

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 553

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 553, as amended, would amend the Utilization Review Organization Act and the Electronic Notice and Document Act.

The bill would amend the Utilization Review Organization Act to require utilization review entities to implement and maintain a prior authorization application programming interface (API), pursuant to federal law in effect on January 1, 2028, to streamline the electronic prior authorization process. This provision would be effective on January 1, 2028.

The bill would amend the Electronic Notice and Document Act to allow a plan sponsor of a health benefit plan (HBP) to authorize electronic delivery of plan documents and identification cards for insured individuals covered by a HBP. The bill would add and clarify definitions in the Electronic Notice and Document Act. The bill would also repeal a current statute pertaining to the consent required to send electronic notices and documents and the exceptions to such requirements.

Utilization Review Organization Act (Section 1)

The bill would require each utilization review entity certified under the Utilization Review Organization Act to implement and maintain a prior authorization API in

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

accordance with 45 CFR § 156.223(b), as in effect on January 1, 2028. This section would not apply to a prior authorization request for the coverage of drugs as defined in federal law.

This section would be part of and supplemental to the Utilization Review Organization Act and would become effective on January 1, 2028.

[*Note:* The Centers for Medicare and Medicaid Services (CMS) issued a proposed rule with a January 1, 2026, implementation date for API enhancement or development. CMS considered public comments on the proposed rule regarding the need for additional time for implementation and changed the compliance date in its final rule to January 1, 2027. The compliance date for the final rule applies to Medicare Advantage organizations and state Medicaid and Children’s Health Insurance Program (CHIP) Fee for Service programs (by January 1, 2027), Medicaid managed care plans and CHIP managed care entities (beginning with the first rating period that begins on or after January 1, 2027), and qualified health plans in the federally facilitated exchanges (by the first plan year beginning on or after January 1, 2017).]

Electronic Notice and Document Act (Sections 2–5)

Definitions (Section 4)

The bill would define the following:

- “Health benefit plan covered person” (HBPCP) would mean a policyholder, subscriber, enrollee, or other individual participating in a HBP;
- “Insured” would mean an individual who is covered by an insurance policy, including a HBP;
- “Plan sponsor” would mean the:

- Employer in the case of an employee benefit plan established or maintained by a single employer;
- Employee organization in the case of a plan established or maintained by an employee organization; or
- Association, committee, joint board of trustees, or similar group of representatives of the parties who establish or maintain the plan in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

The bill would clarify that the term “party” does not include a HBPCP.

[*Note:* Current law defines “party” as any recipient of a 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.]

Consent to Electronic Delivery of Health Benefit Plan Communications (Section 2)

The bill would allow the HBP sponsor, on behalf of HBPCPs, to provide consent to the electronic delivery of all communications related to the plan that are required by the Electronic Notice and Document Act and any health insurance identification cards. Before providing consent on behalf of a HBPCP, the bill would require a plan sponsor to confirm that the HBPCP routinely (at least once every 24 hours during the work week) uses electronic communications during the normal course of such covered person’s employment.

Before the electronic delivery of any plan communications or health insurance identification cards, the HBP would be required to:

- Provide the HBPCP with an opportunity to opt out of electronic delivery and to select U.S. mail as the preferred method of delivery; and
- Document satisfaction of all applicable statutory requirements regarding electronic delivery, consent, withdrawal of consent, and accessibility.

*Provisions Included in Electronic Notice and Document Act
(Section 3)*

The bill would make the provisions in Section 2 part of the Electronic Notice and Document Act.

*Requirements for Electronic Delivery, Consent, and
Withdrawal of Consent and Accessibility (Section 5)*

The bill would amend law regarding the requirements for authorized electronic delivery, storage, and presentation of notices or other required documents in an insurance transaction or that serve as evidence of insurance coverage to a party. The bill would extend certain provisions to apply the following conditions for electronic delivery to both a party and a HBPCP:

- If provisions in the Electronic Notice and Document Act or applicable law expressly require verification or acknowledgment of receipt of a notice or document be provided to a party or a HBPCP, electronic delivery could be used only if the delivery method used provides verification or acknowledgment of receipt;
- The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party or a HBPCP could not be denied solely because of the failure to obtain electronic consent or confirmation of consent as required under Section 1 of the bill;

- A withdrawal of consent by a party or HBPCP would not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party or HBPCP before the withdrawal of consent is effective. A withdrawal of consent by a party or HBPCP would be effective within a reasonable period of time after receipt of the withdrawal by the insurer; and
- If after consent to electronic delivery is given by the party, a change in the hardware or software requirements needed to access or retain a notice or document delivered electronically creates a material risk that the party would be unable to access or retain a subsequent notice or document to which the consent applies, the party or HBPCP could elect to treat an insurer's failure to provide the following statements as a withdrawal of consent:
 - The revised hardware or software requirements for access to and retention of a notice or document delivered electronically; and
 - The right of the party to withdraw consent without the imposition of any undisclosed fee, condition, or consequence.

This section of the bill would not apply to a notice or document delivered electronically by an insurer before the effective date of the Electronic Notice and Document Act to a party or HBPCP who, before that date, had consented to receive a notice or document in an electronic form otherwise allowed by law.

Repealed Statutes (Section 6)

In addition to the statutes amended, the bill would repeal KSA 40-5802, which contains the consent requirements for

electronic delivery of notices and documents and the exceptions to such requirements.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Longbine. The bill was referred to the Senate Committee on Financial Institutions and Insurance.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Kansas Employers for Affordable Healthcare, who stated the bill could benefit employers who take advantage of the electronic communication option and has the potential to lower administrative overhead, streamline communications, and allow insured members to use a format with which they are comfortable.

Written-only proponent testimony was provided by representatives of Blue Cross Blue Shield of Kansas, Inc., and the Kansas Chamber.

Neutral testimony was provided by a representative of the Kansas Hospital Association who proposed two amendments that would allow for the acceptance and response to prior authorization requests through a secure electronic transmission.

No other testimony was provided.

The Senate Committee amended the bill to add provisions to the Utilization Review Organization Act requiring utilization review entities to implement and maintain a prior authorization API by January 1, 2028.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Administration and the Kansas Insurance Department indicate enactment of the bill would not have a fiscal effect on the operations of either agency.

Health insurance; Electronic Notice and Document Act; health benefit plan; plan sponsor; health benefit plan covered person; electronic delivery; documents and identification cards; Utilization Review Organization Act; prior authorization application programming interface