

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2107**

As Agreed to April 2, 2013

Brief*

HB 2107 would create the Electronic Notice and Document Act; amend a provision in the Insurance Code requiring notification to policyholders of adverse underwriting decisions and refunds; increase the maximum lifetime benefit for individuals in the State High Risk Pool; amend existing law regarding dividends for mutual insurance companies organized to provide health care provider liability insurance; update various statutory references; and enact the Mandate Lite Health Benefit Plan Act.

***Electronic Notice and Document Act
(New Sections 1-4)***

The bill would establish the Electronic Notice and Document Act (Act), which would allow the use of electronic notices and documents for sending insurance notices and documents. In order to send electronic notices and documents to another party, the bill would require the insurer to obtain the consent of the other party, as provided in the Act.

Definitions

The bill would define “delivered by electronic means” to include:

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- Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
- Posting on an electronic network or site accessible to the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with a separate notice of the posting, which would be required to be provided by e-mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

In addition, the bill would define “party” as any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

Electronic Delivery

A notice or document could be delivered by electronic means by an insurer to a party if:

- The party has affirmatively consented to the method of delivery and has not withdrawn consent;
- The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:
 - Any right or option to have the notice or document provided in paper or other non-electronic form;
 - The right to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences imposed if consent is withdrawn;

- Whether the party's consent applies only to a particular transaction or to identified categories of notices or documents;
 - How a paper copy of a notice or document delivered electronically may be obtained and the fee, if any, for the paper copy; and
 - The procedure to withdraw consent and to update information needed to contact the party electronically;
- The party, before giving consent, is provided with the hardware and software requirements to access and retain the notice or document and to provide electronic consent that shows the party can access the information electronically; and
 - After consent is given, the insurer provides a statement to the party if the hardware and software requirements for access and retaining notice or documents have changed, and the right of the party to withdraw consent without fees, conditions, or consequences.

Any notice or other document in an insurance transaction or that serves as evidence of insurance coverage would be allowed to be delivered, stored, and presented by electronic means, so long as it meets the requirements of the Act.

Delivery of a notice or other document would be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

Posting Online and Delivery

The bill would allow insurance policies and endorsements that do not contain personally identifiable

information to be mailed, delivered, or posted on the insurer's website. If the insurer would elect to post policies and endorsements on its website instead of mailing or delivering to the insured, the insurer would be required to comply with all of the following conditions:

- The policy and endorsements must be easily accessible and remain that way for as long as the policy is in force;
- After expiration of the policy, the insurer must archive its expired policies and endorsements for five years, making them available upon request;
- Policies and endorsements must be posted in a way that enables the insured to print and save the documents using programs or applications that are widely available and free to use;
- The insurer must provide notice of the method by which the insured may obtain a paper or electronic copy of the insured's policy or endorsements upon request and free of charge;
- The insurer must clearly identify the exact policy and endorsements forms purchased by the insured on each declarations page issued; and
- The insurer must provide notice of any changes to the forms or endorsements and of the insured's right to obtain a paper or electronic copy upon request and without charge.

Consent and Applicability

The bill would not affect requirements related to content or timing of any notice or document required under applicable law. In addition, the bill would allow electronic delivery of a notice or document requiring verification or acknowledgment only if the delivery method used provides for verification or acknowledgment of receipt.

The bill would not allow denial of legal effectiveness, validity, or enforceability of any contract or policy of insurance solely due to the failure to obtain electronic consent or confirmation of consent by a party. A withdrawal of consent by a party would be effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by the insurer to comply with providing revised hardware and software requirements and allowing withdrawal of consent without a fee, conditions, or consequences would constitute, at the election of the party, a withdrawal of consent.

In addition, the bill would not apply to a notice or document delivered electronically by an insurer before the effective date of the Act to a party who has consented to receive the notice or document electronically. However, after the effective date of the Act, the insurer would be required to notify the party of the notices or documents that could be delivered electronically under the Act, that were not previously delivered electronically. The party would have the right to withdraw consent.

The bill also would allow an oral communication or recording that could be reliably stored and reproduced by the insurer to qualify as a notice or document delivered electronically. The bill would allow electronic signatures that are attached to or logically associated with the signature, notice, or document to satisfy a requirement for a notice or document to be notarized, acknowledged, verified, or made under oath.

The bill would not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured. The bill also would not apply to any mutual insurance company organized pursuant to Kansas law, and the bill would not be construed to modify, limit, or supersede the provisions of the Federal Electronic Signature in Global and National Commerce Act (PL 106-229) or the Uniform Electronic Transactions Act (KSA 16-1601 *et seq.*).

Notification Requirements, Adverse Underwriting Decisions (Section 5)

The bill would amend existing law relating to notice to policyholders of adverse underwriting decisions and refunds.

Current law provides that refunds to the applicant or individual proposed for coverage of the difference between the payment and earned premium, if any, in the event of a declination of insurance coverage, termination, or any other adverse underwriting decision must accompany the notice of the decision.

