

SENATE BILL No. 325

By Committee on Financial Institutions and Insurance

1-28

1 AN ACT concerning the healthcare stabilization fund; relating to the
2 definition of healthcare provider; requiring that certain business entities
3 be Kansas corporations for coverage by the healthcare stabilization
4 fund; amending K.S.A. 2019 Supp. 40-3401 and 65-28,134 and
5 repealing the existing sections.

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

8 Section 1. K.S.A. 2019 Supp. 40-3401 is hereby amended to read as
9 follows: 40-3401. As used in this act:

10 (a) "Applicant" means any healthcare provider.

11 (b) "Basic coverage" means a policy of professional liability
12 insurance required to be maintained by each healthcare provider pursuant
13 to the provisions of K.S.A. 40-3402(a) or (b), and 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 healthcare stabilization fund established
18 pursuant to K.S.A. 40-3403(a), and amendments thereto.

19 (f) "Healthcare 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, an optometrist licensed by the
27 board of examiners in optometry, a pharmacist licensed by the state board
28 of pharmacy, a licensed professional nurse who is authorized to practice as
29 a registered nurse anesthetist, a licensed professional nurse who has been
30 granted a temporary authorization to practice nurse anesthesia under
31 K.S.A. 65-1153, and amendments thereto, a professional corporation
32 organized pursuant to the professional corporation law of Kansas by
33 persons who are authorized by such law to form such a corporation and
34 who are healthcare providers as defined by this subsection, a Kansas
35 limited liability company organized for the purpose of rendering
36 professional services by its members who are healthcare providers as

1 defined by this subsection and who are legally authorized to render the
2 professional services for which the limited liability company is organized,
3 a partnership of persons who are healthcare providers under this
4 subsection, a Kansas not-for-profit corporation organized for the purpose
5 of rendering professional services by persons who are healthcare providers
6 as defined by this subsection, a nonprofit corporation organized to
7 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. 2015 Supp. 75-3307b, prior to its repeal, and
13 K.S.A. 2019 Supp. 39-2001 et seq., 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, "Healthcare 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 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 board of nursing to practice as an~~
21 ~~advanced practice registered nurse in the classification of a nurse-midwife,~~
22 ~~a nursing facility licensed by the state of Kansas, an assisted living facility~~
23 ~~licensed by the state of Kansas or a residential healthcare facility licensed~~
24 ~~by the state of Kansas. *On and after March 1, 2020, "healthcare provider"*~~
25 ~~*also means a business entity, as defined in K.S.A. 65-68,134, and*~~
26 ~~*amendments thereto. "Healthcare provider" does not include: (1) Any state*~~
27 ~~*institution for people with intellectual disability; (2) any state psychiatric*~~
28 ~~*hospital; (3) any person holding an exempt license issued by the state*~~
29 ~~*board of healing arts or the board of nursing; (4) any person holding a*~~
30 ~~*visiting clinical professor license from the state board of healing arts; (5)*~~
31 ~~*any person holding an inactive license issued by the state board of healing*~~
32 ~~*arts; (6) any person holding a federally active license issued by the state*~~
33 ~~*board of healing arts; (7) an advanced practice registered nurse who is*~~
34 ~~*authorized by the board of nursing to practice as an advanced practice*~~
35 ~~*registered nurse in the classification of nurse-midwife or nurse anesthetist*~~
36 ~~*and who practices solely in the course of employment or active duty in the*~~
37 ~~*United States government or any of its departments, bureaus or agencies or*~~
38 ~~*who provides professional services as a charitable healthcare provider as*~~
39 ~~*defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician*~~
40 ~~*assistant licensed by the state board of healing arts who practices solely in*~~
41 ~~*the course of employment or active duty in the United States government*~~
42 ~~*or any of its departments, bureaus or agencies or who provides*~~
43 ~~*professional services as a charitable healthcare provider as defined under*~~

1 K.S.A. 75-6102, and amendments thereto.

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

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

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

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

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

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

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

35 (n) "Mental health center" means a mental health center licensed by
36 the state of Kansas under K.S.A. 2019 Supp. 39-2001 et seq., and
37 amendments thereto, except that, as used in the healthcare provider
38 insurance availability act, such term, as it relates to insurance coverage
39 under the healthcare provider insurance availability act, also includes any
40 director, trustee, 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. 2019 Supp. 39-2001 et seq., and
43 amendments thereto, except that, as used in the healthcare provider

1 insurance availability act, such term, as it relates to insurance coverage
2 under the healthcare provider insurance availability act, also includes any
3 director, trustee, 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 that do not include extracurricular, extra-institutional
14 medical service for which such person receives extra compensation and
15 that have not been approved by the dean of the school of medicine and the
16 executive vice-chancellor of the university of Kansas medical center.
17 Persons engaged in residency training shall be considered resident
18 healthcare providers for purposes of K.S.A. 40-3401 et seq., and
19 amendments 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 that do not include extracurricular, extra-institutional medical
28 service for which such person receives extra compensation and that 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 healthcare. A person licensed to
36 practice medicine and surgery who holds a full-time appointment at the
37 university of Kansas medical center may also be employed part-time by
38 the United States department of veterans affairs if such employment is
39 approved by the executive vice-chancellor of the university of Kansas
40 medical center.

