

**KANSAS WORKERS COMPENSATION
FUND**

*YEAR END REPORT
FY 2020*



**KANSAS
INSURANCE
DEPARTMENT**

Vicki Schmidt
Commissioner of Insurance



KANSAS INSURANCE DEPARTMENT

Vicki Schmidt, Commissioner

Kansas State Capitol
300 SW 10th Street
Topeka, Kansas 66612

Members of the Committee:

I am pleased to present to you the FY 2020 Annual Report of the Kansas Workers Compensation Fund ("Fund"). This report summarizes the activities of the Fund for the last five fiscal years through the period ending July 1, 2020. Years prior to FY 2016 are available upon request.

Pursuant to K.S.A. § 44-566a(h), this report includes recommendations about the advisability of continuation or termination of the Workers Compensation Fund, suggested changes to the Workers Compensation Act relating to the Fund, an analysis on changes in the Federal Americans with Disabilities Act that would impact the Fund, and recommendations on ways to reduce the claim and operational costs of the Fund.

As an overview, I propose the following recommendations:

1. The Fund should continue to provide benefits as provided by law;
2. The Fund recommends the Workers Compensation Act should be reviewed to determine if Legislative intent is to include reimbursements to employers seeking dismissal under K.S.A. § 44-523(f) when there has been no finding of an overpayment of benefits;
3. There is no direct impact on the Fund this year from the Americans with Disabilities Act or the Amendments of 2009;
4. Partnerships with outside vendors should continue in order to realize efficiencies; and
5. New strategies with Fund attorneys should continue to be developed to decrease costs and overall liabilities.

A more detailed analysis of these recommendations is included in the following report. Upon further review, if you have questions or concerns, please do not hesitate to contact me personally at KID.Commissioner@ks.gov or at 785-291-3299.

Sincerely,

Vicki Schmidt
Commissioner of Insurance

I. General Overview

The Kansas Workers Compensation Fund (“Fund”) was established in 1993 when the Legislature amended Kansas workers compensation laws. The 1993 changes abolished the Kansas Second Injury Fund. However, the Fund retained the liability for the existing Kansas Second Injury Fund cases. In addition, the Fund remains liable for cases in which an employer does not carry workers compensation insurance and is financially unable to pay for work injuries to its employees. The Fund is also liable for Director Certifications, which are reimbursements to insurance carriers or employers in cases when there has been an overpayment of benefits to a claimant for reasons such as fraud or mistake, or when a claim is found to be not compensable. An analysis of the liability for each of these claims is detailed below.

a. Second Injury Fund

The purpose behind the now dissolved Second Injury Fund was to incentivize employers to hire people with previous injuries or disabilities. Employers were understandably hesitant to hire someone with a previous injury because of the risk that the employee will suffer a second injury.

The Second Injury Fund was held partially or fully liable for claims if the employer could establish that it knowingly hired or retained a previously injured employee with knowledge of the preexisting injury, or when the employee intentionally misrepresented the existence of a pre-existing injury and the employer hired them without knowledge of that condition.

b. Workers Compensation Fund

The 1993 legislative changes represented a significant policy shift. The Fund is no longer used to incentivize employers to hire previously injured employees. Instead, the Fund is now brought into a case (impleaded) when an injured worker’s employer is uninsured and unable to pay for the medical and disability payments or, in some cases, cannot be located.

The Fund essentially steps into the shoes of the employer when impleaded. If an Administrative Law Judge (ALJ) finds the injury is compensable, the employer was uninsured at the time of the accident,

and the employer is unable to pay expenses related to the injury, the ALJ will order the Fund to begin making payments to the claimant for disability payments for lost wages and due to loss of function and to medical providers for medical treatment. The Fund is able to seek reimbursement from the employer in some cases in a separate civil action.

