

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; **designating certain**
4 **healthcare providers as being ineligible to purchase professional**
5 **liability insurance from the healthcare stabilization fund; requiring**
6 **such healthcare providers to maintain continuous professional**
7 **liability coverage equivalent to that provided by the healthcare**
8 **stabilization fund as a condition of licensure; amending K.S.A. 40-**
9 **3401 and 40-3403a and repealing the existing ~~section~~ sections.**

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 40-3401 is hereby amended to read as follows: 40-
13 3401. As used in this act:

- 14 (a) "Applicant" means any healthcare provider.
15 (b) "Basic coverage" means a policy of professional liability
16 insurance required to be maintained by each healthcare provider pursuant
17 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.
18 (c) "Commissioner" means the commissioner of insurance.
19 (d) "Fiscal year" means the year commencing on the effective date of
20 this act and each year, commencing on the first day of July thereafter.
21 (e) "Fund" means the healthcare stabilization fund established
22 pursuant to K.S.A. 40-3403(a), and amendments thereto.
23 (f) (1) "Healthcare provider" means a-:
24 (A) Person licensed to practice any branch of the healing arts by the
25 state board of healing arts, ~~a~~;
26 (B) person who holds a temporary permit to practice any branch of
27 the healing arts issued by the state board of healing arts, ~~a~~;
28 (C) person engaged in a postgraduate training program approved by
29 the state board of healing arts, ~~a~~;
30 (D) medical care facility licensed by the state of Kansas, ~~a~~;
31 (E) podiatrist licensed by the state board of healing arts, ~~a~~;
32 (F) health maintenance organization issued a certificate of authority
33 by the commissioner, ~~an~~;
34 (G) optometrist licensed by the board of examiners in optometry, ~~a~~;

1 (H) pharmacist licensed by the state board of pharmacy;~~—a;~~

2 (I) licensed professional nurse who is authorized to practice as a
3 registered nurse anesthetist;~~—a;~~

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

7 (K) professional corporation organized pursuant to the professional
8 corporation law of Kansas by persons who are authorized by such law to
9 form such a corporation and who are healthcare providers as defined by
10 this subsection;~~—a;~~

11 (L) Kansas limited liability company organized for the purpose of
12 rendering professional services by its members who are healthcare
13 providers as defined by this subsection and who are legally authorized to
14 render the professional services for which the limited liability company is
15 organized;~~—a;~~

16 (M) partnership of persons who are healthcare providers under this
17 subsection;~~—a;~~

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

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

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

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

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

32 (S) licensed advanced practice registered nurse who is authorized by
33 the board of nursing to practice as an advanced practice registered nurse in
34 the classification of a nurse-midwife;~~—a;~~

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

39 (U) licensed advanced practice registered nurse who has been granted
40 a temporary authorization by the board of nursing to practice as an
41 advanced practice registered nurse in the classification of a nurse-midwife;
42 ~~a;~~

43 (V) nursing facility licensed by the state of Kansas;~~—an;~~

- 1 (W) assisted living facility licensed by the state of Kansas; or
2 (X) a residential healthcare facility licensed by the state of Kansas.
3 (2) "Healthcare provider" does not include: ~~(1)~~
4 (A) Any state institution for people with intellectual disability; ~~(2)~~
5 (B) any state psychiatric hospital; ~~(3)~~
6 (C) any person holding an exempt license issued by the state board of
7 healing arts or the board of nursing; ~~(4)~~
8 (D) any person holding a visiting clinical professor license from the
9 state board of healing arts; ~~(5)~~
10 (E) any person holding an inactive license issued by the state board of
11 healing arts; ~~(6)~~
12 (F) any person holding a federally active license issued by the state
13 board of healing arts; ~~(7)~~
14 (G) an advanced practice registered nurse who is authorized by the
15 board of nursing to practice as an advanced practice registered nurse in the
16 classification of nurse-midwife or nurse anesthetist and who practices
17 solely in the course of employment or active duty in the United States
18 government or any of its departments, bureaus or agencies or who
19 provides professional services as a charitable healthcare provider as
20 defined under K.S.A. 75-6102, and amendments thereto; ~~or (8)~~
21 (H) a physician assistant licensed by the state board of healing arts
22 who practices solely in the course of employment or active duty in the
23 United States government or any of its departments, bureaus or agencies or
24 who provides professional services as a charitable healthcare provider as
25 defined under K.S.A. 75-6102, and amendments thereto; *or*
26 (I) ***any facility where elective abortions, as defined in K.S.A. 65-***
27 ***4a01, and amendments thereto, are performed.***
28 (g) "Inactive healthcare provider" means a person or other entity who
29 purchased basic coverage or qualified as a self-insurer on or subsequent to
30 the effective date of this act but who, at the time a claim is made for
31 personal injury or death arising out of the rendering of or the failure to
32 render professional services by such healthcare provider, does not have
33 basic coverage or self-insurance in effect solely because such person is no
34 longer engaged in rendering professional service as a healthcare provider.
35 (h) "Insurer" means any corporation, association, reciprocal
36 exchange, inter-insurer and any other legal entity authorized to write
37 bodily injury or property damage liability insurance in this state, including
38 workers compensation and automobile liability insurance, pursuant to the
39 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
40 the Kansas Statutes Annotated, and amendments thereto.
41 (i) "Plan" means the operating and administrative rules and
42 procedures developed by insurers and rating organizations or the
43 commissioner to make professional liability insurance available to

