

39-7-118 Professional liability protection for certain persons ordered to active duty in the armed forces.

- (1) This section applies to a person who:
 - (a) is ordered to military service, other than training; and
 - (b) immediately before receiving the order to military service:
 - (i) was engaged in the furnishing of health-care services or other services determined by rule to be professional services; and
 - (ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the service member during the period of the service member's active duty unless the premiums are paid for coverage for that period.
- (2) Coverage of a person referred to in Subsection (1) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with Subsection (3) upon receipt of a written request by the service member.
- (3) A professional liability insurance carrier:
 - (a) may not require that premiums be paid by or on behalf of a service member for any professional liability insurance coverage suspended pursuant to Subsection (2); and
 - (b) shall refund any amount paid for coverage for the period of the suspension or, upon the election of the service member, apply the amount for the payment of any premium becoming due upon the reinstatement of the coverage.
- (4) A professional liability insurance carrier is not liable with respect to any claim that is based on professional conduct, including any failure to take any action in a professional capacity of a person that occurs during a period of suspension of that person's professional liability insurance under this section. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's military service is considered an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section, except in a case in which professional services were provided after the date of the beginning of the period.
- (5)
 - (a) Professional liability insurance coverage suspended in the case of any service member pursuant to Subsection (2) shall be reinstated by the insurance carrier on the date on which the service member transmits to the insurance carrier a written request for reinstatement.
 - (b) The request of a service member for reinstatement shall be effective only if the service member transmits the request to the insurance carrier within 30 days after the date on which the service member's military service is terminated. The insurance carrier shall notify the person of the due date for payment of the insurance premium. The premium shall be paid by the person within 30 days after receipt of the notice.
- (6) The period for which professional liability insurance coverage shall be reinstated for a service member under this section may not be less than the balance of the period for which coverage would have continued under the policy if the coverage had not been suspended.
- (7) An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any service member for the minimum period of the reinstatement of coverage required under Subsection (5) to an amount greater than the amount chargeable for the coverage for the period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for other persons similarly covered by the same insurance during the period of the suspension.
- (8) This section does not:

- (a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in Subsection (1) and who is covered by the same professional liability insurance as a person referred to in Subsection (1); or
 - (b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.
- (9) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under Subsection (2) shall be stayed until the end of the period of the suspension if:
- (a) the action was commenced during the period of suspension;
 - (b) the action is based on an act or omission that occurred before the date on which the suspension became effective; and
 - (c) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the person.

Enacted by Chapter 306, 1997 General Session