AN ACT concerning the healthcare stabilization fund; relating to the
definition of healthcare provider; requiring that certain business entities
be Kansas corporations for coverage by the healthcare stabilization
fund; amending K.S.A. 2019 Supp. 40-3401 and 65-28,134 and
repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:
Section 1. K.S.A. 2019 Supp. 40-3401 is hereby amended to read as
follows: 40-3401. As used in this act:
(a) "Applicant" means any healthcare provider.
(b) "Basic coverage" means a policy of professional liability
insurance required to be maintained by each healthcare provider pursuant
to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.
(c) "Commissioner" means the commissioner of insurance.
(d) "Fiscal year" means the year commencing on the effective date of
this act and each year, commencing on the first day of July thereafter.
(e) "Fund" means the healthcare stabilization fund established
pursuant to K.S.A. 40-3403(a), and amendments thereto.
(f) "Healthcare provider" means a person licensed to practice any
branch of the healing arts by the state board of healing arts, a person who
holds a temporary permit to practice any branch of the healing arts issued
by the state board of healing arts, a person engaged in a postgraduate
training program approved by the state board of healing arts, a medical
care facility licensed by the state of Kansas, a podiatrist licensed by the
state board of healing arts, a health maintenance organization issued a
certificate of authority by the commissioner, an optometrist licensed by the
board of examiners in optometry, a pharmacist licensed by the state board
of pharmacy, a licensed professional nurse who is authorized to practice as
a registered nurse anesthetist, a licensed professional nurse who has been
granted a temporary authorization to practice nurse anesthesia under
K.S.A. 65-1153, and amendments thereto, a professional corporation
organized pursuant to the professional corporation law of Kansas by
persons who are authorized by such law to form such a corporation and
who are healthcare providers as defined by this subsection, a Kansas
limited liability company organized for the purpose of rendering
professional services by its members who are healthcare providers as
defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are healthcare providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are healthcare providers as defined by this subsection, a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899, and amendments thereto, a psychiatric hospital licensed prior to January 1, 1988, and continuously thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, or a mental health center or mental health clinic licensed by the state of Kansas. On and after January 1, 2015, "Healthcare provider" also means, a physician assistant licensed by the state board of healing arts, a licensed advanced practice registered nurse who is authorized by the board of nursing to practice as an advanced practice registered nurse in the classification of a nurse-midwife, a licensed advanced practice registered nurse who has been granted a temporary authorization by the board of nursing to practice as an advanced practice registered nurse in the classification of a nurse-midwife, a nursing facility licensed by the state of Kansas, an assisted living facility licensed by the state of Kansas or a residential healthcare facility licensed by the state of Kansas. On and after March 1, 2020, "healthcare provider" also means a business entity, as defined in K.S.A. 65-68,134, and amendments thereto. "Healthcare provider" does not include: (1) Any state institution for people with intellectual disability; (2) any state psychiatric hospital; (3) any person holding an exempt license issued by the state board of healing arts or the board of nursing; (4) any person holding a visiting clinical professor license from the state board of healing arts; (5) any person holding an inactive license issued by the state board of healing arts; (6) any person holding a federally active license issued by the state board of healing arts; (7) an advanced practice registered nurse who is authorized by the board of nursing to practice as an advanced practice registered nurse in the classification of nurse-midwife or nurse anesthetist and who practices solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies or who provides professional services as a charitable healthcare provider as defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician assistant licensed by the state board of healing arts who practices solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies or who provides professional services as a charitable healthcare provider as defined under
K.S.A. 75-6102, and amendments thereto.

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

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

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

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

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

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

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

(n) "Mental health center" means a mental health center licensed by the state of Kansas under K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, except that, as used in the healthcare provider insurance availability act, such term, as it relates to insurance coverage under the healthcare provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) "Mental health clinic" means a mental health clinic licensed by the state of Kansas under K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto, except that, as used in the healthcare provider insurance availability act, such term, as it relates to insurance coverage under the healthcare provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.
SB 325

insurance availability act, such term, as it relates to insurance coverage under the healthcare provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2019 Supp. 65-28,134 is hereby amended to read as follows: 65-28,134. (a) Notwithstanding any other provision of law, a business entity issued a certificate of authorization by the board may employ or contract with one or more licensees of the board for the purpose of providing professional services for which such licensees hold a valid license issued by the board. Nothing in the Kansas healing arts act shall be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization pursuant to this section. Medical care facilities, as defined by K.S.A. 65-425, and amendments thereto, that are in compliance with department of health and environment licensure requirements are exempt from the provisions of this section. Nothing contained herein shall be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in K.S.A. 17-2706, and amendments thereto.