II. Federal Medicare and ADA Requirements affecting the Fund

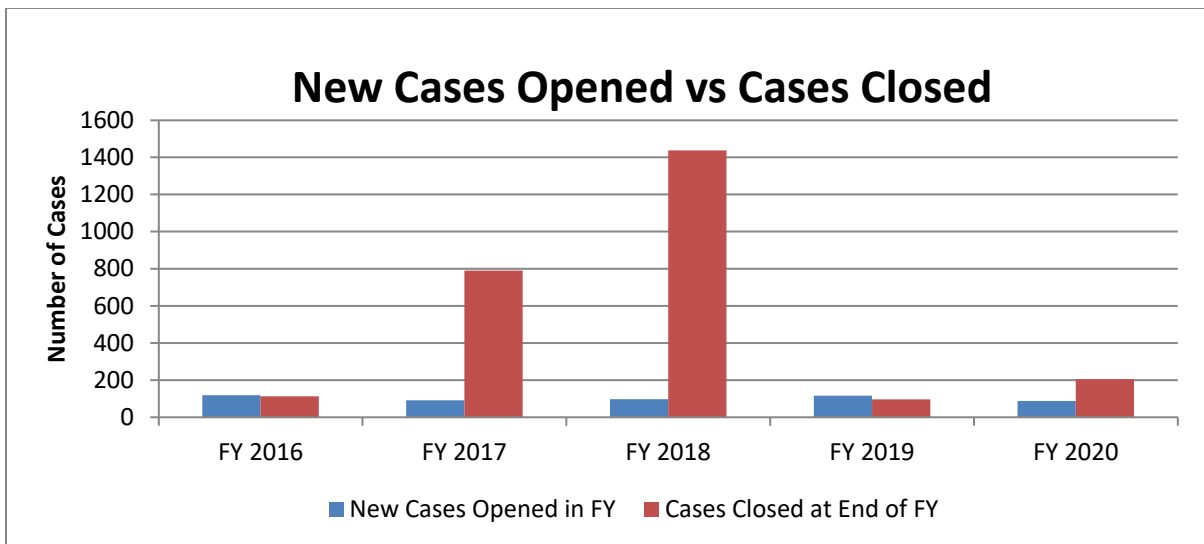
In instances where Medicare inadvertently pays for medical treatment related to an injury under the Workers Compensation Act, Medicare will seek reimbursement from the primary payer. The Fund is required by 42 U.S.C.A. 1395y to report claims where the injured employee is Medicare eligible to the Center for Medicare and Medicaid Services (CMS). To date, the Fund has met its reporting obligation and CMS has acknowledged receipt of the data. This year’s data submission identified 252 Medicare beneficiaries for whom the Fund has either a current or a permanent obligation to provide medical services.

III. Case Information

The Fund continues to work to close cases that have been dormant for more than 10 years. A total of 205 cases were closed in FY 2020 and open cases continue to be reviewed to identify inactive status in order to investigate possible closure. It is anticipated that this continued focus on closing claims will decrease overall Fund liability in the coming years.

Open Case Statistics

<i>Fiscal Year</i>	<i>New Cases Opened in FY</i>	<i>% Change from prior FY</i>	<i>Cases Closed at End of FY</i>	<i>% Change from Prior FY</i>	<i>Open Cases at End of FY</i>	<i>% Change from prior FY</i>
<i>FY 2016</i>	119	+11.22%	113	+32.95%	3,950	>+0.003%
<i>FY 2017</i>	91	-23.53%	790	+599.12%	3,250	-17.72%
<i>FY 2018</i>	97	+6.59	1,437	+81.90%	1,920	-40.92%
<i>FY 2019</i>	116	+19.59%	96	-93.32%	1,948	1.46%
<i>FY 2020</i>	88	-24.14%	205	113.54%	1,837	-5.70%



IV. Financial

The Fund receives income from three sources: (1) assessments of workers compensation carriers, self-insurers, and group-funded pools (“carriers”), (2) reimbursements from uninsured employers, and (3) fines levied against uninsured employers by the Kansas Department of Labor’s Division of Workers Compensation. Assessments are based on a carrier’s total paid losses for the prior year. Paid losses are the amount of money expended in the payment of claims for a carrier. The Fund’s expenses are discussed in more detail below and listed in the following tables.

