

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2325

By Committee on Insurance

2-7

1 AN ACT concerning insurance; relating to the healthcare provider  
2 insurance availability act; adding maternity center to the definition of  
3 "healthcare provider" contained therein; amending K.S.A. 40-3401 and  
4 repealing the existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 40-3401 is hereby amended to read as follows: 40-  
8 3401. As used in this act:

9 (a) "Applicant" means any healthcare provider.

10 (b) "Basic coverage" means a policy of professional liability  
11 insurance required to be maintained by each healthcare provider pursuant  
12 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.

13 (c) "Commissioner" means the commissioner of insurance.

14 (d) "Fiscal year" means the year commencing on the effective date of  
15 this act and each year, commencing on the first day of July thereafter.

16 (e) "Fund" means the healthcare stabilization fund established  
17 pursuant to K.S.A. 40-3403(a), and amendments thereto.

18 (f) (1) "Healthcare provider" means a-:

19 (A) Person licensed to practice any branch of the healing arts by the  
20 state board of healing arts, ~~a-~~;

21 (B) person who holds a temporary permit to practice any branch of  
22 the healing arts issued by the state board of healing arts, ~~a-~~;

23 (C) person engaged in a postgraduate training program approved by  
24 the state board of healing arts, ~~a-~~;

25 (D) medical care facility licensed by the state of Kansas, ~~a-~~;

26 (E) podiatrist licensed by the state board of healing arts, ~~a-~~;

27 (F) health maintenance organization issued a certificate of authority  
28 by the commissioner, ~~an-~~;

29 (G) optometrist licensed by the board of examiners in optometry, ~~a-~~;

30 (H) pharmacist licensed by the state board of pharmacy, ~~a-~~;

31 (I) licensed professional nurse who is authorized to practice as a  
32 registered nurse anesthetist, ~~a-~~;

33 (J) licensed professional nurse who has been granted a temporary  
34 authorization to practice nurse anesthesia under K.S.A. 65-1153, and  
35 amendments thereto, ~~a-~~;

36 (K) professional corporation organized pursuant to the professional

1 corporation law of Kansas by persons who are authorized by such law to  
2 form such a corporation and who are healthcare providers as defined by  
3 this subsection;~~a;~~

4 (L) Kansas limited liability company organized for the purpose of  
5 rendering professional services by its members who are healthcare  
6 providers as defined by this subsection and who are legally authorized to  
7 render the professional services for which the limited liability company is  
8 organized;~~a;~~

9 (M) partnership of persons who are healthcare providers under this  
10 subsection;~~a;~~

11 (N) Kansas not-for-profit corporation organized for the purpose of  
12 rendering professional services by persons who are healthcare providers as  
13 defined by this subsection;~~a;~~

14 (O) nonprofit corporation organized to administer the graduate  
15 medical education programs of community hospitals or medical care  
16 facilities affiliated with the university of Kansas school of medicine;~~a;~~

17 (P) dentist certified by the state board of healing arts to administer  
18 anesthetics under K.S.A. 65-2899, and amendments thereto;~~a;~~

19 (Q) psychiatric hospital licensed prior to January 1, 1988, and  
20 continuously thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its  
21 repeal, and K.S.A. 39-2001 et seq., and amendments thereto, or a mental  
22 health center or mental health clinic licensed by the state of Kansas. ~~On~~  
23 ~~and after January 1, 2015, "healthcare provider" also means a;~~

24 (R) physician assistant licensed by the state board of healing arts;~~a;~~

25 (S) licensed advanced practice registered nurse who is authorized by  
26 the board of nursing to practice as an advanced practice registered nurse in  
27 the classification of a nurse-midwife;~~a;~~

28 (T) *maternity center; if such maternity center has been granted*  
29 *accreditation by the commission for accreditation of birth centers* ~~or~~ *and*  
30 *if such maternity center is a maternity center as defined in K.S.A. 65-503,*  
31 *and amendments thereto;*

32 (U) licensed advanced practice registered nurse who has been granted  
33 a temporary authorization by the board of nursing to practice as an  
34 advanced practice registered nurse in the classification of a nurse-midwife;  
35 ~~a;~~

36 (V) nursing facility licensed by the state of Kansas;~~aa;~~

37 (W) assisted living facility licensed by the state of Kansas; or

38 (X) a residential healthcare facility licensed by the state of Kansas.

39 (2) "Healthcare provider" does not include: ~~(1)~~

40 (A) Any state institution for people with intellectual disability; ~~(2)~~

41 (B) any state psychiatric hospital; ~~(3)~~

42 (C) any person holding an exempt license issued by the state board of  
43 healing arts or the board of nursing; ~~(4)~~

1 (D) any person holding a visiting clinical professor license from the  
2 state board of healing arts;~~(5)~~

3 (E) any person holding an inactive license issued by the state board of  
4 healing arts;~~(6)~~

5 (F) any person holding a federally active license issued by the state  
6 board of healing arts;~~(7)~~

7 (G) an advanced practice registered nurse who is authorized by the  
8 board of nursing to practice as an advanced practice registered nurse in the  
9 classification of nurse-midwife or nurse anesthetist and who practices  
10 solely in the course of employment or active duty in the United States  
11 government or any of its departments, bureaus or agencies or who  
12 provides professional services as a charitable healthcare provider as  
13 defined under K.S.A. 75-6102, and amendments thereto; or~~(8)~~

14 (H) a physician assistant licensed by the state board of healing arts  
15 who practices solely in the course of employment or active duty in the  
16 United States government or any of its departments, bureaus or agencies or  
17 who provides professional services as a charitable healthcare provider as  
18 defined under K.S.A. 75-6102, and amendments thereto.

