

SESSION OF 2008

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 81**

As Agreed to May 3, 2008

Brief*

House Sub. for SB 81 would enact the Health Care Reform Act of 2008, would make amendments to several health and insurance statutes, and would establish the Physician Workforce and Accreditation Task Force. The bill also would appropriate moneys from the State General Fund for the Wichita Center for Graduate Medical Education (WCGME) in FY 2009 contingent upon a submission of a request for research-oriented grant funding from the Kansas Bioscience Authority.

Mandatory Offer—Premium Only Plans (POPs)

The bill would create new law to require insurers that offer group health insurance provide the option of establishing a premium only (cafeteria) plan (POP). The establishment of a POP or other payroll deduction plan would not be in violation of KSA 40-2404, a statute governing unfair methods of competition or unfair and deceptive acts or practices. The bill would allow insurers to charge a fee for establishing a POP or use a vendor for plan establishment. An “insurer” would be defined as any insurance company, fraternal benefit society, health maintenance organization and hospital and medical service corporation authorized to transact health insurance business in this state. [A premium only cafeteria plan, POP, allows employees to pay for their portion of group insurance premiums with pre-tax dollars]. **(New Section 1)**

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Optional Offer—Premium Only Plans (POPs)

The bill would create new law to allow employers that provide health insurance coverage, in which any portion of the premium is payable by an employee, to offer a premium only cafeteria plan. This provision would not apply to any employer who offers health insurance through a self-insured or self-funded group health benefit plan. The term, "health benefit plan" would be defined to include a cafeteria plan authorized by 26 U.S.C. Section 125; and the cafeteria plan could offer the option of paying all or any portion of the premium or the option of receiving insurance coverage through a High Deductible Health Plan and the establishment of an HSA. The terms "Health Savings Account (HSA)," and "High Deductible Health Plan (HDHP)" are defined as:

- "Health Savings Account" would have the meaning ascribed to it as in subsection (d) of 26 U.S.C. Section 223; and
- "High Deductible Health Plan" would mean a policy or contract of health insurance or health care plan that meets the criteria established in subsection (c) of 26 U.S.C. Section 223 and amendments and regulations. **(New Section 2)**

High Risk Pool—Amendment to the Kansas Uninsurable Health Insurance Plan Act

The bill would amend KSA 40-2124 to increase the maximum lifetime benefit for participants in the state High Risk Pool (the Kansas Uninsurable Health Insurance Plan administered by the Kansas Health Insurance Association) from \$1.0 million to \$2.0 million. **(Section 4)**

State COBRA Coverage Continuation

The bill would make amendments to three statutes in the Insurance Code (Nonprofit Medical and Hospital Service

Corporations; Group Accident and Sickness Insurance; and HMOs and Medicare provider organizations) to extend the state continuation of coverage period from six to eighteen months. Amendments also would be made to require employers to provide reasonable notice of the right of continuation of coverage and to require, in the case group accident and sickness insurance policies, a terminated employee to pay premiums to the employer (rather than insurer, as in current law). **(Sections 3, 5, 7)**

Health Benefit Plans—Small Employers

The bill would amend KSA 40-2209d to specify that a "health benefit plan" would include a section 125 plan which offers the option of receiving coverage through an HDHP and the establishment of an HSA. The terms "High Deductible Health Plan" and "Health Savings Account" also would be defined [definitions are identical to those created in New Section 2]. **(Section 6)**

Safety Net Clinics

The bill would amend two statutes in the Primary Care Safety Net Clinic Capital Loan Guarantee Act to create a definition of "provider-based indigent care clinic." Such clinic would have to be located in a Medicare-certified hospital, nursing facility, or home health agency and would be included within the definition of a "primary care safety net clinic." Additionally, the Secretary of the Kansas Department of Health and Environment would be allowed to enter into agreements with provider-based indigent care clinics to allow such clinics to act as primary care safety net clinics. **(Sections 8-9)**

State Employee Health Care Benefits Program

The bill would amend a statute governing the State Employee Health Care Benefits Program (KSA 2007 Supp. 75-6501) to require the state's employer contribution to any HSA plan offered to state employees be equal to the state's

employer contribution to any fully insured plans offered to state employees.

