

SENATE BILL No. 219

By Committee on Federal and State Affairs

2-8

1 AN ACT concerning insurance; relating to the healthcare provider
2 insurance availability act; designating certain healthcare providers as
3 being ineligible to purchase professional liability insurance from the
4 healthcare stabilization fund; requiring such healthcare providers to
5 maintain continuous professional liability insurance coverage
6 equivalent to that provided by the healthcare stabilization fund as a
7 condition of licensure; amending K.S.A. 40-3401 and 40-3403a and
8 repealing the existing sections.
9

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

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

- 13 (a) "Applicant" means any healthcare provider.
14 (b) "Basic coverage" means a policy of professional liability
15 insurance required to be maintained by each healthcare provider pursuant
16 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.
17 (c) "Commissioner" means the commissioner of insurance.
18 (d) "Fiscal year" means the year commencing on the effective date of
19 this act and each year, commencing on the first day of July thereafter.
20 (e) "Fund" means the healthcare stabilization fund established
21 pursuant to K.S.A. 40-3403(a), and amendments thereto.
22 (f) "Healthcare provider" means a person licensed to practice any
23 branch of the healing arts by the state board of healing arts, a person who
24 holds a temporary permit to practice any branch of the healing arts issued
25 by the state board of healing arts, a person engaged in a postgraduate
26 training program approved by the state board of healing arts, a medical
27 care facility licensed by the state of Kansas, a podiatrist licensed by the
28 state board of healing arts, a health maintenance organization issued a
29 certificate of authority by the commissioner, an optometrist licensed by the
30 board of examiners in optometry, a pharmacist licensed by the state board
31 of pharmacy, a licensed professional nurse who is authorized to practice as
32 a registered nurse anesthetist, a licensed professional nurse who has been
33 granted a temporary authorization to practice nurse anesthesia under
34 K.S.A. 65-1153, and amendments thereto, a professional corporation
35 organized pursuant to the professional corporation law of Kansas by
36 persons who are authorized by such law to form such a corporation and

1 who are healthcare providers as defined by this subsection, a Kansas
2 limited liability company organized for the purpose of rendering
3 professional services by its members who are healthcare providers as
4 defined by this subsection and who are legally authorized to render the
5 professional services for which the limited liability company is organized,
6 a partnership of persons who are healthcare providers under this
7 subsection, a Kansas not-for-profit corporation organized for the purpose
8 of rendering professional services by persons who are healthcare providers
9 as defined by this subsection, a nonprofit corporation organized to
10 administer the graduate medical education programs of community
11 hospitals or medical care facilities affiliated with the university of Kansas
12 school of medicine, a dentist certified by the state board of healing arts to
13 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
14 psychiatric hospital licensed prior to January 1, 1988, and continuously
15 thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and
16 K.S.A. 39-2001 et seq., and amendments thereto, or a mental health center
17 or mental health clinic licensed by the state of Kansas. ~~On and after~~
18 ~~January 1, 2015,~~ "Healthcare provider" also means a physician assistant
19 licensed by the state board of healing arts, a licensed advanced practice
20 registered nurse who is authorized by the board of nursing to practice as an
21 advanced practice registered nurse in the classification of a nurse-midwife,
22 a licensed advanced practice registered nurse who has been granted a
23 temporary authorization by the board of nursing to practice as an advanced
24 practice registered nurse in the classification of a nurse-midwife, a nursing
25 facility licensed by the state of Kansas, an assisted living facility licensed
26 by the state of Kansas or a residential healthcare facility licensed by the
27 state of Kansas. "Healthcare provider" does not include: (1) Any state
28 institution for people with intellectual disability; (2) any state psychiatric
29 hospital; (3) any person holding an exempt license issued by the state
30 board of healing arts or the board of nursing; (4) any person holding a
31 visiting clinical professor license from the state board of healing arts; (5)
32 any person holding an inactive license issued by the state board of healing
33 arts; (6) any person holding a federally active license issued by the state
34 board of healing arts; (7) an advanced practice registered nurse who is
35 authorized by the board of nursing to practice as an advanced practice
36 registered nurse in the classification of nurse-midwife or nurse anesthetist
37 and who practices solely in the course of employment or active duty in the
38 United States government or any of its departments, bureaus or agencies or
39 who provides professional services as a charitable healthcare provider as
40 defined under K.S.A. 75-6102, and amendments thereto; ~~or~~ (8) a physician
41 assistant licensed by the state board of healing arts who practices solely in
42 the course of employment or active duty in the United States government
43 or any of its departments, bureaus or agencies or who provides

