As Amended by Senate Committee

Session of 2015

SENATE BILL No. 101

By Committee on Financial Institutions and Insurance

1-28

AN ACT concerning insurance; relating to the health care provider insurance availability act; definitions; amending K.S.A. 2014 Supp. 40-3401 and repealing the existing section.

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

Section 1. K.S.A. 2014 Supp. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

(a) "Applicant" means any health care provider.

(b) "Basic coverage" means a policy of professional liability insurance required to be maintained by each health care provider pursuant to the provisions of subsection (a) or (b) 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 health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403(a), and amendments thereto.

(f) "Health care 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 of insurance, 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 health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health
care 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 health care providers under
this subsection, a Kansas not-for-profit corporation organized for the
purpose of rendering professional services by persons who are health care
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. 75-3307b, and amendments thereto, or a mental
health center or mental health clinic licensed by the state of Kansas. On
and after January 1, 2015, "health care 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 state 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 state 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 health care
facility licensed by the state of Kansas. "Health care 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 state 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 state 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, in addition to such employment
or assignment, provides professional services as a charitable health care
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,
in addition to such employment or assignment, provides professional
services as a charitable health care provider as defined under K.S.A. 75-
6102, and amendments thereto.
(g) "Inactive health care 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 health care 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 health care 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 health care providers.

(j) "Professional liability insurance" means insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care 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 health care 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 health care provider insurance availability act as the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care 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. 75-3307b, and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care 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. 75-3307b, and amendments thereto, except that as used in the health care provider insurance availability act
such term, as it relates to insurance coverage under the health care
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 which do not include extracurricular, extra-institutional
medical service for which such person receives extra compensation and
which 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 health
care 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 which do not include extracurricular, extra-institutional medical
service for which such person receives extra compensation and which 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 health care.
(t) "Sexual act" or "sexual activity" means that sexual conduct which
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 health care 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 health care provider.

Sec. 2. K.S.A. 2014 Supp. 40-3401 is hereby repealed.

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