

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2010

SENATE BILL No. 388

By Committee on Financial Institutions and Insurance

1-19

12 AN ACT concerning insurance; relating to ~~risk-based capital require-~~
13 ~~ments for insurers~~ **the regulation thereof**; amending K.S.A. 2009
14 Supp. **[40-2,103,]** 40-2c01 **[and 40-19c09]** and repealing the existing
15 ~~section~~ **[sections]**.
16

17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2009 Supp. 40-2c01 is hereby amended to read as
19 follows: 40-2c01. As used in this act:

20 (a) “Adjusted RBC report” means an RBC report which has been
21 adjusted by the commissioner in accordance with K.S.A. 40-2c04, and
22 amendments thereto.

23 (b) “Corrective order” means an order issued by the commissioner
24 specifying corrective actions which the commissioner has determined are
25 required to address a RBC level event.

26 (c) “Domestic insurer” means any insurance company or risk reten-
27 tion group which is licensed and organized in this state.

28 (d) “Foreign insurer” means any insurance company or risk retention
29 group not domiciled in this state which is licensed or registered to do
30 business in this state pursuant to article 41 of chapter 40 of the Kansas
31 Statutes Annotated or K.S.A. 40-209, and amendments thereto.

32 (e) “NAIC” means the national association of insurance
33 commissioners.

34 (f) “Life and health insurer” means any insurance company licensed
35 under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a
36 licensed property and casualty insurer writing only accident and health
37 insurance.

38 (g) “Property and casualty insurer” means any insurance company
39 licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the
40 Kansas Statutes Annotated, but shall not include monoline mortgage
41 guaranty insurers, financial guaranty insurers and title insurers.

42 (h) “Negative trend” means, with respect to a life and health insurer,
43 a negative trend over a period of time, as determined in accordance with

1 the “trend test calculation” included in the RBC instructions defined in
2 subsection (j).

3 (i) “RBC” means risk-based capital.

4 (j) “RBC instructions” mean the risk-based capital instructions prom-
5 ulgated by the NAIC, which are in effect on December 31, ~~2008~~ 2009,
6 or any later version promulgated by the NAIC as may be adopted by the
7 commissioner under K.S.A. 2009 Supp. 40-2c29, and amendments
8 thereto.

9 (k) “RBC level” means an insurer’s company action level RBC, reg-
10 ulatory action level RBC, authorized control level RBC, or mandatory
11 control level RBC where:

12 (1) “Company action level RBC” means, with respect to any insurer,
13 the product of 2.0 and its authorized control level RBC;

14 (2) “regulatory action level RBC” means the product of 1.5 and its
15 authorized control level RBC;

16 (3) “authorized control level RBC” means the number determined
17 under the risk-based capital formula in accordance with the RBC instruc-
18 tions; and

19 (4) “mandatory control level RBC” means the product of .70 and the
20 authorized control level RBC.

21 (l) “RBC plan” means a comprehensive financial plan containing the
22 elements specified in K.S.A. 40-2c06, and amendments thereto. If the
23 commissioner rejects the RBC plan, and it is revised by the insurer, with
24 or without the commissioner’s recommendation, the plan shall be called
25 the “revised RBC plan.”

26 (m) “RBC report” means the report required by K.S.A. 40-2c02, and
27 amendments thereto.

28 (n) “Total adjusted capital” means the sum of:

29 (1) An insurer’s capital and surplus or surplus only if a mutual insurer;
30 and

31 (2) such other items, if any, as the RBC instructions may provide.

32 (o) “Commissioner” means the commissioner of insurance.

33 **New Sec. 2. (a) The Kansas health policy authority shall con-**
34 **duct a study on the topic of requiring insurance companies to re-**
35 **imburse clinical marriage and family therapists, clinical profes-**
36 **sional counselors and clinical psychotherapists. Such study shall be**
37 **designed to:**

38 (1) **Determine the impact that coverage for such therapists,**
39 **counselors and psychotherapists has had on the state health care**
40 **benefits program as described in article 65 of chapter 75 of the**
41 **Kansas Statutes Annotated, and amendments thereto;**

42 (2) **provide data on utilization of such therapists, counselors**
43 **and psychotherapists by individuals covered for direct reimburse-**