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

43 (u) "Board" means the board of governors created by K.S.A. 40-3403,

1 and amendments thereto.

2 (v) "Board of directors" means the governing board created by K.S.A.
3 40-3413, and amendments thereto.

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

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

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

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

14 Sec. 2. K.S.A. 2019 Supp. 65-28,134 is hereby amended to read as
15 follows: 65-28,134. (a) Notwithstanding any other provision of law, a
16 business entity issued a certificate of authorization by the board may
17 employ or contract with one or more licensees of the board for the purpose
18 of providing professional services for which such licensees hold a valid
19 license issued by the board. Nothing in the Kansas healing arts act shall be
20 construed to prohibit a licensee from being employed by or under contract
21 to provide professional services for a business entity granted a certificate
22 of authorization pursuant to this section. Medical care facilities, as defined
23 by K.S.A. 65-425, and amendments thereto, that are in compliance with
24 department of health and environment licensure requirements are exempt
25 from the provisions of this section. Nothing contained herein shall be
26 construed to allow a corporation to practice optometry or dentistry, except
27 as otherwise provided in K.S.A. 17-2706, and amendments thereto.

28 (b) (1) A business entity may apply to the state board of healing arts
29 for a certificate of authorization, on a form and in a manner prescribed by
30 the state board of healing arts, and shall include the following information:

31 (A) The name of the business entity;

32 (B) a list of the names of the owners and officers of the business
33 entity;

34 (C) a description of the apportionment of liability of all partners or
35 owners, if the business entity is organized as a limited partnership or a
36 limited liability company;

37 (D) a list of each responsible official if the business entity is
38 organized as a governmental unit; and

39 (E) a list of all licensed physicians and chiropractors to be hired by
40 the business entity.

41 (2) As a condition of certification, a business entity shall be required
42 to provide the state board of healing arts evidence of the following:

43 (A) The address of the business entity;

1 (B) a city or county occupational license; and
2 (C) licensure of all physicians and chiropractors to be employed by
3 the business entity.

4 (3) A business entity applying for certification shall remit a fee set by
5 the state board of healing arts through rules and regulations, not to exceed
6 \$1,000.

7 (c) (1) If the state board of healing arts finds that such business entity
8 is in compliance with all of the requirements of this section, the state board
9 of healing arts shall issue a certificate of authorization to such business
10 entity designating the business entity as authorized to employ individuals
11 licensed to practice medicine and surgery or chiropractic, as applicable.

12 (2) A certificate of authorization shall be renewed annually and
13 accompanied by a fee to be fixed by the state board of healing arts. The
14 renewal fee shall be accompanied by a form prescribed by the state board
15 of healing arts.

16 (d) Except as provided in K.S.A. 40-3403, and amendments thereto,
17 no business entity issued a certificate of authorization under this section
18 shall be relieved of responsibility for the conduct or acts of its agents or
19 employees by reason of its compliance with the provisions of this section,
20 nor shall any individual licensed to practice the healing arts be relieved of
21 responsibility and liability for services performed by reason of
22 employment or relationship with such business entity. Nothing in this
23 section shall exempt any business entity from the provisions of any other
24 law applicable to the business entity.

25 (e) A business entity issued a certificate of authorization under this
26 section shall not:

27 (1) In any manner, directly or indirectly, interfere with, diminish,
28 restrict, substitute its judgment for or otherwise exercise control over the
29 independent professional judgment and decisions of its employed licensees
30 as it relates to the care of patients; or

31 (2) prohibit or restrict any employed licensee from discussing with or
32 disclosing to any patient or other individual any medically appropriate
33 healthcare information that such licensee deems appropriate regarding the
34 nature of treatment options, the risks or alternatives thereto, the process
35 used or the decision made by the business entity to approve or deny
36 healthcare services, the availability of alternate therapies, consultations or
37 tests, or from advocating on behalf of the patient.

