

304.40-030 Joint underwriting association -- Health care provider categories -- Termination -- Powers of association.

- (1) A temporary joint underwriting association is hereby created, consisting of all insurers authorized to write and engage in writing in this state on a direct basis the following lines of insurance, as reported in the companies' annual statements:
- (a) Workers' compensation;
 - (b) Liability other than auto;
 - (c) Private passenger auto liability;
 - (d) Commercial auto liability;
 - (e) The liability portion of commercial multiperil policies; and
 - (f) Health insurance including prepaid hospital services contracts and group or blanket health insurance.

Every such insurer shall remain a member of the joint underwriting association as a condition of its authority to continue to transact such kinds of insurance in this state.

- (2) The implementation of the operation of the joint underwriting association shall become effective upon the order of the commissioner. The commissioner shall not order the association to commence underwriting operations until he or she, after due hearing and investigation, has determined that medical malpractice insurance cannot be made available in the voluntary market for any of the categories defined in subsection (3)(a), (b), and (c) of this section. The joint underwriting association shall remain in effect for a period of no longer than two and one-half (2-1/2) years from the date that it commences underwriting operations.
- (3) For the purposes of the joint underwriting association, three (3) health care provider categories shall be established:
- (a) Physicians and surgeons;
 - (b) Hospitals; and
 - (c) All other licensed health care providers.

The commissioner shall hold separate hearings and conduct investigations on each of the three (3) categories of health care providers and determine for each category whether or not medical malpractice insurance is readily available in the voluntary market. If the commissioner finds that insurance is not readily available for any of the categories of health care providers, the joint underwriting association shall commence underwriting operations for that category.

KRS 304.40-030 to 304.40-140 shall not preclude any licensed health care provider from procuring medical malpractice insurance from the voluntary market.

If the commissioner determines at any time that medical malpractice insurance is readily available in the voluntary market for either (a) physicians and surgeons, (b) hospitals, or (c) all other licensed health care providers, the association shall thereby cease its underwriting operations for such category of medical malpractice insurance which the commissioner has determined is readily available in the voluntary market.

- (4) The association shall, pursuant to the provisions of KRS 304.40-030 to 304.40-140 and the plan of operation with respect to medical malpractice insurance, have the power on behalf of its members:
- (a) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limitations as specified in the plan of operation, but not to exceed one hundred thousand dollars (\$100,000) for each claimant under one (1) policy and one million dollars (\$1,000,000) for all claimants under one (1) policy in any one (1) year;
 - (b) To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
 - (c) To assume reinsurance from its members;
 - (d) To cede reinsurance; and
 - (e) To negotiate and obtain in the voluntary market medical malpractice insurance for any health care provider to whom the association has issued or caused to be issued a policy of medical malpractice insurance with the foregoing limits.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1535, effective July 15, 2010. -- Created 1976 Ky. Acts ch. 164, sec. 3, effective June 19, 1976.