

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

1 AN ACT concerning insurance; relating to the health care provider
2 insurance availability act; definitions; **self-insurance; health care**
3 **systems**; amending K.S.A. 2014 Supp. 40-3401 and **40-3414** and
4 repealing the existing section **sections**.

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

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

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

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

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

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

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

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

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

1 ~~in addition to such employment or assignment~~, provides professional
2 services as a charitable health care provider as defined under K.S.A. 75-
3 6102, and amendments thereto.

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

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

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

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

25 (k) "Rating organization" means a corporation, an unincorporated
26 association, a partnership or an individual licensed pursuant to K.S.A. 40-
27 956, and amendments thereto, to make rates for professional liability
28 insurance.

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

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

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

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

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

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

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

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

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

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

39 (t) "Sexual act" or "sexual activity" means that sexual conduct which
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 health care 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 health care provider.

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

10 **Sec. 2. K.S.A. 2014 Supp. 40-3414 is hereby amended to read as**
11 **follows: 40-3414. (a) Any health care provider; or any health care**
12 **system organized and existing under the laws of this state which owns**
13 **and operates ~~two or more~~ *than one* medical care ~~facilities~~ *facility or***
14 ***more than one health care facility, as defined in K.S.A. 40-3401, and***
15 ***amendments thereto, licensed by the state of Kansas, whose aggregate***
16 **annual insurance premium is or would be \$100,000 or more for basic**
17 **coverage calculated in accordance with rating procedures approved**
18 **by the commissioner pursuant to K.S.A. 40-3413, and amendments**
19 **thereto, may qualify as a self-insurer by obtaining a certificate of self-**
20 **insurance from the board of governors. Upon application of any such**
21 **health care provider or health care system, on a form prescribed by**
22 **the board of governors, the board of governors may issue a certificate**
23 **of self-insurance if the board of governors is satisfied that the**
24 **applicant is possessed and will continue to be possessed of ability to**
25 **pay any judgment for which liability exists equal to the amount of**
26 **basic coverage required of a health care provider obtained against**
27 **such applicant arising from the applicant's rendering of professional**
28 **services as a health care provider. In making such determination the**
29 **board of governors shall consider: (1) The financial condition of the**
30 **applicant; (2) the procedures adopted and followed by the applicant**
31 **to process and handle claims and potential claims; (3) the amount and**
32 **liquidity of assets reserved for the settlement of claims or potential**
33 **claims; and (4) any other relevant factors. The certificate of self-**
34 **insurance may contain reasonable conditions prescribed by the board**
35 **of governors. Upon notice and a hearing in accordance with the**
36 **provisions of the Kansas administrative procedure act, the board of**
37 **governors may cancel a certificate of self-insurance upon reasonable**
38 **grounds therefor. Failure to pay any judgment for which the self-**
39 **insurer is liable arising from the self-insurer's rendering of**
40 **professional services as a health care provider, the failure to comply**
41 **with any provision of this act or the failure to comply with any**
42 **conditions contained in the certificate of self-insurance shall be**
43 **reasonable grounds for the cancellation of such certificate of self-**

1 insurance. The provisions of this subsection shall not apply to the
2 Kansas soldiers' home, the Kansas veterans' home or to any person
3 who is a self-insurer pursuant to subsection (d) or (e).

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

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

11 (d) Persons engaged in residency training as provided in
12 subsections ~~(r)(1) and (2) of~~ K.S.A. 40-3401(r)(1) and (2), and
13 amendments thereto, shall be self-insured by the state of Kansas for
14 occurrences arising during such training, and such person shall be
15 deemed a self-insurer for the purposes of the health care provider
16 insurance availability act. Such self-insurance shall be applicable to a
17 person engaged in residency training only when such person is
18 engaged in medical activities which do not include extracurricular,
19 extra-institutional medical service for which such person receives
20 extra compensation and which have not been approved as provided in
21 subsections ~~(r)(1) and (2) of~~ K.S.A. 40-3401(r)(1) and (2), and
22 amendments thereto.

23 (e) (1) A person engaged in a postgraduate training program
24 approved by the state board of healing arts at a medical care facility
25 or mental health center in this state may be self-insured by such
26 medical care facility or mental health center in accordance with this
27 subsection (e) and in accordance with such terms and conditions of
28 eligibility therefor as may be specified by the medical care facility or
29 mental health center and approved by the board of governors. A
30 person self-insured under this subsection (e) by a medical care facility
31 or mental health center shall be deemed a self-insurer for purposes of
32 the health care provider insurance availability act. Upon application
33 by a medical care facility or mental health center, on a form
34 prescribed by the board of governors, the board of governors may
35 authorize such medical care facility or mental health center to self-
36 insure persons engaged in postgraduate training programs approved
37 by the state board of healing arts at such medical care facility or
38 mental health center if the board of governors is satisfied that the
39 medical care facility or mental health center is possessed and will
40 continue to be possessed of ability to pay any judgment for which
41 liability exists equal to the amount of basic coverage required of a
42 health care provider obtained against a person engaged in such a
43 postgraduate training program and arising from such person's

1 rendering of or failure to render professional services as a health care
2 provider.

