

HOUSE BILL No. 2118

By Committee on Insurance

1-20

1 AN ACT concerning health care providers; relating to the health care
2 provider insurance availability act; liability exceptions; provider
3 exemptions; inactive provider coverage limits; inactive licensure of
4 advanced practice registered nurses; amending K.S.A. 2016 Supp. 40-
5 3401, 40-3408, 40-3424 and 65-1131 and repealing the existing
6 sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. (a) Notwithstanding any provision of article 34 of
10 chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to
11 the contrary, the fund shall in no event be liable for any claim against a
12 health care provider if:

13 (1) The health care provider's liability for the incident giving rise to
14 the claim is the result of professional services rendered as a charitable
15 healthcare provider; or

16 (2) the health care provider's liability for the incident giving rise to
17 the claim is covered under the federal tort claims act pursuant to chapter
18 171 of title 28 of the United States code.

19 (b) This section shall be part of and supplemental to the health care
20 provider insurance availability act.

21 Sec. 2. K.S.A. 2016 Supp. 40-3401 is hereby amended to read as
22 follows: 40-3401. As used in this act the following terms shall have the
23 meanings respectively ascribed to them herein.

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

25 (b) "Basic coverage" means a policy of professional liability
26 insurance required to be maintained by each health care provider pursuant
27 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.

28 (c) "Commissioner" means the commissioner of insurance.

29 (d) "Fiscal year" means the year commencing on the effective date of
30 this act and each year, commencing on the first day of July thereafter.

31 (e) "Fund" means the health care stabilization fund established
32 pursuant to K.S.A. 40-3403(a), and amendments thereto.

33 (f) "Health care provider" means a person licensed to practice any
34 branch of the healing arts by the state board of healing arts, a person who
35 holds a temporary permit to practice any branch of the healing arts issued
36 by the state board of healing arts, a person engaged in a postgraduate

1 training program approved by the state board of healing arts, a medical
2 care facility licensed by the state of Kansas, a podiatrist licensed by the
3 state board of healing arts, a health maintenance organization issued a
4 certificate of authority by the commissioner, an optometrist licensed by the
5 board of examiners in optometry, a pharmacist licensed by the state board
6 of pharmacy, a licensed professional nurse who is authorized to practice as
7 a registered nurse anesthetist, a licensed professional nurse who has been
8 granted a temporary authorization to practice nurse anesthesia under
9 K.S.A. 65-1153, and amendments thereto, a professional corporation
10 organized pursuant to the professional corporation law of Kansas by
11 persons who are authorized by such law to form such a corporation and
12 who are health care providers as defined by this subsection, a Kansas
13 limited liability company organized for the purpose of rendering
14 professional services by its members who are health care providers as
15 defined by this subsection and who are legally authorized to render the
16 professional services for which the limited liability company is organized,
17 a partnership of persons who are health care providers under this
18 subsection, a Kansas not-for-profit corporation organized for the purpose
19 of rendering professional services by persons who are health care
20 providers as defined by this subsection, a nonprofit corporation organized
21 to administer the graduate medical education programs of community
22 hospitals or medical care facilities affiliated with the university of Kansas
23 school of medicine, a dentist certified by the state board of healing arts to
24 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
25 psychiatric hospital licensed prior to January 1, 1988, and continuously
26 thereafter under K.S.A. 75-3307b, and amendments thereto, or a mental
27 health center or mental health clinic licensed by the state of Kansas. On
28 and after January 1, 2015, "health care provider" also means a physician
29 assistant licensed by the state board of healing arts, a licensed advanced
30 practice registered nurse who is authorized by the state board of nursing to
31 practice as an advanced practice registered nurse in the classification of a
32 nurse-midwife, a licensed advanced practice registered nurse who has been
33 granted a temporary authorization by the state board of nursing to practice
34 as an advanced practice registered nurse in the classification of a nurse-
35 midwife, a nursing facility licensed by the state of Kansas, an assisted
36 living facility licensed by the state of Kansas or a residential health care
37 facility licensed by the state of Kansas. "Health care provider" does not
38 include: (1) Any state institution for people with intellectual disability; (2)
39 any state psychiatric hospital; (3) any person holding an exempt license
40 issued by the state board of healing arts or the state board of nursing; (4)
41 any person holding a visiting clinical professor license from the state board
42 of healing arts; (5) any person holding an inactive license issued by the
43 state board of healing arts; (6) any person holding a federally active

1 license issued by the state board of healing arts; (7) an advanced practice
2 registered nurse who is authorized by the state board of nursing to practice
3 as an advanced practice registered nurse in the classification of nurse-
4 midwife or nurse anesthetist and who practices solely in the course of
5 employment or active duty in the United States government or any of its
6 departments, bureaus or agencies or who provides professional services as
7 a charitable health care provider as defined under K.S.A. 75-6102, and
8 amendments thereto; or (8) a physician assistant licensed by the state
9 board of healing arts who practices solely in the course of employment or
10 active duty in the United States government or any of its departments,
11 bureaus or agencies or who provides professional services as a charitable
12 health care provider as defined under K.S.A. 75-6102, and amendments
13 thereto.