- 1 ments for services provided by such therapists, counselors and
2 psychotherapists;
- 3 (3) determine the cost of providing coverage for such thera-
4 pists, counselors and psychotherapists;
- 5 (4) compare the costs of coverage between individuals under
6 the state health care benefits program covered by insurance com-
7 panies which provide direct reimbursement for services provided
8 by such therapists, counselors and psychotherapists to individuals
9 under the state health care benefits program covered by insurance
10 companies which do not provide such direct reimbursement;
- 11 (5) compare the amount of premiums charged by insurance
12 companies which provide reimbursement for services provided by
13 such therapists, counselors and psychotherapists to the amount of
14 premiums charged by insurance companies which do not provide
15 such direct reimbursement;
- 16 (6) determine whether mandated direct reimbursement for
17 such therapists, counselors and psychotherapists should be contin-
18 ued under the state health care benefits program.
- 19 (b) The Kansas health policy authority shall conduct an analysis
20 to determine if proactive mental health care treatment results in
21 reduced expenditures for future mental and physical health care
22 services. Under such analysis the Kansas health policy authority
23 shall compare expenditures of patients who receive such proactive
24 mental health care treatments with those patients who do not.
- 25 (c) Such studies shall be completed no later than December
26 31, 2010 and shall be made available to all members of the house
27 committee on insurance, the senate committee on financial insti-
28 tutions and insurance and all parties seeking passage of such leg-
29 islation no later than the first day of the 2011 Kansas legislative
30 session.
- 31 (d) The insurance department and all other departments,
32 boards, agencies, officers and institutions and subdivisions thereof
33 shall cooperate with the Kansas health policy authority in carrying
34 out all duties prescribed pursuant to this section.
- 35 [New Sec. 3. If individual and group health insurance policies,
36 medical service plans, contracts, hospital service corporation con-
37 tracts, hospital and medical service corporation contracts, frater-
38 nal benefit societies or health maintenance organizations, munic-
39 ipal group-funded pools and the state employee health care
40 benefits plan which are delivered, issued for delivery, amended or
41 renewed on and after July 1, 2010, shall be required to exclude
42 coverage for abortions unless the procedure is necessary to pre-
43 serve the life of the mother or in the case of rape reported to a

1 law enforcement agency or in the case of incest involving a minor
2 and reported to a law enforcement agency, such policies, plans,
3 contracts, organizations, societies and pools shall be required to
4 offer a rider covering abortions for which an additional premium
5 is paid.

6 [Sec. 4. K.S.A. 2009 Supp. 40-2,103 is hereby amended to read
7 as follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-
8 2,101, 40-2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165
9 through 40-2,170, inclusive, 40-2250, K.S.A. 2009 Supp. 40-2,105a
10 and 40-2,105b and section 3, and amendments thereto, shall apply
11 to all insurance policies, subscriber contracts or certificates of in-
12 surance delivered, renewed or issued for delivery within or outside
13 of this state or used within this state by or for an individual who
14 resides or is employed in this state.

15 [Sec. 5. K.S.A. 2009 Supp. 40-19c09 is hereby amended to
16 read as follows: 40-19c09. (a) Corporations organized under the
17 nonprofit medical and hospital service corporation act shall be
18 subject to the provisions of the Kansas general corporation code,
19 articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes
20 Annotated, applicable to nonprofit corporations, to the provisions
21 of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223,
22 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236,
23 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254,
24 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-
25 2,116, 40-2,117, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163
26 through 40-2,170, inclusive, 40-2a01 *et seq.*, 40-2111 to 40-2116,
27 inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-
28 2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-
29 2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2009
30 Supp. 40-2,105a and 40-2,105b and section 3, and amendments
31 thereto, except as the context otherwise requires, and shall not be
32 subject to any other provisions of the insurance code except as
33 expressly provided in this act.

34 [(b) No policy, agreement, contract or certificate issued by a
35 corporation to which this section applies shall contain a provision
36 which excludes, limits or otherwise restricts coverage because
37 medicaid benefits as permitted by title XIX of the social security
38 act of 1965 are or may be available for the same accident or illness.

39 [(c) Violation of subsection (b) shall be subject to the penalties
40 prescribed by K.S.A. 40-2407 and 40-2411, and amendments
41 thereto.]

42 [New Sec. 6. (a) The Kansas health policy authority shall con-
43 duct a study on its contract with CVS CareMark, including (1) com-

1 **petitiveness of rates for prescription drug coverage, (2) policy of**
2 **permissible substitution of generic drugs and (3) comparison of**
3 **coverage and costs with other providers.**

4 **[(b) The Kansas health policy authority shall conduct an anal-**
5 **ysis of the study and shall report the results of the study and such**
6 **analysis to the house committee on health and human services, the**
7 **house committee on government efficiency and fiscal oversight**
8 **and the senate committee on public health and welfare no later**
9 **than the first day of the 2011 Kansas legislative session.]**

10 Sec. ~~2~~ 3 [7]. K.S.A. 2009 Supp. [40-2,103,] 40-2c01 ~~is~~ [and 40-
11 **19c09 are**] hereby repealed.

12 Sec. ~~3~~ 4 [8]. This act shall take effect and be in force from and after
13 its publication in the statute book.