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

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

36 (4) A medical care facility or mental health center authorized to
37 self-insure persons engaged in such postgraduate training programs
38 shall pay the applicable surcharge set forth in ~~subsection (e) of K.S.A.~~
39 ~~40-3402(c)~~, and amendments thereto, on behalf of such persons.

40 (5) As used in this subsection (e), "medical care facility" does not
41 include the university of Kansas medical center or those community
42 hospitals or medical care facilities described in ~~subsection (r)(2) of~~
43 ~~K.S.A. 40-3401(r)(2)~~, and amendments thereto.

1 (f) For the purposes of subsection (a), "health care provider" may
2 include each health care provider in any group of health care
3 providers who practice as a group to provide physician services only
4 for a health maintenance organization, any professional corporations,
5 partnerships or not-for-profit corporations formed by such group and
6 the health maintenance organization itself. The premiums for each
7 such provider, health maintenance organization and group
8 corporation or partnership may be aggregated for the purpose of
9 being eligible for and subject to the statutory requirements for self-
10 insurance as set forth in this section.

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

21 (h) Each private practice corporation or foundation and their
22 full-time physician faculty employed by the university of Kansas
23 medical center and each nonprofit corporation organized to
24 administer the graduate medical education programs of community
25 hospitals or medical care facilities affiliated with the university of
26 Kansas school of medicine shall be deemed a self-insurer for the
27 purposes of the health care provider insurance availability act. The
28 private practice corporation or foundation of which the full-time
29 physician faculty is a member and each nonprofit corporation
30 organized to administer the graduate medical education programs of
31 community hospitals or medical care facilities affiliated with the
32 university of Kansas school of medicine shall pay the applicable
33 surcharge set forth in ~~subsection (a) of K.S.A. 40-3404(a)~~, and
34 amendments thereto, on behalf of the private practice corporation or
35 foundation and their full-time physician faculty employed by the
36 university of Kansas medical center or on behalf of a nonprofit
37 corporation organized to administer the graduate medical education
38 programs of community hospitals or medical care facilities affiliated
39 with the university of Kansas school of medicine.

40 (i) (1) Subject to the provisions of paragraph (4), for the purposes
41 of the health care provider insurance availability act, each nonprofit
42 corporation organized to administer the graduate medical education
43 programs of community hospitals or medical care facilities affiliated

1 with the university of Kansas school of medicine shall be deemed to
2 have been a health care provider as defined in K.S.A. 40-3401, and
3 amendments thereto, from and after July 1, 1997.

4 (2) Subject to the provisions of paragraph (4), for the purposes of
5 the health care provider insurance availability act, each nonprofit
6 corporation organized to administer the graduate medical education
7 programs of community hospitals or medical care facilities affiliated
8 with the university of Kansas school of medicine shall be deemed to
9 have been a self-insurer within the meaning of subsection (h) ~~of this~~
10 ~~section~~, and amendments thereto, from and after July 1, 1997.

11 (3) Subject to the provisions of paragraph (4), for the purposes of
12 the health care provider insurance availability act, the election of fund
13 coverage limits for each nonprofit corporation organized to
14 administer the graduate medical education programs of community
15 hospitals or medical care facilities affiliated with the university of
16 Kansas school of medicine shall be deemed to have been effective at
17 the highest option, as provided in ~~subsection (l) of K.S.A. 40-3403(l),~~
18 and amendments thereto, from and after July 1, 1997.

19 (4) No nonprofit corporation organized to administer the
20 graduate medical education programs of community hospitals or
21 medical care facilities affiliated with the university of Kansas school of
22 medicine shall be required to pay to the fund any annual premium
23 surcharge for any period prior to the effective date of this act. Any
24 annual premium surcharge for the period commencing on the effective
25 date of this act and ending on June 30, 2001, shall be prorated.

26 ~~Sec. 2.~~ 3. K.S.A. 2014 Supp. 40-3401 ~~is~~ and 40-3414 are hereby
27 repealed.

28 ~~Sec. 3.~~ 4. This act shall take effect and be in force from and after its
29 publication in the statute book.