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

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

27 (i) "Plan" means the operating and administrative rules and
28 procedures developed by insurers and rating organizations or the
29 commissioner to make professional liability insurance available to health
30 care providers.

31 (j) "Professional liability insurance" means insurance providing
32 coverage for legal liability arising out of the performance of professional
33 services rendered or which should have been rendered by a health care
34 provider.

35 (k) "Rating organization" means a corporation, an unincorporated
36 association, a partnership or an individual licensed pursuant to K.S.A. 40-
37 956, and amendments thereto, to make rates for professional liability
38 insurance.

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

41 (m) "Medical care facility" means the same when used in the health
42 care provider insurance availability act as the meaning ascribed to that
43 term in K.S.A. 65-425, and amendments thereto, except that as used in the

1 health care provider insurance availability act such term, as it relates to
2 insurance coverage under the health care provider insurance availability
3 act, also includes any director, trustee, officer or administrator of a medical
4 care facility.

5 (n) "Mental health center" means a mental health center licensed by
6 the state of Kansas under K.S.A. 75-3307b, and amendments thereto,
7 except that as used in the health care provider insurance availability act
8 such term, as it relates to insurance coverage under the health care
9 provider insurance availability act, also includes any director, trustee,
10 officer or administrator of a mental health center.

11 (o) "Mental health clinic" means a mental health clinic licensed by
12 the state of Kansas under K.S.A. 75-3307b, and amendments thereto,
13 except that as used in the health care provider insurance availability act
14 such term, as it relates to insurance coverage under the health care
15 provider insurance availability act, also includes any director, trustee,
16 officer or administrator of a mental health clinic.

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

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

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

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

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

1 vice-chancellor of the university of Kansas medical center.

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

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

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

15 (v) "Board of directors" means the governing board created by K.S.A.
16 40-3413, and amendments thereto.

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

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

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

25 (z) *"Charitable health care provider" means the same as defined in
26 K.S.A. 75-6102, and amendments thereto.*

27 Sec. 3. K.S.A. 2016 Supp. 40-3408 is hereby amended to read as
28 follows: 40-3408. (a) The insurer of a health care provider covered by the
29 fund or self-insurer shall be liable only for the first \$200,000 of a claim for
30 personal injury or death arising out of the rendering of or the failure to
31 render professional services by such health care provider, subject to an
32 annual aggregate of \$600,000 for all such claims against the health care
33 provider. However, if any liability insurance in excess of such amounts is
34 applicable to any claim or would be applicable in the absence of this act,
35 any payments from the fund shall be excess over such amounts paid,
36 payable or that would have been payable in the absence of this act.

37 (b) If any inactive health care provider has liability insurance in effect
38 which is applicable to any claim or would be applicable in the absence of
39 this act, any payments from the fund shall be excess over such amounts
40 paid, payable or that would have been payable in the absence of this act.

41 (c) Notwithstanding anything in article 34 of chapter 40 of the Kansas
42 Statutes Annotated, and amendments thereto, to the contrary, an insurer
43 that provides coverage to a health care provider may exclude from

1 coverage any liability incurred by such provider:

2 (1) From the rendering of or the failure to render professional
3 services by any other health care provider who is required by K.S.A. 40-
4 3402, and amendments thereto, to maintain professional liability insurance
5 in effect as a condition to rendering professional services as a health care
6 provider in this state; or

7 (2) based upon or relating to the health care provider's sexual acts or
8 activity, but in such cases the insurer may provide reasonable and
9 necessary expenses for attorney fees incurred in defending against such
10 claim. The insurer may recover all or a portion of such expenses for
11 attorney fees if an adverse judgment is returned against the health care
12 provider for damages resulting from the health care provider's sexual acts
13 or activity.

14 (d) The fund shall not be liable for payment of any claim excluded by
15 an insurer pursuant to this section or any claim otherwise excluded from
16 coverage under a health care provider's professional liability insurance.

17 (e) *Notwithstanding any provision of article 34 of chapter 40 of the*
18 *Kansas Statutes Annotated, and amendments thereto, to the contrary, an*
19 *insurer that provides coverage to a health care provider may exclude from*
20 *coverage:*

21 (1) *Any liability incurred by such health care provider as a result of*
22 *professional services rendered as a charitable health care provider; or*

23 (2) *any liability incurred by such health care provider that is covered*
24 *under the federal tort claims act pursuant to chapter 171 of title 28 of the*
25 *United States code.*

26 Sec. 4. K.S.A. 2016 Supp. 40-3424 is hereby amended to read as
27 follows: 40-3424. (a) For all claims made on and after July 1, 2014, the
28 amount of fund liability for a judgment or settlement against a resident or
29 nonresident inactive health care provider shall be equal to the minimum
30 professional liability insurance policy limits required pursuant to K.S.A.
31 40-3402, and amendments thereto, plus the level of coverage selected by
32 the health care provider pursuant to ~~subsection (f)~~ of K.S.A. 40-3403(l),
33 and amendments thereto, at the time of the incident giving rise to a claim.
34 *The aggregate fund liability for all judgments and settlements arising from*
35 *all claims made in any fiscal year against a resident or nonresident*
36 *inactive health care provider shall not exceed \$3,000,000 in any fiscal*
37 *year.*

38 (b) This section shall be part of and supplemental to the health care
39 provider insurance availability act.