1 healthcare providers.

2 (j) "Professional liability insurance" means insurance providing
3 coverage for legal liability arising out of the performance of professional
4 services rendered or that should have been rendered by a healthcare
5 provider.

6 (k) "Rating organization" means a corporation, an unincorporated
7 association, a partnership or an individual licensed pursuant to K.S.A. 40-
8 956, and amendments thereto, to make rates for professional liability
9 insurance.

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

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

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

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

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

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

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

36 (1) A person engaged in a postgraduate training program approved by
37 the state board of healing arts who is employed by and is studying at the
38 university of Kansas medical center only when such person is engaged in
39 medical activities that do not include extracurricular, extra-institutional
40 medical service for which such person receives extra compensation and
41 that have not been approved by the dean of the school of medicine and the
42 executive vice-chancellor of the university of Kansas medical center.
43 Persons engaged in residency training shall be considered resident

1 healthcare providers for purposes of K.S.A. 40-3401 et seq., and
2 amendments thereto; and

3 (2) a person engaged in a postgraduate training program approved by
4 the state board of healing arts who is employed by a nonprofit corporation
5 organized to administer the graduate medical education programs of
6 community hospitals or medical care facilities affiliated with the university
7 of Kansas school of medicine or who is employed by an affiliate of the
8 university of Kansas school of medicine as defined in K.S.A. 76-367, and
9 amendments thereto, only when such person is engaged in medical
10 activities that do not include extracurricular, extra-institutional medical
11 service for which such person receives extra compensation and that have
12 not been approved by the chief operating officer of the nonprofit
13 corporation or the chief operating officer of the affiliate and the executive
14 vice-chancellor of the university of Kansas medical center.

15 (s) "Full-time physician faculty employed by the university of Kansas
16 medical center" means a person licensed to practice medicine and surgery
17 who holds a full-time appointment at the university of Kansas medical
18 center when such person is providing healthcare. A person licensed to
19 practice medicine and surgery who holds a full-time appointment at the
20 university of Kansas medical center may also be employed part-time by
21 the United States department of veterans affairs if such employment is
22 approved by the executive vice-chancellor of the university of Kansas
23 medical center.

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

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

28 (v) "Board of directors" means the governing board created by K.S.A.
29 40-3413, and amendments thereto.

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

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

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

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

40 **Sec. 2. K.S.A. 40-3403a is hereby amended to read as follows: 40-**
41 **3403a. Any ~~health care~~ healthcare provider whose fund coverage has**
42 **been terminated under ~~subsection (i) of K.S.A. 40-3403(i), and~~**
43 **amendments thereto, and any facility described in K.S.A. 40-4301(f)(2)(I),**

1 *and amendments thereto, shall, as a condition of licensure, maintain*
2 *continuous professional liability insurance coverage equivalent to that*
3 *provided by the fund and shall submit to the board of governors*
4 *satisfactory proof of such coverage, as required by the board.*

5 Sec. ~~2~~ 3. K.S.A. 40-3401~~is~~ and 40-3403a are hereby repealed.

6 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its
7 publication in the statute book.