

**164.941 Basic coverage compensation fund -- Management and use -- Settlement of claims -- Contributions to funds.**

- (1) The board of trustees of the university may, at its election, establish a basic coverage compensation fund for the benefit and protection from liability of itself and its agents. Promptly after the board of trustees of said university has elected to establish a basic coverage compensation fund, the university shall pay to the State Treasurer the sum of three hundred fifty thousand dollars (\$350,000).
- (2) Upon receipt of said payment of three hundred fifty thousand dollars (\$350,000) the State Treasurer shall create a separate account to be designated as the "Basic Coverage Compensation Fund, University of Kentucky" and there shall be credited to said fund the initial payment of three hundred fifty thousand dollars (\$350,000), all income thereafter earned from the investment of said fund, and all contributions thereafter made by the university. Unexpended and unencumbered balances in any fund created hereunder shall be carried forward and be available for expenditure in succeeding fiscal years notwithstanding the provisions of KRS 45.229 or any other provision of the Kentucky Revised Statutes. No portion of said fund shall ever lapse to the general fund and income earned from the investment of funds standing to the credit of said account shall accrue and be credited thereto, notwithstanding the provisions of KRS 42.500 or any other provision of the Kentucky Revised Statutes. Upon termination of said fund for any reason, the balance therein shall revert to the university.
- (3) The funds held in any fund created under KRS 164.939 to 164.944 shall be expended solely in payment of claims for liability arising in favor of any patient from treatment performed or furnished, or treatment that should have been performed or furnished by the university or its agents. The liabilities which said fund shall be created to discharge are all liabilities from acts or omissions to act which may have occurred since July 1, 1975 and which may occur in the future which no entity other than the university and its agents is or will be obligated either by law or contract to pay and discharge.
- (4) No settlement shall be made of any claim for personal injury or death to any claimant arising out of the furnishing or failure to furnish medical care by the university and its agents, until and unless the board of trustees of the university, or its duly delegated agent or body has first approved of such settlement. The board of trustees of the university shall also have the right to determine whether or not an appeal shall be taken from any judgment rendered against it or its agents, when such claim is founded upon or arises out of the furnishing or failure to furnish medical care. Provided, however, that if the payment of a judgment would involve expenditures from appropriations of general funds of the Commonwealth under the provisions of subsection (8) of this section then any payment from said fund must also be approved by the secretary, or his delegate.
- (5) Funds held in an account created hereunder may be disbursed by the secretary only upon the written certification of the university, or its duly designated agent, of the amount to be disbursed and the name of the person or persons to whom such funds shall be paid.

- (6) Annual contributions to said fund shall be made by the university in an amount which will be not less than one hundred fifty percent (150%) of the average amounts actually paid in each year on medical malpractice claims for the five (5) years next preceding the making of the annual contribution. In the event the university terminates its commercial excess insurance coverage then said annual contributions shall be in the amount of two hundred fifty thousand dollars (\$250,000) with the first contribution being due and payable within twelve (12) months next following the month in which such insurance is terminated. Provided, however, that if the university and the secretary shall at any time in the future, based upon accepted actuarial principles, mutually determine that an annual contribution in a lesser amount will not impair the adequacy of the fund to satisfy existing and potential health care malpractice claims for a period of one year, then an annual contribution in such lesser amount as may be determined may be made.
- (7) The university shall be solely responsible for the investigation and servicing of all claims made against it arising out of medical malpractice and all costs, expenses and fees incurred in the investigation, servicing and defense of all such claims shall be borne and paid by the university.
- (8) Claims or judgments certified to be paid by the university shall be paid in the order received by the secretary. If the basic coverage compensation fund created hereunder shall at any time fail to have sufficient funds to pay all judgments, then they shall be paid out of the excess coverage fund upon certification of the obligation by the secretary and the university. Said excess fund shall be expended only upon exhaustion of the basic coverage compensation fund and any insurance from any source whatsoever.

**Effective:** July 1, 1983

**History:** Amended 1982 Ky. Acts ch. 382, sec. 27, effective July 15, 1982; and ch. 450, sec. 72, effective July 1, 1983. -- Amended 1978 Ky. Acts ch. 394, sec. 2, effective June 17, 1978. -- Created 1976 Ky. Acts ch. 348, sec. 3.