1 professional services as a charitable healthcare provider as defined under
2 K.S.A. 75-6102, and amendments thereto; *or (9) any facility where*
3 *elective abortions, as defined under K.S.A. 65-4a01, and amendments*
4 *thereto, are performed.*

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

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

18 (i) "Plan" means the operating and administrative rules and
19 procedures developed by insurers and rating organizations or the
20 commissioner to make professional liability insurance available to
21 healthcare providers.

22 (j) "Professional liability insurance" means insurance providing
23 coverage for legal liability arising out of the performance of professional
24 services rendered or that should have been rendered by a healthcare
25 provider.

26 (k) "Rating organization" means a corporation, an unincorporated
27 association, a partnership or an individual licensed pursuant to K.S.A. 40-
28 956, and amendments thereto, to make rates for professional liability
29 insurance.

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

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

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

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

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

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

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

13 (1) A person engaged in a postgraduate training program approved by
14 the state board of healing arts who is employed by and is studying at the
15 university of Kansas medical center only when such person is engaged in
16 medical activities that do not include extracurricular, extra-institutional
17 medical service for which such person receives extra compensation and
18 that have not been approved by the dean of the school of medicine and the
19 executive vice-chancellor of the university of Kansas medical center.
20 Persons engaged in residency training shall be considered resident
21 healthcare providers for purposes of K.S.A. 40-3401 et seq., and
22 amendments thereto; and

23 (2) a person engaged in a postgraduate training program approved by
24 the state board of healing arts who is employed by a nonprofit corporation
25 organized to administer the graduate medical education programs of
26 community hospitals or medical care facilities affiliated with the university
27 of Kansas school of medicine or who is employed by an affiliate of the
28 university of Kansas school of medicine as defined in K.S.A. 76-367, and
29 amendments thereto, only when such person is engaged in medical
30 activities that do not include extracurricular, extra-institutional medical
31 service for which such person receives extra compensation and that have
32 not been approved by the chief operating officer of the nonprofit
33 corporation or the chief operating officer of the affiliate and the executive
34 vice-chancellor of the university of Kansas medical center.

35 (s) "Full-time physician faculty employed by the university of Kansas
36 medical center" means a person licensed to practice medicine and surgery
37 who holds a full-time appointment at the university of Kansas medical
38 center when such person is providing healthcare. A person licensed to
39 practice medicine and surgery who holds a full-time appointment at the
40 university of Kansas medical center may also be employed part-time by
41 the United States department of veterans affairs if such employment is
42 approved by the executive vice-chancellor of the university of Kansas
43 medical center.

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

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

5 (v) "Board of directors" means the governing board created by K.S.A.
6 40-3413, and amendments thereto.

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

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

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

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

17 Sec. 2. K.S.A. 40-3403a is hereby amended to read as follows: 40-
18 3403a. Any ~~health-care~~ *healthcare* provider whose fund coverage has been
19 terminated under ~~subsection (i)~~ of K.S.A. 40-3403(i), and amendments
20 thereto, *and any facility described under K.S.A. 40-4301(f)(9), and*
21 *amendments thereto*, shall, as a condition of licensure, maintain continuous
22 professional liability insurance coverage equivalent to that provided by the
23 fund and shall submit to the board of governors satisfactory proof of such
24 coverage, as required by the board.

25 Sec. 3. K.S.A. 40-3401 and 40-3403a are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the statute book.