

**SENATE BILL No. 399**

By Committee on Financial Institutions and Insurance

1-27

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1 AN ACT concerning insurance; relating to the healthcare insurance  
2 provider 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.

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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) "Healthcare provider" means a person licensed to practice any  
19 branch of the healing arts by the state board of healing arts, a person who  
20 holds a temporary permit to practice any branch of the healing arts issued  
21 by the state board of healing arts, a person engaged in a postgraduate  
22 training program approved by the state board of healing arts, a medical  
23 care facility licensed by the state of Kansas, a podiatrist licensed by the  
24 state board of healing arts, a health maintenance organization issued a  
25 certificate of authority by the commissioner, an optometrist licensed by the  
26 board of examiners in optometry, a pharmacist licensed by the state board  
27 of pharmacy, a licensed professional nurse who is authorized to practice as  
28 a registered nurse anesthetist, a licensed professional nurse who has been  
29 granted a temporary authorization to practice nurse anesthesia under  
30 K.S.A. 65-1153, and amendments thereto, a professional corporation  
31 organized pursuant to the professional corporation law of Kansas by  
32 persons who are authorized by such law to form such a corporation and  
33 who are healthcare providers as defined by this subsection, a Kansas  
34 limited liability company organized for the purpose of rendering  
35 professional services by its members who are healthcare providers as  
36 defined by this subsection and who are legally authorized to render the

1 professional services for which the limited liability company is organized,  
2 a partnership of persons who are healthcare providers under this  
3 subsection, a Kansas not-for-profit corporation organized for the purpose  
4 of rendering professional services by persons who are healthcare providers  
5 as defined by this subsection, a nonprofit corporation organized to  
6 administer the graduate medical education programs of community  
7 hospitals or medical care facilities affiliated with the university of Kansas  
8 school of medicine, a dentist certified by the state board of healing arts to  
9 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a  
10 psychiatric hospital licensed prior to January 1, 1988, and continuously  
11 thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and  
12 K.S.A. 39-2001 et seq., and amendments thereto, or a mental health center  
13 or mental health clinic licensed by the state of Kansas. ~~On and after~~  
14 ~~January 1, 2015, "Healthcare provider" also means, a physician assistant~~  
15 ~~licensed by the state board of healing arts, a licensed advanced practice~~  
16 ~~registered nurse who is authorized by the board of nursing to practice as an~~  
17 ~~advanced practice registered nurse in the classification of a nurse-midwife,~~  
18 ~~a maternity center as defined in K.S.A. 65-503, and amendments thereto, a~~  
19 ~~licensed advanced practice registered nurse who has been granted a~~  
20 ~~temporary authorization by the board of nursing to practice as an advanced~~  
21 ~~practice registered nurse in the classification of a nurse-midwife, a nursing~~  
22 ~~facility licensed by the state of Kansas, an assisted living facility licensed~~  
23 ~~by the state of Kansas or a residential healthcare facility licensed by the~~  
24 ~~state of Kansas. "Healthcare provider" does not include: (1) Any state~~  
25 ~~institution for people with intellectual disability; (2) any state psychiatric~~  
26 ~~hospital; (3) any person holding an exempt license issued by the state~~  
27 ~~board of healing arts or the board of nursing; (4) any person holding a~~  
28 ~~visiting clinical professor license from the state board of healing arts; (5)~~  
29 ~~any person holding an inactive license issued by the state board of healing~~  
30 ~~arts; (6) any person holding a federally active license issued by the state~~  
31 ~~board of healing arts; (7) an advanced practice registered nurse who is~~  
32 ~~authorized by the board of nursing to practice as an advanced practice~~  
33 ~~registered nurse in the classification of nurse-midwife or nurse anesthetist~~  
34 ~~and who practices solely in the course of employment or active duty in the~~  
35 ~~United States government or any of its departments, bureaus or agencies or~~  
36 ~~who provides professional services as a charitable healthcare provider as~~  
37 ~~defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician~~  
38 ~~assistant licensed by the state board of healing arts who practices solely in~~  
39 ~~the course of employment or active duty in the United States government~~  
40 ~~or any of its departments, bureaus or agencies or who provides~~  
41 ~~professional services as a charitable healthcare provider as defined under~~  
42 ~~K.S.A. 75-6102, and amendments thereto.~~

43 (g) "Inactive healthcare provider" means a person or other entity who

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

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

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

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

21 (k) "Rating organization" means a corporation, an unincorporated  
22 association, a partnership or an individual licensed pursuant to K.S.A. 40-  
23 956, and amendments thereto, to make rates for professional liability  
24 insurance.

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

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

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

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

1 administrator of a mental health clinic.

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

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

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

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

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

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

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

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

43 (v) "Board of directors" means the governing board created by K.S.A.

1 40-3413, and amendments thereto.

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

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

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

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

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

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