Beginning with Plan Year 2009, the cost savings to the state for the High Deductible Health Plan would be deposited monthly into the employee's Health Savings Account (amount cannot exceed the federally established maximum annual amount), for as long as the employee participates in this plan. For state employees who have not previously participated in the State Health Benefits Plan, the employer is to calculate an average savings. The employer also is to allow additional voluntary contributions by the employee to his or her HSA. **(Section 10)**

Office of the Inspector General (Kansas Health Policy Authority)

The bill would amend a statute (KSA 2007 Supp. 75-7427) applying to the Inspector General within the Kansas Health Policy Authority (KHPA), to provide that contractors convicted of fraud, waste, abuse, or illegal acts or whose actions have caused the State to pay fines or reimburse the federal government more than \$1.0 million in the Medicaid program, with certain exceptions, are not eligible for any state Medicaid contract. A technical change also would be made to clarify the Inspector General reports to the Kansas Health Policy Authority. The bill would specify that these provisions are not to be construed to conflict with federal law or to require or permit the use of federal funds where prohibited. **(Section 11)**

Kansas Health Policy Authority – Membership; Programs

The bill would add the Commissioner of Education to the KHPA Board as a non-voting, *ex-officio* member. **(Section 12)**

The bill would amend two provisions enacted in 2007 SB 11 to transfer administration of the Small Employer Cafeteria Plan Development Program and the Association Assistance

Plan grants and loan program from the Department of Commerce to KHPA. **(Sections 16-17)**

Medical Home

The bill would define a “medical home” to mean “a health care delivery model in which a patient establishes an ongoing relationship with a physician or other personal care provider in a physician-directed team, to provide comprehensive, accessible and continuous evidence-based primary and preventive care, and to coordinate the patient’s health care needs across the health care system in order to improve quality and health outcomes in a cost effective manner.” The Kansas Health Policy Authority would be directed to incorporate the use of the medical home delivery system within the state Medical Assistance program, the State Children’s Health Insurance Program (SCHIP), and the state MediKan program. The Kansas State Employees Health Care Commission would be required to incorporate the use of a medical home delivery system within the State Health Care Benefits Program. Compliance with a medical home delivery system would not, however, be required for those benefits’ participants who receive treatment in accordance with a religious method of healing pursuant to KSA 2007 Supp. 75-6501.

On or before February 1, 2009, the Kansas Health Policy Authority, in conjunction with the Kansas Department of Health and Environment and state stakeholders, would be required to develop systems and standards for the implementation and administration of a “medical home.” **(New Section 13)**

Legislative Committees

The bill would amend the statutory authority of the Joint Committee on Children's Issues to specify the Committee is to study children's issues. Under current law, the Joint Committee is charged with the oversight of the implementation and operation of the children’s health insurance plans created under the provisions of the act, including the assessment of the performance based contracting’s measurable outcomes as set

forth in subsection (b)(4) of KSA 38-2001 and other children's issues as the Committee deems necessary. **(Section 14)**

The bill would assign the oversight of the state children's health insurance programs to the Joint Committee on Health Policy Oversight. **(Section 15)**

Program Establishment, Implementation – KHPA

The bill would require the Kansas Health Policy Authority, subject to appropriations from the State General Fund, to establish and implement the following:

- *Dental Coverage for Pregnant Medicaid Beneficiaries.* The cost could not exceed \$545,833.
- *Expansion of Medicaid Eligibility up to 200 percent FPL (Federal Poverty Level) and Smoking Cessation Programs for pregnant women.* The cost would be an amount of approximately \$460,000 from the State General Fund.
- *Statewide Community Health Records Program.* The cost could not exceed \$383,600. **(New Section 19)**

Program Establishment – KDHE

The bill would require the Kansas Department of Health and Environment, subject to appropriations from the State General Fund, to establish a program to increase access to screenings for colon, breast, prostate and cervical cancer and to be used in conjunction with, but not limited to, rural health and safety net clinics. The cost could not exceed \$1.5 million. **(New Section 20)**

