

HOUSE BILL No. 2478

By Representative Proctor

11-28

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;~~;~~

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;~~;~~

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

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

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

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

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

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

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

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;~~;~~

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 and if
- 30 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.