The bill would allow for applicants, policyholders, or individuals proposed for coverage, both with coverage in effect or not in effect, to receive refunds along with the notice of the adverse underwriting decision, or allow the refund and notice to be provided separately, so long as the refund is provided within ten days from the date of the notice.

The requirement would not apply to life insurance that is in effect, if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium.

State High-Risk Pool, Lifetime Limit (Section 6)

The bill would amend existing law regarding the Kansas Uninsurable Health Insurance Plan Act by increasing the maximum lifetime benefit per covered individual in the high-risk health insurance pool from \$3.0 million to \$4.0 million.

Health Care Provider Liability Insurance, Certain Mutual Insurance Companies, Dividends (Section 7)

The bill would amend existing law in the Insurance Code to allow dividends to be credited to a member's account and

distributed in accordance with a plan adopted by the board of directors of a mutual insurance company that is organized to provide health care provider liability insurance.

Statutory Updates—Obsolete Penalty Provisions in the Insurance Code, ERO 41 Updates (Sections 8-11)

The bill would update existing law in Chapters 39 and 40 of the *Kansas Statutes Annotated* by correcting invalid and obsolete statutory references regarding penalty provisions and state agency names corresponding to changes in agency duties made per 2012 Executive Reorganization Order No. 41 (ERO No. 41).

Mandate Lite Health Benefit Plan Act (New Sections 12-14)

The bill would enact the Mandate Lite Health Benefit Plan Act, exclude agent commissions from the calculation of administrative costs associated with medical loss ratio (MLR), and define specially designed policies and exclude such policies from the definition of group sickness and accident insurance.

The bill would define a “mandate lite health benefit plan” as an individual or group sickness and accident insurance plan that does not contain one or more of the Kansas-mandated benefits other than coverages for optometrist, dentist, or podiatrist services (KSA 40-2,100) and for reconstructive breast surgery (KSA 40-2,166). The plan could be issued on either a group or individual basis. The bill specifies a plan could offer drug coverages.

The bill would require such plans to:

- Contain the definitions of group or individual sickness and accident insurance with respect to

major medical benefits and standard provisions or rights of coverage; and

- Provide insureds with written notice that one or more of the state-mandated benefits are not included in the plan.

The bill would provide that the definition of preexisting conditions could not be more restrictive than the definition of preexisting conditions normally used for the corresponding regular or group insurance contracts. Additionally, a mandate lite health benefit plan would be allowed to charge additional premiums for each optional benefit offered.

Medical Loss Ratio

Under the bill, portions of health insurance premiums paid by consumers that are passed through as (agent) commissions are not to be considered part of administrative expenses and would be excluded from all determination of the MLR calculations when totaling the ratio of premiums paid by a consumer used for claims versus administrative expenses for a policy. (To be excluded from MLR calculations, any portion of premiums identified as commissions must be paid to a nonemployee.) Instead, portions of premiums retained by an insurance company or its employees would be required to be considered as part of the MLR calculation as administrative related income.

Specially Designed Policies

The bill would define and allow specially designed policies to provide specific coverage of benefits or services that are not required to be included the mandate lite health benefit plans authorized by the bill. These stand-alone policies and coverages may include:

- Chiropractic plans;
- Acupuncture coverage plans;

- Holistic medical treatment plans;
- Podiatrist plans;
- Pharmacy plans;
- Psychiatric plans;
- Allergy plans; and
- Other plans or combinations of plans of accepted traditional and nontraditional medical practice.

The bill would define “specially designed policy” to mean an insurance policy that by design may not meet all or part of the definitions of group or individual sickness and accident insurance policy, and includes temporary sickness and accident insurance on a short-term basis. The bill would exclude specially designed policies from:

- Inclusion under the definition of group sickness and accident insurance, including as short-term policies;
- Continuation coverage provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
- MLR calculations associated with individual sickness and accident insurance unless the calculation excludes any monthly administrative fee associated with the sale of such short-term policies.

Conference Committee Action

The House Committee on Insurance agreed to the Senate amendments to HB 2107, with technical amendments agreed to by the Conference Committee and inserted provisions that would:

- Increase the maximum lifetime benefit per covered individual in the State High Risk Pool from \$3.0 million to \$4.0 million (HB 2312, as introduced);
- Allow dividends to be credited to a member's account and distributed in accordance with a plan adopted by the board of directors of a mutual insurance company organized to provide health care provider liability insurance;
- Delete references to obsolete penalty provisions in the Insurance Code and update other statutory references to conform with ERO No. 41 (HB 2099, as amended by the House Committee); and
- Enact the Mandate Lite Health Benefit Plan Act (SB 163 as introduced). The Conference Committee recommended an amendment to the Act to remove language regarding drug coverage.

Background

HB 2107 was introduced by the House Committee on Insurance at the request of a representative of State Farm Insurance Companies.

At the House Committee hearing on the bill, proponents included representatives of America's Health Insurance Plans (AHIP), Kansas Association of Property and Casualty Insurance Companies (KAPCIC), Property Casualty Insurers Association of America (PCI), and State Farm Insurance Companies.