<u>Receipt Analysis</u>		<u>Disbursement of Expenditures</u>	
FY 2020 (July 2019-June 2020)		FY 2020	
Assessment Receipts	\$ 1,546,886.02	Court Costs	\$ 121,391.50
Gen. Fund Entitlement	\$ -	Case Management	\$ 6,408.58
Fine & Penalties Receipts	\$ 96,929.15	Director's Certification	\$ 929,208.27
Misc. Reimbursements	\$ 234,236.30	Compensation Costs	\$ 868,702.24
TOTAL RECEIPTS	\$ 1,878,051.47	Medical Costs	\$ 1,130,251.02
LEGISLATIVE TRANSFER	\$ -	Other Operating Costs	\$ 258,108.38
Previous Year Carryover	\$ 7,964,043.87	Attorney Fee Expenses	\$ 538,280.26
LEGISLATIVE SWEEP	\$ -	Accounts Payable	\$ 2,118.24
TOTAL FUNDS AVAILABLE	\$ 9,842,095.34	TOTAL EXPENDITURES	\$ 3,854,468.49
TOTAL END BALANCE	\$ 5,987,626.85		

<u>Receipt Analysis</u>		<u>Disbursement of Expenditures</u>	
FY 2019 (July 2018-June 2019)		FY 2019	
Assessment Receipts	\$ 791,509.69	Court Costs	\$ 49,869.69
Gen. Fund Entitlement	\$ -	Case Management	\$ 8,121.68
Fine & Penalties Receipts	\$ 113,632.33	Director's Certification	\$ 1,675,524.89
Misc. Reimbursements	\$ 103,389.63	Compensation Costs	\$ 721,531.90
TOTAL RECEIPTS	\$ 1,008,531.65	Medical Costs	\$ 530,235.49
LEGISLATIVE TRANSFER	\$ -	Other Operating Costs	\$ 254,837.33
Previous Year Carryover	\$ 10,625,152.89	Attorney Fee Expenses	\$ 429,519.69
LEGISLATIVE SWEEP	\$ -		
TOTAL FUNDS AVAILABLE	\$ 11,633,684.54	TOTAL EXPENDITURES	\$ 3,669,640.67
TOTAL END BALANCE	\$ 7,964,043.87		

<u>Receipt Analysis</u>		<u>Disbursement of Expenditures</u>	
FY 2018 (July 2017-June 2018)		FY 2018	
Assessment Receipts	\$ 2,653,115.81	Court Costs	\$ 48,108.83
Gen. Fund Entitlement		Vocational Rehabilitation	\$ -
Fine & Penalties Receipts	\$ 112,895.78	Director's Certification	\$ 3,304,859.68
Misc. Reimbursements	\$ 190,975.30	Compensation Costs	\$ 781,209.78
TOTAL RECEIPTS	\$ 2,956,986.89	Medical Costs	\$ 654,586.40
LEGISLATIVE TRANSFER	\$ 2,355,000.00	Other Operating Costs	\$ 203,672.96
Previous Year Carryover	\$ 10,615,364.55	Attorney Fee Expenses	\$ 309,396.41
LEGISLATIVE SWEEP	\$ -		
TOTAL FUNDS AVAILABLE	\$ 15,927,351.44	TOTAL EXPENDITURES	\$ 5,301,834.06
TOTAL END BALANCE	\$ 10,625,152.89		

<u>Receipt Analysis</u>		<u>Disbursement of Expenditures</u>	
FY 2017 (July 2016-June 2017)		FY 2017	
Assessment Receipts	\$ 3,650,561.03	Court Costs	\$ 48,680.14
Gen. Fund Entitlement	\$ -	Vocational Rehabilitation	\$ 4,875.77
Fine & Penalties Receipts	\$ 192,982.12	Director's Certification	\$ 1,434,120.88
Misc. Reimbursements	\$ 110,813.48	Compensation Costs	\$ 659,449.45
TOTAL RECEIPTS	\$ 3,954,356.63	Medical Costs	\$ 757,177.33
LEGISLATIVE TRANSFER	\$ -	Other Operating Costs	\$ 202,279.06
Previous Year Carryover	\$ 10,030,389.47	Attorney Fee Expenses	\$ 262,984.55
LEGISLATIVE SWEEP	\$ -		\$ -
TOTAL FUNDS AVAILABLE	\$ 13,984,746.10	TOTAL EXPENDITURES	\$ 3,369,567.18
TOTAL END BALANCE	\$ 10,615,364.55		

