

Corrected
SESSION OF 2007

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 11**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 11, as amended by the House Committee of the Whole, would create new legislation relating to Medicaid reform, health insurance reform, premium assistance, assistance for safety net clinics, the development of small employer and association health insurance plans, and creation of an Office of Inspector General in the Kansas Health Policy Authority.

Medicaid Reform

Section 1 of the bill would direct the Kansas Health Policy Authority, in consultation with the Joint Committee on Health Policy Oversight, to consider various Medicaid reform options as part of health reform in Kansas. The options to be included are:

- Experience of the other states;
- Long-term care alternatives;
- Waste, fraud and abuse;
- Health opportunity accounts;
- Tax credits, vouchers and premium assistance; and
- Wellness programs.

The bill would direct that the reforms should result in improved health outcomes, long-term cost controls and encourage primary and preventive care which would result in cost savings.

*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>

Health and Insurance Reform

Section 2 of the bill would require the Authority to develop and deliver to the Governor, the Joint Committee on Health Policy Oversight, the Speaker of the House, the President of the Senate, the House and Senate Majority and Minority Leaders health care finance reform options for enactment by the 2008 Legislature. Such options would be required to include an analysis of a Kansas health care insurance connector, a model for a voluntary health insurance connector, and draft legislation for the proposed health care finance reform options. In developing options, the Authority would be required to solicit and consider information and recommendations from advisory committees and to advise and consult with the Joint Committee on Health Policy Oversight regularly and on a continuing basis.

The Authority would be required to analyze and develop health care finance options with the goals of:

- Financing health care and health promotion in a manner that is equitable, seamless, and sustainable for consumers, providers, purchasers, and government;
- Promoting market-based solutions that encourage fiscal and individual responsibility;
- Protecting the health care safety net in the development of such options; and
- Facilitating pooling and purchasing of health insurance and facilitating access to health insurance by small businesses and individuals.

The Authority would be required to identify and analyze policies that are designed to: increase portability; increase individual ownership of health care policies; utilize pre-tax dollars for the purchase of health insurance; and expand consumer responsibility for making health care decisions.

The Authority would be required to obtain economic and actuarial analyses by an entity recognized as having specific experience in all proposed health care finance reform options to determine the economic impact on consumers, providers, purchasers, businesses, and government, as well as the number of uninsured Kansans with the potential to receive coverage as a result of the proposed options.

The Authority would be required to investigate and identify public funding sources for any proposed options, including Medicaid and other federal programs and possible waivers.

In order to expand health services to low-income families, the Authority would be required to investigate: the development and availability of federal initiative funding; waivers and funding opportunities under the Deficit Reduction Act of 2005; waivers under the federal health insurance flexibility and accountability demonstration initiative; and to the extent feasible, to include such federal programs in any proposed options.

In collaboration with the Commissioner of Insurance, the Authority would be required to analyze the potential for the use of reinsurance and state subsidies for reinsurance as a way to reduce premium volatility in the small group market, to increase the predictability of premium trends, to lower costs, and to increase coverage.

Interims and Other Studies

Under Section 3, the Department of Insurance would be required to conduct a study of the impact of extending continuation benefits under COBRA from 6 months to 18 months. The Commissioner would be required to report its finding to the Kansas Health Policy Authority and the Joint Committee on Health Policy Oversight.

Section 3 would require the Legislative Coordinating Council to appoint a legislative study committee for the 2007 interim. The study committee would study and review various options for tax credits and benefits for the purchase of long-

term care insurance, health earned income tax credits, health insurance and health savings accounts.

Premium Assistance

Section 4 would amend state law to add a phased-in premium assistance plan to the list of programs for which the Kansas Health Policy Authority is responsible. This assistance plan would be intended to assist eligible low income Kansans with the purchase of private insurance that are actuarially equivalent to the Kansas state employee health plan. In the first 2 years of the program eligibility will be for families at and under 50 percent of the federal poverty level (annual income of approximately \$10,325 for a family of 4 in 2007). In year 3, eligibility will extend to families under 75 percent of the federal poverty level (annual income of approximately \$15,488 for a family of 4 in 2007). In year four, eligibility will extend to families with incomes up to 100 percent of the federal poverty level (annual income of approximately \$20,650 for a family of four in 2007). All assistance that would be provided would be subject to all eligibility requirements and would be subject to appropriation. The Authority would be authorized to seek approval from the Centers for Medicare and Medicaid Services necessary to accomplish the development of the premium assistance program.

