

## SENATE BILL No. 101

By Committee on Financial Institutions and Insurance

1-28

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1 AN ACT concerning insurance; relating to the health care provider  
2 insurance availability act; definitions; amending K.S.A. 2014 Supp. 40-  
3 3401 and repealing the existing section.

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

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

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

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

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

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

17 (e) "Fund" means the health care stabilization fund established  
18 pursuant to ~~subsection (a)~~ of K.S.A. 40-3403(a), and amendments thereto.

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

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

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

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

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

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

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

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

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

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

41 (o) "Mental health clinic" means a mental health clinic licensed by  
42 the state of Kansas under K.S.A. 75-3307b, and amendments thereto,  
43 except that as used in the health care provider insurance availability act

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

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

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

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

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

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

32 (s) "Full-time physician faculty employed by the university of Kansas  
33 medical center" means a person licensed to practice medicine and surgery  
34 who holds a full-time appointment at the university of Kansas medical  
35 center when such person is providing health care.

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

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

40 (v) "Board of directors" means the governing board created by K.S.A.  
41 40-3413, and amendments thereto.

42 (w) "Locum tenens contract" means a temporary agreement not  
43 exceeding 182 days per calendar year that employs a health care provider

1 to actively render professional services in this state.

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

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

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