proposing the study shall submit the proposal for the study to the secretary or the secretary’s designee for approval.

(e) Each person conducting an approved study shall reimburse the cancer registry for all costs pertaining to the retrieval of confidential data. The cancer registry shall be credited by the person on any publication or presentation when the cancer registry data is used.

(f) Before proceeding with each study, the cancer registry director shall obtain informed consent from each individual who is the subject of the data or from that individual’s parent or legal guardian. The consent form shall accompany or follow the notice specified in subsection (g). Signing the consent form shall indicate that the individual has read and understands the information provided in the notice.

(g) The cancer registry director shall deliver a notice to each subject individual or the subject individual’s parent or legal guardian. Each notice shall include the following information:

(1) All details of the study to be conducted, including the purpose, methodology, and public health benefit; and

(2) the following information:

(A) Participation in the study is voluntary;

(B) the method of data collection will be at the convenience of the subject individual. Data will be collected in writing, by telephone, or by personal interview; and

(C) the subject individual will be provided with a summary of the final report of the study. (Authorized by and implementing K.S.A. 2008 Supp. 65-1,172; effective June 12, 2009.)

Article 73.—ENVIRONMENTAL USE CONTROLS PROGRAM

28-73-1. Definitions. (a) “Act” means K.S.A. 65-1,221 et seq. and amendments thereto.

(b) “Applicant” means the owner, as defined in K.S.A. 65-1,222 (c) and amendments thereto, of an eligible property who submits to the secretary an application for approval of environmental use controls for the eligible property.

(c) “Eligible property” means real property that exhibits environmental contamination exceeding department standards for unrestricted use and