



**To: Kansas Health Stabilization Fund Legislative Oversight Committee**

**From: Kurt Scott, KAMMCO President & CEO**

**Date: November 21, 2024**

**Re: Report of the Kansas Health Care Provider Insurance Availability Plan (“Plan”) Servicing Carrier and Update on Health Care Professional Liability Market Conditions**

- KAMMCO is a Kansas domestic mutual insurance company formed in 1989 by the Kansas Medical Society to insure its members for medical professional liability and related lines of insurance. KAMMCO began insuring hospitals and other health care facilities in 1996 and is the preferred company of the Kansas Hospital Association and Leading Age of Kansas. KAMMCO insures half of the healthcare providers in the State of Kansas. In addition, KAMMCO has served as the Servicing Carrier for the Plan since July 1, 1990.
- The Plan serves as the “insurer of last resort” for defined healthcare providers who are required by statute to maintain professional liability insurance but are unable to obtain it in the regular market.
- The Plan currently insures 410 health providers (see Exhibit). The graph also serves as a reflection of the cyclical nature of the medical professional market over the years. As the market hardens or becomes more restrictive, healthcare providers gravitate to the Plan to find insurance. When market conditions soften or become less restrictive, healthcare providers leave the Plan and rejoin those insured by the regular market. The period from 2002-2010 demonstrates the effects of a hard market cycle, where underwriting requirements tighten, and prices move higher. The period beginning in 2021 signals the beginning of a tightening cycle. Much of the recent rise in healthcare providers insured by the Plan comes from market conditions for Adult Care Facilities, a likely result of conditions brought on by the COVID-19 pandemic.

**History of Adult Care Facilities Insured by the Plan**

<u>Year</u>	<u>Insured</u>
<b>2019</b>	<b>8</b>
<b>2020</b>	<b>20</b>
<b>2021</b>	<b>49</b>
<b>2022</b>	<b>58</b>
<b>2023</b>	<b>54</b>
<b>2024</b>	<b>59</b>

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- The Plan experienced a significant increase in Adult Care Facility claims in the past few years. For example, in calendar years 2018 and 2019, the Plan had 1 reported Adult Care Facility claim each year. The number of reported Plan Adult Care Facility claims jumped to 11 in calendar year 2020 (Plan year 2020-21), and has since nearly doubled again, with 19 of the total 24 Plan claims reported in calendar year 2023 being Adult Care Facility claims. This increase in claims has resulted in financial losses to the Plan, which are funded by the Fund and all health care providers in the state.
- While the COVID-19 pandemic influenced healthcare delivery nationwide, in many ways it also accelerated trends which were already underway in healthcare and in the healthcare professional liability insurance market.
- Legislation passed by the Kansas Legislature over the past few sessions to provide a level of immunity to healthcare providers appears to have mitigated the effects of COVID-19 related liability issues. A limited number of COVID related claims have been made in Kansas.
- After more than a decade of profitable underwriting results, the healthcare professional liability line of insurance has produced underwriting losses since 2014. There are various factors contributing to the underwriting losses experienced by the insurance industry, including but not limited to: 1) increasing claim severity; 2) an increase in the frequency of “mega verdicts” (verdicts in excess of \$10 million); 3) erosion of tort reform; 4) tightening terms and increasing rates for reinsurance programs; and 5) inadequacy of primary insurer rates due to a consolidating healthcare market creating greater competition for the remaining business opportunities.
- In Kansas, the uncertainty surrounding the State’s cap on non-economic damages resulting from the **Hilburn v. Enerpipe Ltd.** Kansas Supreme Court opinion leaves insurance companies wondering whether the **Miller v. Johnson** Supreme Court opinion (a medical malpractice case decided in 2012) remains persuasive precedent making the cap still applicable in medical professional liability cases.
- During the 2022 Session of the Kansas Legislature, the Nurse Practice Act (K.S.A. 65-1113 et. seq.), was amended to broaden the scope of practice for Advanced Practice Registered Nurses (APRN). These amendments to the Act also required APRNs to maintain malpractice insurance coverage as a condition of rendering professional clinical services as an APRN in Kansas. The amendments did not allow APRNs to be included in the definition of “health care provider” for the purposes of the Kansas Health Care Provider Insurance Availability Act.

