As Amended by House Committee

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; self-insurance; health care
systems; amending K.S.A. 2014 Supp. 40-3401 and 40-3414 and
repealing the existing section sections.

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.

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

Sec. 2. K.S.A. 2014 Supp. 40-3414 is hereby amended to read as follows: 40-3414. (a) Any health care provider, or any health care system organized and existing under the laws of this state which owns and operates two or more than one medical care facility or more than one health care facility, as defined in K.S.A. 40-3401, and amendments thereto, licensed by the state of Kansas, whose aggregate annual insurance premium is or would be $100,000 or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. Upon application of any such health care provider or health care system, on a form prescribed by the board of governors, the board of governors may issue a certificate of self-insurance if the board of governors is satisfied that the applicant is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a health care provider obtained against such applicant arising from the applicant's rendering of professional services as a health care provider. In making such determination the board of governors shall consider: (1) The financial condition of the applicant; (2) the procedures adopted and followed by the applicant to process and handle claims and potential claims; (3) the amount and liquidity of assets reserved for the settlement of claims or potential claims; and (4) any other relevant factors. The certificate of self-insurance may contain reasonable conditions prescribed by the board of governors. Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable arising from the self-insurer's rendering of professional services as a health care provider, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-
insurance. The provisions of this subsection shall not apply to the
Kansas soldiers' home, the Kansas veterans' home or to any person
who is a self-insurer pursuant to subsection (d) or (e).

(b) Any such health care provider or health care system that
holds a certificate of self-insurance shall pay the applicable surcharge
set forth in subsection (c) of K.S.A. 40-3402(c), and amendments
thereto.

(c) The Kansas soldiers' home and the Kansas veterans' home
shall be self-insurers and shall pay the applicable surcharge set forth
in subsection (c) of K.S.A. 40-3402(c), and amendments thereto.

(d) Persons engaged in residency training as provided in
subsections (r)(1) and (2) of K.S.A. 40-3401(r)(1) and (2), and
amendments thereto, shall be self-insured by the state of Kansas for
occurrences arising during such training, and such person shall be
deemed a self-insurer for the purposes of the health care provider
insurance availability act. Such self-insurance shall be applicable to a
person engaged in residency training 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 as provided in
subsections (r)(1) and (2) of K.S.A. 40-3401(r)(1) and (2), and
amendments thereto.

(e) (1) A person engaged in a postgraduate training program
approved by the state board of healing arts at a medical care facility
or mental health center in this state may be self-insured by such
medical care facility or mental health center in accordance with this
subsection (e) and in accordance with such terms and conditions of
eligibility therefor as may be specified by the medical care facility or
mental health center and approved by the board of governors. A
person self-insured under this subsection (e) by a medical care facility
or mental health center shall be deemed a self-insurer for purposes of
the health care provider insurance availability act. Upon application
by a medical care facility or mental health center, on a form
prescribed by the board of governors, the board of governors may
authorize such medical care facility or mental health center to self-
insure persons engaged in postgraduate training programs approved
by the state board of healing arts at such medical care facility or
mental health center if the board of governors is satisfied that the
medical care facility or mental health center is possessed and will
continue to be possessed of ability to pay any judgment for which
liability exists equal to the amount of basic coverage required of a
health care provider obtained against a person engaged in such a
postgraduate training program and arising from such person's
rendering of or failure to render professional services as a health care provider.

(2) In making such determination the board of governors shall consider: (A) The financial condition of the medical care facility or mental health center; (B) the procedures adopted by the medical care facility or mental health center to process and handle claims and potential claims; (C) the amount and liquidity of assets reserved for the settlement of claims or potential claims by the medical care facility or mental health center; and (D) any other factors the board of governors deems relevant. The board of governors may specify such conditions for the approval of an application as the board of governors deems necessary. Upon approval of an application, the board of governors shall issue a certificate of self-insurance to each person engaged in such postgraduate training program at the medical care facility or mental health center who is self-insured by such medical care facility or mental health center.

(3) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel, upon reasonable grounds therefor, a certificate of self-insurance issued pursuant to this subsection (e) or the authority of a medical care facility or mental health center to self-insure persons engaged in such postgraduate training programs at the medical care facility or mental health center. Failure of a person engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such person, the failure to comply with any provisions of the health care provider insurance availability act or the failure to comply with any conditions for approval of the application or any conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such persons.

(4) A medical care facility or mental health center authorized to self-insure persons engaged in such postgraduate training programs shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402(c), and amendments thereto, on behalf of such persons.

(5) As used in this subsection (e), "medical care facility" does not include the university of Kansas medical center or those community hospitals or medical care facilities described in subsection (r)(2) of K.S.A. 40-3401(r)(2), and amendments thereto.
(f) For the purposes of subsection (a), "health care provider" may include each health care provider in any group of health care providers who practice as a group to provide physician services only for a health maintenance organization, any professional corporations, partnerships or not-for-profit corporations formed by such group and the health maintenance organization itself. The premiums for each such provider, health maintenance organization and group corporation or partnership may be aggregated for the purpose of being eligible for and subject to the statutory requirements for self-insurance as set forth in this section.

(g) The provisions of subsections (a) and (f), relating to health care systems, shall not affect the responsibility of individual health care providers as defined in subsection (f) of K.S.A. 40-3401(f), and amendments thereto, or organizations whose premiums are aggregated for purposes of being eligible for self-insurance from individually meeting the requirements imposed by K.S.A. 40-3402, and amendments thereto, with respect to the ability to respond to injury or damages to the extent specified therein and K.S.A. 40-3404, and amendments thereto, with respect to the payment of the health care stabilization fund surcharge.

(h) Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center and each 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 shall be deemed a self-insurer for the purposes of the health care provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member and each 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 shall pay the applicable surcharge set forth in subsection (a) of K.S.A. 40-3404(a), and amendments thereto, on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center or on behalf of 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.

(i) (1) Subject to the provisions of paragraph (4), for the purposes of the health care provider insurance availability act, each 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 shall be deemed to
have been a health care provider as defined in K.S.A. 40-3401, and
amendments thereto, from and after July 1, 1997.

(2) Subject to the provisions of paragraph (4), for the purposes of
the health care provider insurance availability act, each 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 shall be deemed to
have been a self-insurer within the meaning of subsection (h) of this
section, and amendments thereto, from and after July 1, 1997.

(3) Subject to the provisions of paragraph (4), for the purposes of
the health care provider insurance availability act, the election of fund
coverage limits for each 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 shall be deemed to have been effective at
the highest option, as provided in subsection (l) of K.S.A. 40-3403(l),
and amendments thereto, from and after July 1, 1997.

(4) No 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 shall be required to pay to the fund any annual premium
surcharge for any period prior to the effective date of this act. Any
annual premium surcharge for the period commencing on the effective
date of this act and ending on June 30, 2001, shall be prorated.

Sec. 3. K.S.A. 2014 Supp. 40-3401 is and 40-3414 are hereby
repealed.

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