<u>Receipt Analysis</u>		<u>Disbursement of Expenditures</u>	
FY 2016 (July 2015-June 2016)		FY 2016	
Assessment Receipts	\$ 3,143,617.45	Court Costs	\$ 41,122.69
Gen. Fund Entitlement	\$ -	Vocational Rehabilitation	\$ 208.16
Fine & Penalties Receipts	\$ 148,434.14	Director's Certification	\$ 1,255,844.80
Misc. Reimbursements	\$ 65,266.66	Compensation Costs	\$ 690,908.30
TOTAL RECEIPTS	\$ 3,357,318.25	Medical Costs	\$ 1,201,418.52
LEGISLATIVE TRANSFER	\$ -	Other Operating Costs	\$ 186,561.44
Previous Year Carryover	\$ 10,360,511.77	Attorney Fee Expenses	\$ 311,378.71
LEGISLATIVE SWEEP	\$ -		\$ -
TOTAL FUNDS AVAILABLE	\$ 13,717,830.02	TOTAL EXPENDITURES	\$ 3,687,442.62
TOTAL END BALANCE	\$ 10,030,389.47		

a. Liabilities

In FY 2020, there was a slight increase of 1.75% in total liabilities over the prior fiscal year. While expenditures in most categories decreased, there was an increase in attorney fees due to several complex and highly litigated claims. Most of the decrease was attributable to a reduction in the number and amount paid in Director Certifications, although these expenditures continue to be one of the Fund's largest liability and there was a period of time in which payments were pended during litigation on certifications issued in dismissal cases. Those pended payments were made in FY 2021 and will likely skew totals next year. Director Certifications represent the Fund's statutory¹ obligation to reimburse an insurance carrier or employer for money expended during a case over the amount ultimately determined to be owed.

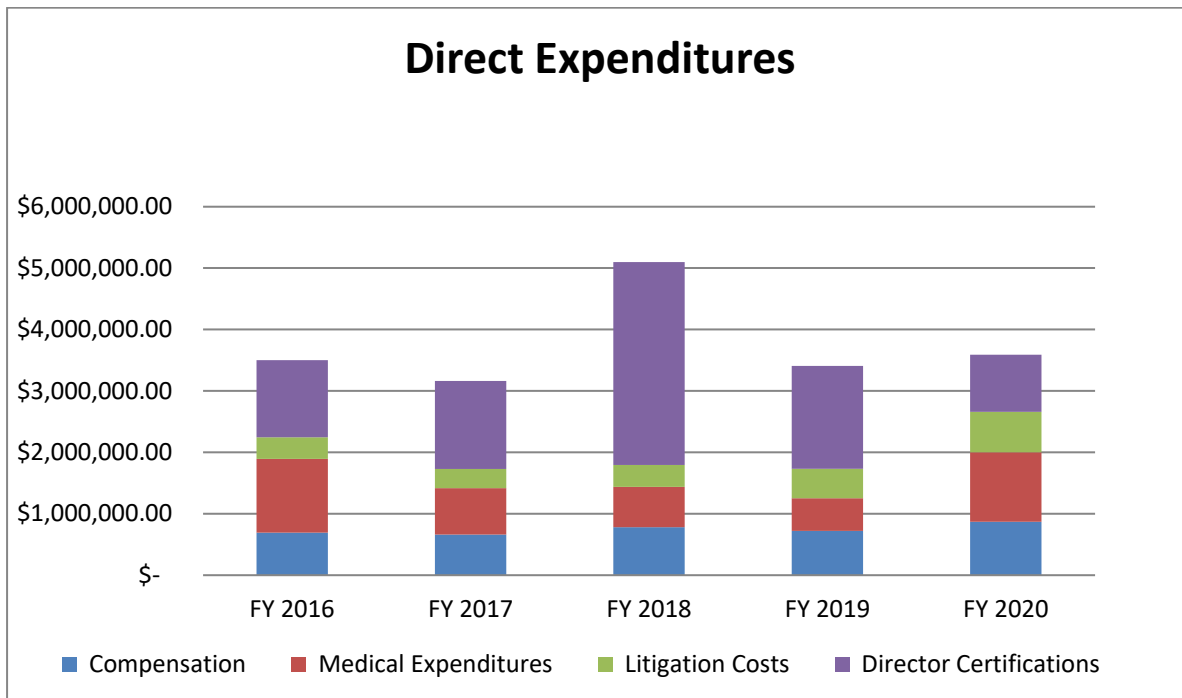
The typical scenario involves an employer that pays benefits up front and it is later determined the claim was not compensable or the employee failed to pursue the claim. Often times the Fund is not made a party to the underlying claim. The Fund has not been able to successfully assert a right to appeal a Director Certification, but the issue continues to be explored. In previous reports, certain litigation costs

¹ K.S.A. 44-566a.

were considered indirect liabilities, but have now been included in total direct liabilities as these are true Fund liabilities.