Safety Net Clinic Capital Loan Guarantee

Sections 5 through 11 of the bill would be cited at the Primary Care Safety Net Clinic Capital Loan Guarantee Act. The bill would authorize the Secretary of Health and Environment to provide capital loan guarantees against risk of default for eligible primary care safety net clinics in Kansas. Agreements may be entered into between the Secretary and primary care safety net clinics, financial institutions, the Kansas Development Finance Authority, and other public or private entities. The aggregate outstanding principal amount for any single borrowing organization cannot exceed \$3,000,000, with the total aggregate outstanding amount for all loan guarantees not exceeding \$15,000,000.

The bill would create a five-member Primary Care Safety Net Clinic Loan Guarantee Review Committee to review all proposals for loan financing guarantees. The members would be appointed by the Secretary of Health and Environment as follows: two members representing the Department of Health and Environment, one member nominated by the Kansas Development Finance Authority, one member nominated by the Kansas Health Policy Authority, and one member nominated by the Kansas Association for the Medically Underserved. Nominees may be officers or employees of the nominating agency or organization, and no more than three members may be affiliated with the same political party. The Secretary of Health and Environment or his designee would serve as the non-voting chairperson of the Review Committee.

The bill would, subject to appropriation, establish the Primary Care Safety Net Clinic Loan Guarantee Fund at the Department for the facilitating the financing for the acquisition and modernization of primary care safety net clinics and the refinancing of capital improvements and equipment.

The bill would require an annual report on the loan guarantee activity including new loans, loan repayment status and other relevant information to the Senate Ways and Means and House Appropriations committees at the beginning of each Session.

Third Party Liability

Section 12 would create a new statute that would apply to third parties, including health insurers, self insured plans, group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are by law, contract, or agreement legally responsible for payment of a claim for a health care item or services. The new statute would:

- Prohibit third parties, from enrolling an individual or making payments for benefits to the individual or on the

individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under the state's Medicaid program or the Medicaid program of any other state;

- Require all third parties, with respect to individuals who are eligible for or are provided medical assistance under the Medicaid program and upon the request of the state Medicaid agency (Kansas Health Policy Authority), to provide information to determine or enable a determination of what periods the individuals or their spouses or dependents may be or may have been covered by the third party payer, along with the nature of the coverage, in a manner prescribed by the United States Secretary of Health and Human Services;

Section 12 of the bill would require all third parties to:

- Accept the state Medicaid agency's right of recovery and assignment to the Medicaid agency of any right of an individual or entity to payment for an item or service for which payment has been made under the state's Medicaid program;
- Respond to any inquiry by the state Medicaid agency or its designee regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and
- Agree not to deny a claim submitted by the state Medicaid agency solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim if certain specified conditions are met.

Small Employer Cafeteria Plan Development Program

Section 13 would create the Small Employer Cafeteria Plan Development program to encourage and expand the use of cafeteria benefit plans authorized by 26 USC 125 (Section 125 plans) by small employers. Small employers are defined in the bill as those who employ fifty or less people. The bill would authorize the Secretary of Commerce to provide grants to small employers, who do not already offer cafeteria plans, for the purpose of establishing Section 125 plans. The bill would direct the Secretary to market the program and allow contracts with third parties to operate the program. The Small Employer Cafeteria Plan Development Program Fund is established to provide grants. Under the provisions of the bill, the Development Program would expire July 1, 2009.

Association Plans

Section 14 would authorize the Secretary of Commerce to make grants or no interest loans for the purpose of financing the initial costs associated with the forming and organization of associations to assist members of the association with obtaining access to health care plans. As defined in the bill, an association would mean a small business or an organization of persons having a common interest. A small business would be defined as an employer with fifty or fewer employees. The bill would specify the use of the funds, including authorization to use the funds to pay for actuarial or feasibility studies. The loans would be required to be interest free and the association would be required to provide a two for one match for the grant or loan. The Association Assistance Plan Fund would be established to provide grants and loans and \$250,000 would be appropriated to the Fund on July 1, 2007.

Inspector General

Section 15 would create the Office of the Inspector General within the Kansas Health Policy Authority (KHPA). The duties of the Office of Inspector General would be to oversee, audit, investigate and make performance reviews of the state

Medicaid program, the state MediKan program and the State Children's Health Insurance Program. As established by the bill, this oversight would include, but not be limited to, the following:

- Investigation of fraud, waste, abuse and illegal acts by the KHPA and its agents, employees, vendors, contractors, consumers, clients and health care providers or other providers;
- Audits of the KHPA and its employees, contractors, vendors and health care providers related to ensuring that appropriate payments are made for services rendered and to the recovery of overpayments;
- Investigations of fraud, waste, abuse or illegal acts committed by clients of the KHPA or by consumers of services administered by the Kansas Health Policy Authority; and
- Monitor adherence to the terms of the contract between the KHPA the organization under contract to make claims' payments.