Proponents testified customers increasingly are showing preferences for electronic access to their records rather than receiving paper mailings. Additionally, proponents stated it is important that consumers have a choice to receive electronic delivery. The KAPCIC representative stated the Association's members support the bill, but requested amendments to the

bill regarding the time limits companies have to keep expired policy information and how many times a company may provide one free printed copy of a policy.

The Kansas Medical Society provided neutral testimony on the bill, stating the association has no position on the bill, but requested that mutual insurance companies be exempted from the Act.

The House Committee amended the bill by clarifying the definition of “delivered by electronic means.” In addition, the Committee adopted amendments regarding insurers posting policies and endorsements on its website and retaining expired policies and endorsements for seven years. The Committee also added language that the Act shall not modify, limit, or supersede the provisions of the Uniform Electronic Transactions Act, as provided in statute. The Committee added an exemption for mutual insurance companies and added language that states the bill shall not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured.

The Senate Committee on Financial Institutions and Insurance amended the bill to change the time frame required for archival of expired policies and to insert provisions relating to notification of policyholders of adverse underwriting decisions and refunds (HB 2339, as introduced).

The fiscal notes provided by the Division of the Budget on the original version of the bill and HB 2339 state passage of the bills would have no fiscal effect on Kansas Insurance Department operations.

HB 2312 was introduced by the House Committee on Insurance at the request of the Kansas Health Insurance Association (KHIA).

At the House Committee hearing on the bill, a representative of the KHIA presented testimony in favor of the bill stating the KHIA is a non-profit association created by

statute that manages the state's high-risk health insurance pool. The pool was established in order to provide coverage for individuals who have pre-existing conditions and are generally uninsurable in the voluntary market. The KHIA representative stated the maximum lifetime benefit was raised in 2011 from \$2.0 million to \$3.0 million, but KHIA projects that as many as 12 members of the state high-risk pool will reach the current \$3.0 million benefit limit in 2013.

There were no opponents to the bill at the time of the House Committee hearing.

The House Committee elected to place the bill on the consent calendar.

The fiscal note provided by the Division of the Budget states there would be no fiscal effect on Kansas Insurance Department operations; however, insurance companies licensed to conduct health insurance business and receive premiums in the State may experience additional costs. All insurance companies are assessed a pro-rated annual amount paid to the Kansas High-Risk Insurance Pool based on the percentage of premiums collected in the State. By increasing the lifetime limit on individuals in the high-risk pool, additional costs would be borne by all insurance companies that are assessed for the high-risk pool.

HB 2099 was introduced by the House Committee on Insurance at the request of the Kansas Insurance Department.

At the House Committee hearing, a representative of the Kansas Insurance Department provided testimony in support of the bill, stating the bill contains technical changes that were suggested to the agency by the Office of the Revisor of Statutes.

There were no opponents to the bill at the time of the House Committee hearing.

The House Committee on Insurance amended the bill to replace references to the Department for Children and Families with “Aging and Disability Services or the Kansas Department of Health and Environment, or both” to reflect the agencies presently tasked with the duties outlined in the bill, as a result of 2012 ERO No. 41.

The fiscal note provided by the Division of the Budget states passage of bill would have no fiscal effect on state operations.

SB 163. Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefits (benefit mandates). Health insurance mandates in Kansas law do not apply to self-insurance health plans (subject to the federal Employment Retirement Income Security Act of 1974 [ERISA]). Provider mandates not specifically required for plans subject to the bill are chiropractors, psychologists, social workers, Advanced Practice Registered Nurses, and pharmacists. Excluded benefit mandates include newborn and adopted children, alcoholism, drug abuse, nervous and mental conditions, mammograms and pap smears, immunizations, maternity stays, prostate screening, diabetes supplies and education, dental care in a medical facility, off-label use of prescription drugs, and orally-administered anti-cancer medications (if the insurance plan or contract provides prescription drug coverage).

Proponents of the bill at the Senate Committee hearing included representatives of Bukaty Companies, Employee Benefits Professionals—Kansas City, and HSA Benefits Consulting. Written testimony was submitted by a representative of the Wichita Independent Business Association. The President of HSA Consulting indicated allowing mandate lite policies could give the state more health insurance options designed to meet the health needs and financial budgets of its citizens, shrink employees’ and

employers' health insurance allocation, reduce the number of the uninsured as a greater number of employees sign up for more affordable coverage, and provide employers with expendable cash for hiring more employees and paying higher salaries.

There were no opponents to the bill present at the Senate Committee hearing.

The fiscal note prepared by the Division of the Budget states the Kansas Insurance Department indicates enactment of the bill would increase costs, as the bill would create a new insurance plan to be regulated by the Department. However, the Department indicates the fiscal effect cannot be estimated, as it would be dependent on the number and type of "mandate lite" plans that would be created and issued by insurers doing business in Kansas. The Department is required to review and approve all plans that would be marketed and sold. Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.

insurance; electronic notices; state high risk pool; Mandate Lite Health Benefit Plan Act

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