<i>Total Direct Liabilities</i>					
Fiscal Year	Compensation	Medical Expenditures	Litigation Costs	Director Certifications	Total
FY 2016	\$ 690,908.30	\$1,201,418.52	\$ 352,501.40	\$1,255,844.80	\$3,500,673.02
FY 2017	\$ 659,449.45	\$757,177.33	\$ 311,664.69	\$1,434,120.88	\$3,162,412.35
FY 2018	\$ 781,209.78	\$ 654,586.40	\$ 357,505.24	\$ 3,304,859.68	\$ 5,098,161.10
FY 2019	\$ 721,531.90	\$ 530,235.49	\$ 479,389.38	\$ 1,675,524.89	\$ 3,406,681.66
FY 2020	\$ 868,702.24	\$ 1,130,251.02	\$ 659,671.76	\$ 929,208.27	\$ 3,587,833.29

*Note: Previous Annual Reports did not include court reporting and deposition fees as direct liabilities.



i. Disability Compensation

The purpose of disability compensation is twofold. First, it aims to compensate a person for the loss in function of a body part or psychological trauma. Second, it compensates an injured person for his or her inability to work. In FY 2020, the Fund experienced a 7.36% increase in total disability compensation paid. The increase was due to higher cost permanent partial disability cases and lump sum

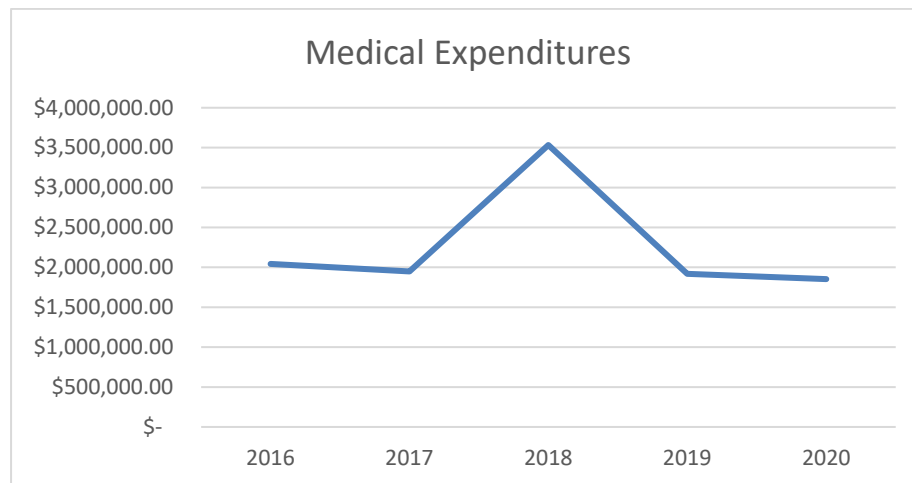
payments, but there was a reduction in the amount paid for temporary total disability. Lump sum payments are generally made for settlements that limit future payment for medical expenses and attorney fees. Claims will continue to be reviewed to identify possible settlement opportunities.

Yearly Compensation Payments

Fiscal Year	Payment Types					
	Lump Sum	Permanent Partial Disability	Permanent Total Disability	Temporary Partial Disability	Temporary Total Disability	Total Compensation Paid
2016	\$ 244,246.98	\$ 72,504.32	\$ 125,299.01	\$ 1,242.54	\$ 661,715.44	\$ 1,105,008.29
2017	\$ 283,634.00	\$ 69,893.37	\$ 76,366.07	\$ 7,119.40	\$ 465,900.31	\$ 902,913.15
2018	\$ 345,791.07	\$ 48,066.49	\$ 40,895.51	\$ 697.73	\$ 772,155.93	\$ 1,207,606.73
2019	\$ 396,261.99	\$ 65,454.88	\$ 27,313.36	\$ 629.17	\$ 519,014.59	\$ 1,008,673.99
2020	\$ 596,354.41	\$ 101,439.12	\$ 23,318.21	\$ 9,757.63	\$ 352,066.45	\$ 1,082,935.82