40 Sec. 5. K.S.A. 2016 Supp. 65-1131 is hereby amended to read as
41 follows: 65-1131. (a) (1) *Licensure.* Upon application to the board by any
42 professional nurse in this state and upon satisfaction of the standards and
43 requirements established by the board under K.S.A. 65-1130, and

1 amendments thereto, the board may issue a license to such applicant
2 authorizing the applicant to perform the duties of an advanced practice
3 registered nurse as defined by the board under K.S.A. 65-1130, and
4 amendments thereto.

5 (2) The board may issue a license to practice nursing as an advanced
6 practice registered nurse to an applicant who has been duly licensed or
7 certified as an advanced practice registered nurse under the laws of another
8 state or territory if, in the opinion of the board, the applicant meets the
9 licensure qualifications required of an advanced practice registered nurse
10 in this state. Verification of the applicant's licensure or certification status
11 shall be required from the original state of licensure or certification.

12 (3) An application to the board for a license, a license with temporary
13 permit, renewal of a license and reinstatement of a license shall be upon
14 such form and contain such information as the board may require and shall
15 be accompanied by a fee, to be established by rules and regulations
16 adopted by the board, to assist in defraying the expenses in connection
17 with the issuance of licenses as advanced practice registered nurses, in an
18 amount fixed by the board under K.S.A. 65-1118, and amendments
19 thereto.

20 (4) An application for initial licensure or endorsement will be held
21 awaiting completion of meeting qualifications for a time period specified
22 in rules and regulations.

23 (5) The executive administrator of the board shall remit all moneys
24 received pursuant to this section to the state treasurer as provided by
25 K.S.A. 74-1108, and amendments thereto.

26 (b) The board may grant a one-time temporary permit to practice as
27 an advanced practice registered nurse for a period of not more than 180
28 days pending completion of the application for a license.

29 (c) *Exempt license.* The board may issue an exempt license to any
30 advanced practice registered nurse as defined in rules and regulations who
31 makes written application for such license on a form provided by the
32 board, who remits a fee as established pursuant to K.S.A. 65-1118, and
33 amendments thereto, and who is not regularly engaged in advanced
34 practice registered nursing in Kansas but volunteers advanced practice
35 registered nursing services or is a charitable health care provider as
36 defined by K.S.A. 75-6102, and amendments thereto. Each exempt
37 advanced practice registered nurse shall be subject to all provisions of the
38 nurse practice act. Each exempt license may be renewed biennially subject
39 to the provisions of this section. To convert an exempt license to an active
40 license, the exempt advanced practice registered nurse shall meet all the
41 requirements of subsection (a) or K.S.A. 65-1132, and amendments
42 thereto. *An advanced practice registered nurse who has been granted an*
43 *exempt license pursuant to this subsection shall be exempt from the*

1 requirements of K.S.A. 40-3402 and 40-3404, and amendments thereto.

2 (d) Inactive license. The board may issue an inactive license to any
3 advanced practice registered nurse as defined in rules and regulations
4 who makes written application for such license on a form provided by the
5 board, who remits a fee as established pursuant to K.S.A. 65-1118, and
6 amendments thereto, and who is not regularly engaged in advanced
7 practice registered nursing in Kansas. The holder of an inactive license
8 shall not be required to submit evidence of satisfactory completion of a
9 program of continuing education required by K.S.A. 65-1117 and 65-1132,
10 and amendments thereto. An inactive license shall not entitle the holder to
11 engage in advanced practice registered nursing in this state. Each inactive
12 license may be renewed subject to the provisions of this section. An
13 inactive licensee may apply for a license to regularly engage in advanced
14 practice registered nursing upon filing a written reinstatement application
15 with the board. The application shall be on a form provided by the board
16 and shall be accompanied by the license fee established pursuant to K.S.A.
17 65-1118, and amendments thereto. An applicant for a license to practice as
18 an advanced practice registered nurse who has not been licensed to
19 practice advanced practice registered nursing for five years preceding
20 application shall be required to successfully complete a refresher course
21 as defined by the board. The board shall by rules and regulations establish
22 appropriate continuing education requirements for inactive licensees to
23 become licensed to regularly engage in advanced practice registered
24 nursing in this state. An advanced practice registered nurse who has been
25 granted an inactive license pursuant to this subsection shall be exempt
26 from the requirements of K.S.A. 40-3402 and 40-3404, and amendments
27 thereto.

28 (e) The board shall have authority to ~~write~~ adopt rules and regulations
29 to carry out the provisions of this section.

30 Sec. 6. K.S.A. 2016 Supp. 40-3401, 40-3408, 40-3424 and 65-1131
31 are hereby repealed.

32 Sec. 7. This act shall take effect and be in force from and after its
33 publication in the statute book.