Upon finding credible evidence of fraud, waste, abuse or illegal acts, the Inspector General would be required to report its findings to the KHPA and refer the findings to the Attorney General.

Under the provision of the bill, the Inspector General would be appointed by the KHPA subject to confirmation by the Senate. Selection would be made without regard to political affiliation. Qualifications for the Inspector General are set out in the bill. No former or current executive or manager of a program or agency subject to oversight would be allowed to serve as an inspector general within two years of such service. The bill would require any person appointed to the position to receive certification as an inspector general from a national organization that provides training to such persons. The term of the first inspector general would expire on January 15, 2009.

Subsequent persons would serve for a term which expires on January 15 of each year in which the whole Senate is sworn in for a new term.

The bill would direct that the Inspector General be in the classified service and that although the person would report to the Executive Director of the KHPA, the Inspector General would exercise independent judgment in carrying out statutory duties. Appropriations for the Office of Inspector General shall be made to the KHPA by a separate line item appropriation. The Inspector General would be allowed to hire employees in the unclassified service and contract for necessary services subject to appropriation.

Under the provisions of the bill, the Inspector General would have access to all pertinent information and to all personnel and facilities of the KHPA, its employees, vendors, contractors and health care providers and any federal, state or local governmental agency that are necessary to perform the duties of the office as directly related to programs administered by the agency. In addition, the bill would grant the Inspector General the power to compel by subpoena the attendance and testimony of witnesses and the production of books, electronic records and papers as directly related to programs under its purview. State and local governmental agencies would be authorized and directed to provide to the Inspector General requested information, assistance or cooperation. Access to contractor files would be limited to those files necessary to verify the accuracy of the contractor's invoices, compliance with the contract provisions or program rules. Individual medical records of patients who are not clients of the Authority would not be made available to the Inspector General.

Under the provisions of the bill, if the Inspector General determines that a possible criminal act relating to fraud in the provision or administration of KHPA programs has been committed, the Inspector General would be required to immediately notify the Office of the Kansas Attorney General. The Inspector General may request the special expertise of the Kansas Bureau of Investigation and may present for

prosecution the findings of any criminal investigation to the Office of the Attorney General or the Office of the United States Attorney in Kansas.

The bill would require the Inspector General to report all convictions, terminations and suspensions taken against vendors, contractors and health care providers to the KHPA and to any agency responsible for licensing or regulating those persons or entities. The Inspector General would be required to notify a licensing or regulatory agency if it determines that reasonable suspicion exists that an act relating to the violation of an agency licensure or regulatory standard has been committed by a vendor, contractor or health care provider who is licensed or regulated by the agency.

The bill would require the Inspector General to make annual reports, findings and recommendations regarding the office's investigations into reports of fraud, waste, abuse and illegal acts to the Executive Director of the KHPA, the Legislative Post Auditor, the Senate Committee on Ways and Means, the House Committee on Appropriations, the Joint Committee on Health Policy Oversight and the Governor. The bill sets out the components of these reports.

Under the provisions of the bill, the Inspector General may make recommendations to the KHPA or the Legislature for changes in law, rules and regulations, policy or procedures as the Inspector General deems appropriate to carry out the provisions of law or to improve the efficiency of programs administered by the KHPA.

Background

The House Committee of the Whole amended the substitute bill to remove all of the language in the bill, with the exception of the enacting clause, and inserted new language described in the Brief above. As amended by the Committee of the Whole, the bill contains language which is also included in the following bills: SB 387, HB 2547, SB 323, and SB 373.

The Social Services Budget Committee amended SB 11 by striking all of the language in the bill, with the exception of the enacting clause, and created a substitute bill by inserting the language of HB 2591. Included in Section 25 of the bill is the language of Substitute for SB 309 and HR 6015. No fiscal note is available for the substitute bill.

The original SB 11 was introduced by the Joint Committee on Administrative Rules and Regulations in response to a question of statutory authority raised before the Committee. SB 11, as amended by the Senate Committee on Ways and Means, would have restored definitions pertaining to the Alcoholism Treatment Facilities Licensing Act which were inadvertently removed in 1998. In addition, the bill includes a savings clause to treat the actions of the Department of Social and Rehabilitation Services and its Secretary during the period from July 1, 1998 to the effective date of this act as having been properly authorized and the provisions had not been repealed. Finally, the bill would add professionals licensed by the Behavioral Sciences Regulatory Board to independently practice to the list of persons exempted from the requirement to be licensed as a treatment facility before providing alcohol and drug abuse treatment services. The Senate Public Health and Welfare Committee added the language from SB 11 to SB 354 during its consideration of that bill.