ii. Medical Expenditures

In FY 2020, the Fund decreased its medical expenditures by 3.44% from the previous year. The Fund utilizes a third party administrator (TPA) in the oversight and management of claims. The TPA has assisted the Fund with bill review, ensuring submitted claims are related to the work-related injury and implementing other best practices, such as use of: (1) a preferred provider network (2) a pharmacy card program, and (3) nurse case managers. With the use of these tools, the Fund should be able to continue to stabilize medical expenditures in the coming years.



iii. Litigation Costs

This category includes attorney fees as well as court reporter and deposition fees. The Fund contracts with attorneys to manage costs and increase efficiency. Currently, the Fund has 14 attorneys accepting new assignments. Attorneys are paid \$ per hour. In FY 2020, total attorney fees increased by 25.3%. The increase was due to continued litigation on several complex claims. However, the attorneys fees increased at a lower rate than the previous year. The Fund continues to analyze billing and will work to find ways to increase efficiencies to try to reduce continued growth in this expenditure category.

Dollars of Compensation Paid Per Dollar of Attorney Fees

Fiscal Year	Attorney Hours Paid	Fund Attorney Fees Paid	Claimant Attorney Fees Paid	Total Attorney Fees
FY 2016	3,663	\$ 311,378.71	\$ -	\$ 311,378.71
FY 2017	2,505	\$ 262,984.55	\$ -	\$ 262,984.55
FY 2018	2,947	\$ 306,278.91	\$ 3,117.50	\$ 309,396.41
FY 2019	3,436	\$ 429,519.69	\$ -	\$ 429,519.69
FY 2020	4,280	\$ 535,060.26	\$ 3,220.00	\$ 538,280.26

iv. Director Certifications

Currently, Director Certifications represent 24.11% of the Fund's overall expenses. As seen in the following table, the dollar amount reimbursed to employers and insurance carriers substantially increased in FY 2018 and is highly unpredictable from year to year. Director Certifications in FY 2020 decreased significantly from FY 2019 and FY 2018, however as previously discussed some certifications received in FY 2020 were not paid until FY 2021.

In October 2018, the Kansas Court of Appeals ruled in *Travelers Casualty Insurance v. Larry G. Karns*,² that "the Fund must be impleaded, as provided in K.S.A. 2017 Supp. 44-566a(c)(1), if it may be responsible for reimbursing benefits." The Court remanded the proceeding to the Workers Compensation

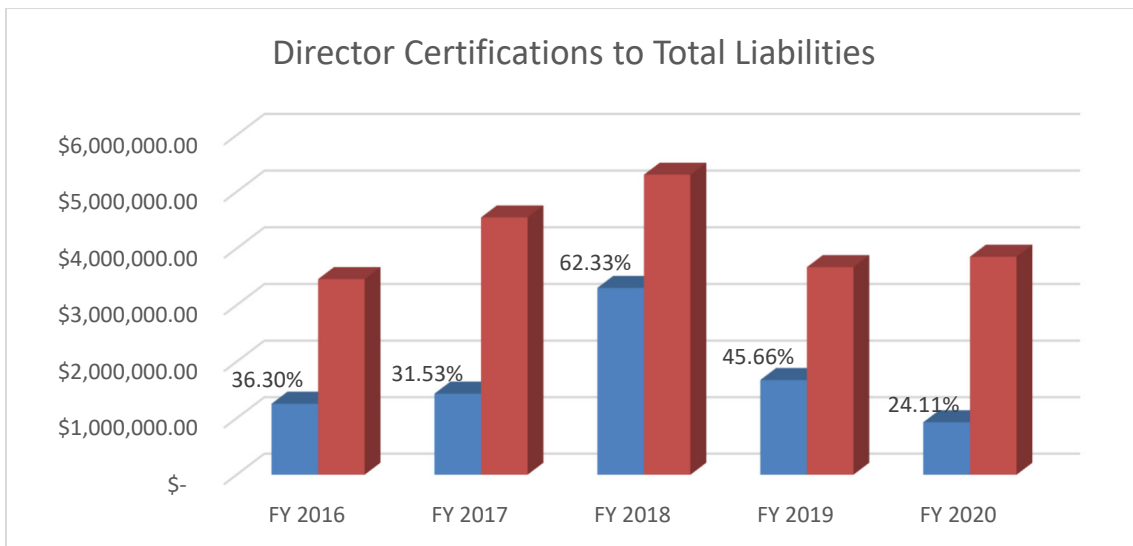
² 56 Kan. App. 2d 388, 431 P.3d 301 (2018).