38 (f) As used in this section:

39 (1) (A) "Business entity" means ~~an employer located in:~~ (i) A Kansas
40 corporation that utilizes electronic medical records and offers medicine
41 and surgery or chiropractic services solely for its employees and the
42 dependents of such employees at the ~~employer's corporation's work-site~~
43 sites in the state of Kansas;

1 (ii) ~~an organization~~ a Kansas corporation that is licensed to sell
2 accident and sickness insurance in the state that is also a mutual or non-
3 profit health carrier that utilizes electronic medical records, or a wholly
4 owned subsidiary of such ~~organization~~ corporation, that provides medical
5 services solely for the ~~organization's~~ corporation's enrollees and the
6 dependents of such enrollees *in the state of Kansas*; or

7 (iii) a Kansas corporation that is an information technology company
8 that designs, utilizes and provides electronic medical records for
9 businesses and worksite medical clinics for employers located in Kansas
10 and offers medicine and surgery or chiropractic services solely to its
11 employees and the dependents of such employees at the employer's work
12 sites in *the state of Kansas*.

13 (B) "Business entity" does not include medical care facilities under
14 K.S.A. 65-425, and amendments thereto, corporations licensed under
15 K.S.A. 40-3214, and amendments thereto, and professional corporations
16 organized pursuant to the professional corporation law of Kansas.

17 (2) "Physician" means a person licensed by the state board of healing
18 arts to practice medicine and surgery.

19 (3) "Licensee" means a person licensed by the state board of healing
20 arts to practice medicine and surgery or chiropractic and whose license is
21 in a full active status and has not been revoked, suspended, limited or
22 placed under probationary conditions.

23 (g) A business entity's certificate of authorization may be revoked,
24 suspended or limited, may be publicly censured or placed under
25 probationary conditions, or an application for a certificate or for
26 reinstatement of a certificate may be denied upon a finding of the
27 existence of any of the following grounds:

28 (1) The business entity has committed fraud or misrepresentation in
29 applying for or securing an original, renewal or reinstated certificate.

30 (2) The business entity has willfully or repeatedly violated this act,
31 the pharmacy act of the state of Kansas or the uniform controlled
32 substances act or any rules and regulations adopted pursuant thereto, or
33 any rules and regulations of the secretary of health and environment that
34 are relevant to the practice of the healing arts.

35 (3) The business entity has had a certificate, or equivalent
36 authorization, to employ licensees to practice the healing arts revoked,
37 suspended or limited, has been censured or has had other disciplinary
38 action taken or has had an application for a certificate or license denied, by
39 the proper licensing authority of another state.

40 (4) The business entity has violated any lawful rule and regulation
41 promulgated by the board.

42 (5) The business entity has failed to report or reveal the knowledge
43 required to be reported or revealed under K.S.A. 65-28,122, and

1 amendments thereto.

2 (6) The business entity has failed to report to the board any adverse
3 action taken against the business entity by another state or licensing
4 jurisdiction, a governmental agency, by a law enforcement agency or a
5 court for acts or conduct similar to acts or conduct that would constitute
6 grounds for disciplinary action under this section.

7 (7) The business entity has engaged in conduct likely to deceive,
8 defraud or harm the public.

9 (8) The business entity has engaged in conduct that violates patient
10 trust and exploits the licensee-patient relationship for corporate gain.

11 (9) The business entity has used any false, fraudulent or deceptive
12 statement in any document connected with the practice of the healing arts,
13 including the intentional falsifying or fraudulent altering of a patient
14 healthcare record.

15 (10) The business entity has failed to furnish to the board, or its
16 investigators or representatives, any information legally requested by the
17 board.

18 (11) The business entity has had, or failed to report to the board, any
19 adverse judgment, award or settlement against the business entity resulting
20 from a medical liability claim related to acts or conduct similar to acts or
21 conduct that would constitute grounds for disciplinary action under this
22 section.

23 (12) The business entity has been convicted of a felony or class A
24 misdemeanor, or substantially similar offense in another jurisdiction,
25 related to the practice of the healing arts.

26 (h) The state board of healing arts shall adopt all rules and regulations
27 as necessary to implement and administer the provisions of this section.

28 ~~(i) For the purposes of determining the impact on the healthcare~~
29 ~~stabilization fund of requiring business entities to comply with the~~
30 ~~provisions of the healthcare provider insurance availability act, the~~
31 ~~healthcare stabilization fund is hereby directed to conduct such actuarial~~
32 ~~and operational studies as are necessary to determine such impact, and to~~
33 ~~report the findings to the legislature on or before January 1, 2020.~~

34 ~~(j)~~—This section shall be a part of and supplemental to the Kansas
35 healing arts act.

36 ~~(k)~~~~(j)~~ The provisions of this section shall take effect on and after
37 March 1, 2020.

38 Sec. 3. K.S.A. 2019 Supp. 40-3401 and 65-28,134 are hereby
39 repealed.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the Kansas register.