

SENATE BILL No. 117

By Committee on Financial Institutions and Insurance

1-29

1 AN ACT concerning insurance; relating to self-insurance under the health
2 care provider insurance availability act; health care systems; amending
3 K.S.A. 2014 Supp. 40-3401 and 40-3414 and repealing the existing
4 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
35 form such a corporation and who are health care providers as defined by
36 this subsection, a Kansas limited liability company organized for the

1 purpose of rendering professional services by its members who are health
2 care providers as defined by this subsection and who are legally authorized
3 to render the professional services for which the limited liability company
4 is organized, a partnership of persons who are health care providers under
5 this subsection, a Kansas not-for-profit corporation organized for the
6 purpose of rendering professional services by persons who are health care
7 providers as defined by this subsection, a nonprofit corporation organized
8 to administer the graduate medical education programs of community
9 hospitals or medical care facilities affiliated with the university of Kansas
10 school of medicine, a dentist certified by the state board of healing arts to
11 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
12 psychiatric hospital licensed prior to January 1, 1988, and continuously
13 thereafter under K.S.A. 75-3307b, and amendments thereto, or a mental
14 health center or mental health clinic licensed by the state of Kansas. On
15 and after January 1, 2015, "health care provider" also means a physician
16 assistant licensed by the state board of healing arts, a licensed advanced
17 practice registered nurse who is authorized by the state board of nursing to
18 practice as an advanced practice registered nurse in the classification of a
19 nurse-midwife, a licensed advanced practice registered nurse who has been
20 granted a temporary authorization by the state board of nursing to practice
21 as an advanced practice registered nurse in the classification of a nurse-
22 midwife, a nursing facility licensed by the state of Kansas, an assisted
23 living facility licensed by the state of Kansas or a residential health care
24 facility licensed by the state of Kansas. "Health care provider" does not
25 include: (1) Any state institution for people with intellectual disability; (2)
26 any state psychiatric hospital; (3) any person holding an exempt license
27 issued by the state board of healing arts; (4) any person holding a visiting
28 clinical professor license from the state board of healing arts; (5) any
29 person holding an inactive license issued by the state board of healing arts;
30 (6) any person holding a federally active license issued by the state board
31 of healing arts; (7) an advanced practice registered nurse who is authorized
32 by the state board of nursing to practice as an advanced practice registered
33 nurse in the classification of nurse-midwife and who practices solely in the
34 course of employment or active duty in the United States government or
35 any of its departments, bureaus or agencies or who, in addition to such
36 employment or assignment, provides professional services as a charitable
37 health care provider as defined under K.S.A. 75-6102, and amendments
38 thereto; or (8) a physician assistant licensed by the state board of healing
39 arts who practices solely in the course of employment or active duty in the
40 United States government or any of its departments, bureaus or agencies or
41 who, in addition to such employment or assignment, provides professional
42 services as a charitable health care provider as defined under K.S.A. 75-
43 6102, and amendments 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 (y) *"Health care facility" means a nursing facility, an assisted living*
5 *facility, or a residential health care facility as all such terms are defined in*
6 *K.S.A. 39-923, and amendments thereto.*

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

42 (b) Any such health care provider or health care system that holds a
43 certificate of self-insurance shall pay the applicable surcharge set forth in

1 ~~subsection (e) of K.S.A. 40-3402(c), and amendments thereto.~~

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

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

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

37 (2) In making such determination the board of governors shall
38 consider: (A) The financial condition of the medical care facility or mental
39 health center; (B) the procedures adopted by the medical care facility or
40 mental health center to process and handle claims and potential claims; (C)
41 the amount and liquidity of assets reserved for the settlement of claims or
42 potential claims by the medical care facility or mental health center; and
43 (D) any other factors the board of governors deems relevant. The board of

1 governors may specify such conditions for the approval of an application
2 as the board of governors deems necessary. Upon approval of an
3 application, the board of governors shall issue a certificate of self-
4 insurance to each person engaged in such postgraduate training program at
5 the medical care facility or mental health center who is self-insured by
6 such medical care facility or mental health center.

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

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

28 (5) As used in this subsection (e), "medical care facility" does not
29 include the university of Kansas medical center or those community
30 hospitals or medical care facilities described in ~~subsection (r)(2) of~~ K.S.A.
31 40-3401(r)(2), and amendments thereto.

32 (f) For the purposes of subsection (a), "health care provider" may
33 include each health care provider in any group of health care providers
34 who practice as a group to provide physician services only for a health
35 maintenance organization, any professional corporations, partnerships or
36 not-for-profit corporations formed by such group and the health
37 maintenance organization itself. The premiums for each such provider,
38 health maintenance organization and group corporation or partnership may
39 be aggregated for the purpose of being eligible for and subject to the
40 statutory requirements for self-insurance as set forth in this section.

41 (g) The provisions of subsections (a) and (f), relating to health care
42 systems, shall not affect the responsibility of individual health care
43 providers as defined in ~~subsection (f) of~~ K.S.A. 40-3401(f), and

1 amendments thereto, or organizations whose premiums are aggregated for
2 purposes of being eligible for self-insurance from individually meeting the
3 requirements imposed by K.S.A. 40-3402, and amendments thereto, with
4 respect to the ability to respond to injury or damages to the extent
5 specified therein and K.S.A. 40-3404, and amendments thereto, with
6 respect to the payment of the health care stabilization fund surcharge.

7 (h) Each private practice corporation or foundation and their full-time
8 physician faculty employed by the university of Kansas medical center and
9 each nonprofit corporation organized to administer the graduate medical
10 education programs of community hospitals or medical care facilities
11 affiliated with the university of Kansas school of medicine shall be
12 deemed a self-insurer for the purposes of the health care provider
13 insurance availability act. The private practice corporation or foundation of
14 which the full-time physician faculty is a member and each nonprofit
15 corporation organized to administer the graduate medical education
16 programs of community hospitals or medical care facilities affiliated with
17 the university of Kansas school of medicine shall pay the applicable
18 surcharge set forth in ~~subsection (a) of~~ K.S.A. 40-3404(a), and
19 amendments thereto, on behalf of the private practice corporation or
20 foundation and their full-time physician faculty employed by the
21 university of Kansas medical center or on behalf of 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.

25 (i) (1) Subject to the provisions of paragraph (4), for the purposes of
26 the health care provider insurance availability act, each nonprofit
27 corporation organized to administer the graduate medical education
28 programs of community hospitals or medical care facilities affiliated with
29 the university of Kansas school of medicine shall be deemed to have been
30 a health care provider as defined in K.S.A. 40-3401, and amendments
31 thereto, from and after July 1, 1997.

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

39 (3) Subject to the provisions of paragraph (4), for the purposes of the
40 health care provider insurance availability act, the election of fund
41 coverage limits for each nonprofit corporation organized to administer the
42 graduate medical education programs of community hospitals or medical
43 care facilities affiliated with the university of Kansas school of medicine

1 shall be deemed to have been effective at the highest option, as provided in
2 ~~subsection (1)~~ of K.S.A. 40-3403(l), and amendments thereto, from and
3 after July 1, 1997.

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

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

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