(b) (1) A business entity may apply to the state board of healing arts for a certificate of authorization, on a form and in a manner prescribed by the state board of healing arts, and shall include the following information:

(A) The name of the business entity;

(B) a list of the names of the owners and officers of the business entity;

(C) a description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;

(D) a list of each responsible official if the business entity is organized as a governmental unit; and

(E) a list of all licensed physicians and chiropractors to be hired by the business entity.

(2) As a condition of certification, a business entity shall be required to provide the state board of healing arts evidence of the following:

(A) The address of the business entity;
(B) a city or county occupational license; and
(C) licensure of all physicians and chiropractors to be employed by
the business entity.
(3) A business entity applying for certification shall remit a fee set by
the state board of healing arts through rules and regulations, not to exceed
$1,000.
(c) (1) If the state board of healing arts finds that such business entity
is in compliance with all of the requirements of this section, the state board
of healing arts shall issue a certificate of authorization to such business
entity designating the business entity as authorized to employ individuals
licensed to practice medicine and surgery or chiropractic, as applicable.
(2) A certificate of authorization shall be renewed annually and
accompanied by a fee to be fixed by the state board of healing arts. The
renewal fee shall be accompanied by a form prescribed by the state board
of healing arts.
(d) Except as provided in K.S.A. 40-3403, and amendments thereto,
no business entity issued a certificate of authorization under this section
shall be relieved of responsibility for the conduct or acts of its agents or
employees by reason of its compliance with the provisions of this section,
nor shall any individual licensed to practice the healing arts be relieved of
responsibility and liability for services performed by reason of
employment or relationship with such business entity. Nothing in this
section shall exempt any business entity from the provisions of any other
law applicable to the business entity.
(e) A business entity issued a certificate of authorization under this
section shall not:
(1) In any manner, directly or indirectly, interfere with, diminish,
restrict, substitute its judgment for or otherwise exercise control over the
independent professional judgment and decisions of its employed licensees
as it relates to the care of patients; or
(2) prohibit or restrict any employed licensee from discussing with or
disclosing to any patient or other individual any medically appropriate
healthcare information that such licensee deems appropriate regarding the
nature of treatment options, the risks or alternatives thereto, the process
used or the decision made by the business entity to approve or deny
healthcare services, the availability of alternate therapies, consultations or
tests, or from advocating on behalf of the patient.
(f) As used in this section:
(1) (A) "Business entity" means an employer located in: (i) A Kansas
corporation that utilizes electronic medical records and offers medicine
and surgery or chiropractic services solely for its employees and the
dependents of such employees at the employer's corporation's work sites
in the state of Kansas;
(ii) an organization **a Kansas corporation** that is licensed to sell accident and sickness insurance in the state that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization **corporation**, that provides medical services solely for the organization's **corporation's enrollees and the dependents of such enrollees in the state of Kansas**; or

(iii) **a Kansas corporation** that is an information technology company that designs, utilizes and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or chiropractic services solely to its employees and the dependents of such employees at the employer's work sites in the state of Kansas.

(B) "Business entity" does not include medical care facilities under K.S.A. 65-425, and amendments thereto, corporations licensed under K.S.A. 40-3214, and amendments thereto, and professional corporations organized pursuant to the professional corporation law of Kansas.

(2) "Physician" means a person licensed by the state board of healing arts to practice medicine and surgery.

(3) "Licensee" means a person licensed by the state board of healing arts to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited or placed under probationary conditions.

(g) A business entity's certificate of authorization may be revoked, suspended or limited, may be publicly censured or placed under probationary conditions, or an application for a certificate or for reinstatement of a certificate may be denied upon a finding of the existence of any of the following grounds:

1. The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated certificate.

2. The business entity has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment that are relevant to the practice of the healing arts.

3. The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken or has had an application for a certificate or license denied, by the proper licensing authority of another state.

4. The business entity has violated any lawful rule and regulation promulgated by the board.

5. The business entity has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and
amendments thereto.

(6) The business entity has failed to report to the board any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

(7) The business entity has engaged in conduct likely to deceive, defraud or harm the public.

(8) The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain.

(9) The business entity has used any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient healthcare record.

(10) The business entity has failed to furnish to the board, or its investigators or representatives, any information legally requested by the board.

(11) The business entity has had, or failed to report to the board, any adverse judgment, award or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

(12) The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

(h) The state board of healing arts shall adopt all rules and regulations as necessary to implement and administer the provisions of this section.

(i) For the purposes of determining the impact on the healthcare stabilization fund of requiring business entities to comply with the provisions of the healthcare provider insurance availability act, the healthcare stabilization fund is hereby directed to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the findings to the legislature on or before January 1, 2020.

(j) This section shall be a part of and supplemental to the Kansas healing arts act.

(k) The provisions of this section shall take effect on and after March 1, 2020.

Sec. 3. K.S.A. 2019 Supp. 40-3401 and 65-28,134 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.