

SENATE BILL No. 354

By Committee on Public Health and Welfare

1-17

1 AN ACT concerning insurance; relating to the healthcare provider
2 insurance availability act; designating certain facilities where elective
3 abortions are performed as being ineligible to purchase professional
4 liability insurance from the healthcare stabilization fund; requiring such
5 facilities to maintain continuous professional liability 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 Sec. 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) (I) "Healthcare provider" means a-:
23 (A) Person licensed to practice any branch of the healing arts, ~~a~~;
24 (B) person who holds a temporary permit to practice any branch of
25 the healing arts issued by the state board of healing arts, ~~a~~;
26 (C) person engaged in a postgraduate training program approved by
27 the state board of healing arts, ~~a~~;
28 (D) medical care facility licensed by the state of Kansas, ~~a~~;
29 (E) podiatrist licensed by the state board of healing arts, ~~a~~;
30 (F) health maintenance organization issued a certificate of authority
31 by the commissioner, ~~a~~;
32 (G) optometrist licensed by the board of examiners in optometry, ~~a~~;
33 (H) pharmacist licensed by the state board of pharmacy, ~~a~~;
34 (I) licensed professional nurse who is authorized to practice as a
35 registered nurse anesthetist, ~~a~~;
36

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

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

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

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

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

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

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

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

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

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

32 (T) 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 (U) nursing facility licensed by the state of Kansas; ~~an;~~

37 (V) assisted living facility licensed by the state of Kansas; ~~or a~~

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

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

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

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

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

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

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

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

7 ~~(7)~~(G) an advanced practice registered nurse who is authorized by
8 the board of nursing to practice as an advanced practice registered nurse in
9 the 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~~

14 (8)(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; *or*

19 *(I) any facility where elective abortions, as defined in K.S.A. 65-*
20 *4a01, and amendments thereto, are performed.*

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

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

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

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

42 (k) "Rating organization" means a corporation, an unincorporated
43 association, a partnership or an individual licensed pursuant to K.S.A. 40-

1 956, and amendments thereto, to make rates for professional liability
2 insurance.

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

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

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

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

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

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

28 (r) "Person engaged in residency training" means *a person engaged*
29 *in a postgraduate training program approved by the state board of healing*
30 *arts who:*

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

41 ~~(2) a person engaged in a postgraduate training program approved by~~
42 ~~the state board of healing arts who~~ is employed by a nonprofit corporation
43 organized to administer the graduate medical education programs of

1 community hospitals or medical care facilities affiliated with the university
2 of Kansas school of medicine or who is employed by an affiliate of the
3 university of Kansas school of medicine as defined in K.S.A. 76-367, and
4 amendments thereto, only when such person is engaged in medical
5 activities that do not include extracurricular, extra-institutional medical
6 service for which such person receives extra compensation and that have
7 not been approved by the chief operating officer of the nonprofit
8 corporation or the chief operating officer of the affiliate and the executive
9 vice-chancellor of the university of Kansas medical center.

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

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

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

23 (v) "Board of directors" means the governing board created by K.S.A.
24 40-3413, and amendments thereto.

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

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

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

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

35 Sec. 2. K.S.A. 40-3403a is hereby amended to read as follows: 40-
36 3403a. Any ~~health care~~ *healthcare* provider whose fund coverage has been
37 terminated under ~~subsection (i) of~~ K.S.A. 40-3403(i), and amendments
38 thereto, *and any facility described under K.S.A. 40-4301(f)(2)(I), and*
39 *amendments thereto*, shall, as a condition of licensure, maintain continuous
40 professional liability insurance coverage equivalent to that provided by the
41 fund and shall submit to the board of governors satisfactory proof of such
42 coverage, as required by the board.

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

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