19 (g) "Inactive healthcare provider" means a person or other entity who  
20 purchased basic coverage or qualified as a self-insurer on or subsequent to  
21 the effective date of this act but who, at the time a claim is made for  
22 personal injury or death arising out of the rendering of or the failure to  
23 render professional services by such healthcare provider, does not have  
24 basic coverage or self-insurance in effect solely because such person is no  
25 longer engaged in rendering professional service as a healthcare provider.

26 (h) "Insurer" means any corporation, association, reciprocal  
27 exchange, inter-insurer and any other legal entity authorized to write  
28 bodily injury or property damage liability insurance in this state, including  
29 workers compensation and automobile liability insurance, pursuant to the  
30 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of  
31 the Kansas Statutes Annotated, and amendments thereto.

32 (i) "Plan" means the operating and administrative rules and  
33 procedures developed by insurers and rating organizations or the  
34 commissioner to make professional liability insurance available to  
35 healthcare providers.

36 (j) "Professional liability insurance" means insurance providing  
37 coverage for legal liability arising out of the performance of professional  
38 services rendered or that should have been rendered by a healthcare  
39 provider.

40 (k) "Rating organization" means a corporation, an unincorporated  
41 association, a partnership or an individual licensed pursuant to K.S.A. 40-  
42 956, and amendments thereto, to make rates for professional liability  
43 insurance.

1 (l) "Self-insurer" means a healthcare provider who qualifies as a self-  
2 insurer pursuant to K.S.A. 40-3414, and amendments thereto.

3 (m) "Medical care facility" means the same when used in the  
4 healthcare provider insurance availability act as defined in K.S.A. 65-425,  
5 and amendments thereto, except that as used in the healthcare provider  
6 insurance availability act such term, as it relates to insurance coverage  
7 under the healthcare provider insurance availability act, also includes any  
8 director, trustee, officer or administrator of a medical care facility.

9 (n) "Mental health center" means a mental health center licensed by  
10 the state of Kansas under K.S.A. 39-2001 et seq., and amendments thereto,  
11 except that as used in the healthcare provider insurance availability act  
12 such term, as it relates to insurance coverage under the healthcare provider  
13 insurance availability act, also includes any director, trustee, officer or  
14 administrator of a mental health center.

15 (o) "Mental health clinic" means a mental health clinic licensed by  
16 the state of Kansas under K.S.A. 39-2001 et seq., and amendments thereto,  
17 except that as used in the healthcare provider insurance availability act  
18 such term, as it relates to insurance coverage under the healthcare provider  
19 insurance availability act, also includes any director, trustee, officer or  
20 administrator of a mental health clinic.

21 (p) "State institution for people with intellectual disability" means  
22 Winfield state hospital and training center, Parsons state hospital and  
23 training center and the Kansas neurological institute.

24 (q) "State psychiatric hospital" means Larned state hospital,  
25 Osawatomie state hospital and Rainbow mental health facility.

26 (r) "Person engaged in residency training" means:

27 (1) A person engaged in a postgraduate training program approved by  
28 the state board of healing arts who is employed by and is studying at the  
29 university of Kansas medical center only when such person is engaged in  
30 medical activities that do not include extracurricular, extra-institutional  
31 medical service for which such person receives extra compensation and  
32 that have not been approved by the dean of the school of medicine and the  
33 executive vice-chancellor of the university of Kansas medical center.  
34 Persons engaged in residency training shall be considered resident  
35 healthcare providers for purposes of K.S.A. 40-3401 et seq., and  
36 amendments thereto; and

37 (2) a person engaged in a postgraduate training program approved by  
38 the state board of healing arts who is employed by a nonprofit corporation  
39 organized to administer the graduate medical education programs of  
40 community hospitals or medical care facilities affiliated with the university  
41 of Kansas school of medicine or who is employed by an affiliate of the  
42 university of Kansas school of medicine as defined in K.S.A. 76-367, and  
43 amendments thereto, only when such person is engaged in medical

1 activities that do not include extracurricular, extra-institutional medical  
2 service for which such person receives extra compensation and that have  
3 not been approved by the chief operating officer of the nonprofit  
4 corporation or the chief operating officer of the affiliate and the executive  
5 vice-chancellor of the university of Kansas medical center.

6 (s) "Full-time physician faculty employed by the university of Kansas  
7 medical center" means a person licensed to practice medicine and surgery  
8 who holds a full-time appointment at the university of Kansas medical  
9 center when such person is providing healthcare. A person licensed to  
10 practice medicine and surgery who holds a full-time appointment at the  
11 university of Kansas medical center may also be employed part-time by  
12 the United States department of veterans affairs if such employment is  
13 approved by the executive vice-chancellor of the university of Kansas  
14 medical center.

15 (t) "Sexual act" or "sexual activity" means that sexual conduct that  
16 constitutes a criminal or tortious act under the laws of the state of Kansas.

17 (u) "Board" means the board of governors created by K.S.A. 40-3403,  
18 and amendments thereto.

19 (v) "Board of directors" means the governing board created by K.S.A.  
20 40-3413, and amendments thereto.

21 (w) "Locum tenens contract" means a temporary agreement not  
22 exceeding 182 days per calendar year that employs a healthcare provider  
23 to actively render professional services in this state.

24 (x) "Professional services" means patient care or other services  
25 authorized under the act governing licensure of a healthcare provider.

26 (y) "Healthcare facility" means a nursing facility, an assisted living  
27 facility or a residential healthcare facility as all such terms are defined in  
28 K.S.A. 39-923, and amendments thereto.

29 (z) "Charitable healthcare provider" means the same as defined in  
30 K.S.A. 75-6102, and amendments thereto.

31 Sec. 2. K.S.A. 40-3401 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its  
33 publication in the statute book.