Board for a determination of whether “the Fund should be impleaded consistent with K.S.A. 2017 Supp. 44-566a(c)(1),³ given the various arguments that it might be liable for preliminary medical benefits.” The Board confirmed the Fund should be impleaded consistent with K.S.A. 2017 Supp. 44-566a(c)(1). The Board also discussed the concern that *Travelers* is being interpreted as requiring the Fund to be brought into all cases in which it might possibly have to pay benefits and stated that should not be the case. The Board distinguished that K.S.A. 44-556(e) might be the sort of proceeding requiring the Fund to contest liability but if the Fund cannot litigate K.S.A. 44-534a(b) reimbursement, impleading into similar situations seems wholly unnecessary. The case was again appealed to the Kansas Court of Appeals and the Fund continues to be impleaded in these types of cases while the decision is pending. While the Fund generally monitors these cases in-house, an increase in resources and expenses may be seen if there is not clarifying case law or statutory changes in the future. One of the largest concerns for the Fund is paying certifications issued when a case is dismissed pursuant to K.S.A. 44-523(f) when there is no finding of an overpayment of benefits.

Director Certifications

<i>Fiscal Year</i>	<i>Amount Paid</i>	<i>Number of Certifications</i>
FY 2016	\$1,255,844.80	52
FY 2017	\$1,434,120.88	47
FY 2018	\$3,304,859.68	47
FY 2019	\$1,675,524.89	26
FY 2020	\$929,208.27	20

³ *Travelers Casualty Insurance v. Larry G. Karns, et al.*, Docket No. AP-00-0430-895 (Kansas Workers Compensation Board, 2019).

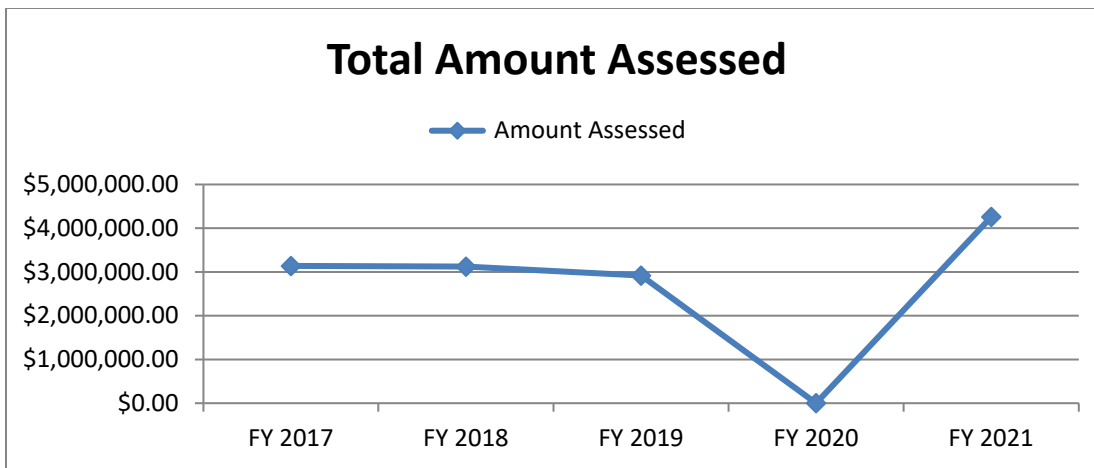


b. Revenue Sources

<i>Annual Workers' Compensations Assessments</i>			
Fiscal Year	Number of Assessed Entities	Assessment Rate	Amount Assessed
FY 2017	478	0.75%	\$3,135,907.92
FY 2018	481	0.75%	\$3,121,389.43
FY 2019	469	0.75%	\$2,917,645.55
FY 2020	0	0.00%	\$0.00
FY 2021	447	1.00%	\$4,259,791.63

i. Annual Assessment

Pursuant to K.S.A. 44-566a, the fees assessed from self-insurers, insurance carriers, and group funded pools are due every year on July 1. The rate of the assessment should be “equal to the amount sufficient, in the opinion of the Commissioner of Insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year.” After analyzing the Fund balance and estimated liabilities, the Commissioner issued an assessment of 1.00% that was due July 1, 2020 (for FY 2021). The amount collected from the assessment totaled \$4,259,791.63.