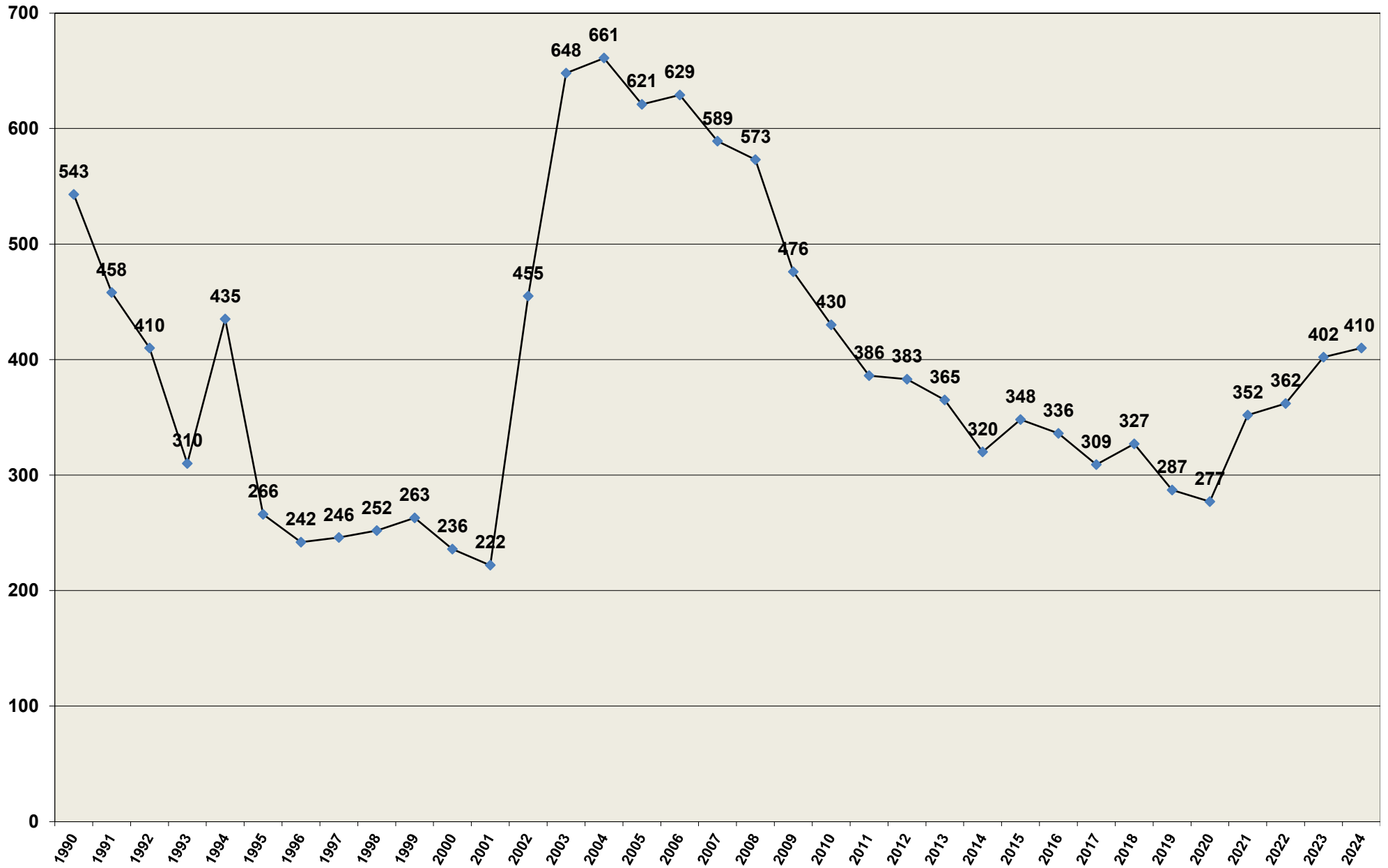
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- Because APRNs remain excluded from the definition of “health care provider,” they do not qualify for the liability coverage provided by the Kansas Health Care Stabilization Fund (Fund) that other advanced practice professionals (such as Physician Assistants and Nurse Anesthetists) have. Further, neither they nor their employers enjoy the same legal protections limiting vicarious liability claims.
- In December of 2022, KAMMCO compiled a closed claim study of KAMMCO insured APRN’s for the years of 2012-2021. KAMMCO’s study found that during this ten-year period APRN claims grew from rarely occurring with de minimis verdicts or settlements, to claim frequency, allegations, and verdicts or settlements equivalent to that of KAMMCO insured physicians and surgeons. A national study of claims activity undertaken by the MPL Association was consistent with the findings of the KAMMCO study. Liability claims against APRNs are becoming like claims against physicians but they do not have access to the same liability coverage or legal protections under Kansas law available to providers included in the Fund. This apparent trend, combined with their continued exclusion from Fund coverage, places APRNs in a challenging position from a medical professional liability perspective.
- In short, there are many headwinds affecting the medical professional liability insurance environment in Kansas and countrywide.
- Also, Senate Bill No. 78 of the 2021 Session of the Kansas Legislature, which increases the basic coverage from \$200,000 to \$500,000 per claim, appears to be working without any shocks to the insurance marketplace or loss of any insurers offering coverage.
- These challenges to the healthcare environment, taken together with macro-economic conditions of inflation and rising interest rates, are resulting in rate increases being felt by Kansas healthcare providers across all lines of insurance. In an era of rising costs and lower reimbursements, healthcare providers across the country are under significant stress, especially considering their experiences during the COVID-19 pandemic. These conditions (i.e., workforce issues, provider burnout, financial viability, etc.) seem likely to create additional risks and liabilities, which will be felt by the MPL insurance industry and the Health Care Stabilization Fund into the future.



# Total Plan Insureds



As of Plan Annual Meeting Held Each October