ii. Reimbursements from Employers

The Fund has the right to reimbursement of all money paid on behalf of an uninsured employer in the course of litigation. The Fund always seeks to obtain reimbursement from the uninsured employer. Fund attorneys attempt to enter into a voluntary reimbursement agreement with the employer during the course of the case. If, by the end of the case, an employer refuses to enter into an agreement, the Fund attorney will proceed with a civil action against the employer. Unfortunately, at this stage, many employers have entered into bankruptcy proceedings or have taken other actions to make collection difficult. The Fund continues to work with employers to find ways to increase collections in this area and has seen an increase over last year in the number of cases we have been able to collect on and in the total amount collected.

Reimbursement Collected from Employers		
Fiscal Year	Amount of Reimbursement	Number of Cases
FY 2016	\$ 65,266.66	25
FY 2017	\$ 110,813.48	25
FY 2018	\$ 190,975.30	23
FY 2019	\$ 103,389.63	18
FY 2020	\$ 234,236.30	29

iii. Fraud and Abuse Fines

All employers who are subject to the Act must obtain workers compensation insurance, qualify as self-insured, or belong to a qualified group-funded pool under K.S.A 44-532(b). If an employer knowingly fails to secure payment of workers compensation through one of these three methods, the Kansas Department of Labor’s Division of Workers Compensation may assess a civil penalty in the amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.⁴ Civil penalties collected are credited to the Workers Compensation Fund. The Fund has and will continue to notify the Division of Workers Compensation about possible fraud and abuse, and provide the assistance the Division requires in their investigations.

Section 44-532 Fines Deposited with Fund		
<i>Fiscal Year</i>	<i>Amount Deposited</i>	<i>Fined Employers</i>
<i>FY 2016</i>	\$148,434.14	47
<i>FY 2017</i>	\$192,982.12	33
<i>FY 2018</i>	\$112,895.78	34
<i>FY 2019</i>	\$113,632.33	46
<i>FY 2020</i>	\$96,929.15	32

V. Claim and Operational Cost Efficiencies

During FY 2017, the Fund began to develop a new system for claims handling in an effort to reduce costs and increase the Fund’s reimbursement ratio. Under the previous claims-handling system, Fund attorneys were tasked with performing all aspects of claim management, including litigating the underlying workers compensation claim, filing reimbursement cases, negotiating fees for medical providers, reviewing medical invoices, etc. Many of these tasks can be performed by other providers at a lower overall cost to the Fund. The Fund utilizes the TPA for specialized medical review. This has helped the Fund continue to see a decrease in medical expenditures. In addition, the Fund continues to explore

⁴ See K.S.A. 44-532(d).

ways to improve the collection process to increase reimbursements from employers in cases where resources or assets are available.

To control claims and operational costs, Fund staff reviews all invoices for attorney fees and an annual audit of attorney fee billings is completed. The Fund pays a fee of \$125.00 per hour to outside counsel to handle its cases. To keep legal costs contained, the Fund Staff Attorney continues in-house representation in certain cases. In addition, the Fund recently implemented the requirement of billing coding to further analyze data and identify possible inefficiencies. Case reporting has also been adjusted to reduce unnecessary billing.

VI. Conclusion

The data contained within this report illustrates recent Fund reforms are working to help reduce expenditures and increase efficiencies. Previously, open claims hovered near 4,000. That number now remains consistently closer to 1,800. As cases are further reviewed, there is a real possibility the number of open claims could reach less than 1,000 which would be a significant accomplishment for the Fund. In addition to reducing the number of open claims, recent reforms have ensured medical claims are vetted and not erroneously paid – leading to a better financial position for the Fund. The Commissioner of Insurance is committed to continued improvement of the administration of the Kansas Workers Compensation Fund in all areas.