Insurance Card Standardization (Annual Publication)

The bill would amend KSA 39-760 to direct the Kansas Health Policy Authority, with the Secretary of Social and Rehabilitation Services, to establish a system for reporting suspected abuse or fraud in connection with the state welfare

and medical assistance programs. Additionally, notification to recipients of Medical Assistance is to be provided on an annual basis to recipients, on the medical cards issued by KHPA. (Currently, the statute applies to only the Department of Social and Rehabilitation Services and notification is required on a monthly basis (printed on medical cards issued to recipients). **(Section 21)**

SCHIP Expansion; Premium Assistance for Employer Sponsored Insurance

A new provision would be added to the statute that authorizes the Kansas Children's Health Insurance Program to direct the Health Policy Authority to provide coverage under the program, subject to appropriations, for children living in a household having a gross income: for 2009, at or under 225 percent of the 2008 federal poverty guidelines and; for 2010 and subsequent years, at or under 250 percent of the 2008 federal poverty guidelines. Participants would be required to contribute to the coverage on the basis of a sliding scale, and new participants would not be eligible for at least eight months if they previously had comprehensive health benefit coverage through another plan and such coverage was not terminated for one of the reasons set out in the legislation.

The statute also would be amended to allow that contributions for health insurance premiums in the State Children's Health Insurance Program may be made to a health savings account, if applicable. Payments for health insurance premiums could be made in conjunction with an employer sponsored health insurance premium assistance plan (ESI), providing that supplemental benefits may be purchased outside of the capitated managed care plan.

Under new language added to the statute, any individual seeking to participate in the SCHIP program would be required to present documentary evidence of citizenship or of being a lawful alien as a condition of eligibility. The criteria for determining whether the documentation is satisfactory could not be more restrictive than that followed by the Social Security

Administration to determine citizenship. Certain types of documents issued by Indian tribes would constitute satisfactory evidence of citizenship. The coverage of children in families up to 225 and 250 percent of federal poverty guidelines authorized by the bill would not be construed as an entitlement, would be subject to state and federal funds and requirements, and, were it determined available federal funds and state appropriations are insufficient to sustain the increased levels of eligibility, a lower income level would be required to be adopted and implemented. **(Section 22)**

Premium Assistance Program

An existing statute, created by 2007 SB 11, would be amended to delete all references to a phased in premium assistance plan to assist eligible low-income residents with the purchase of private insurance or other benefits that are actuarially equivalent to the Kansas State Employee Health Plan. **(Section 23)**

Establishment of Funding Priorities for FY 2009

The bill would establish funding recommendations for the following priorities:

- KDHE: Safety Net Clinics, \$2.5 million. **(Section 24)**

WCGME Appropriation, FY 2009

The bill would, through a request, allow the Wichita Center for Graduate Medical Education to receive moneys from the Kansas Bioscience Authority in FY 2009 and would appropriate \$1.5 million (from the State General Fund) in FY 2009 for non-research expenditures (off-site or rural rotation), contingent upon the submission of the request to the Bioscience Authority for \$7.1 million in research-oriented grant funding. **(Section 25)**

Physician Workforce and Accreditation Task Force

The bill would create the Physician Workforce and Accreditation Task Force. The Task Force would be composed of 13 members as follows:

- Two members of the medical faculty or administrators of the University of Kansas Medical Center appointed by the dean of the school of medicine; one from the Kansas City Campus, and one from the Wichita Campus;
- Two members appointed by the Governor, practicing medicine in Kansas who are current or former participants in a Kansas graduate medical residency program;
- One member appointed by the Board of Regents;
- One member representing Via Christi appointed by the Wichita Center for Graduate Medical Education (WCGME);
- One member representing Wesley Medical Center, appointed by WCGME;
- One member appointed by the Kansas Health Policy Authority (KHPA);
- One member who is an administrator of a rural hospital appointed by the Kansas Hospital Association;
- Four legislators, with one each appointed by the Senate President; the Speaker of the House; the Senate Minority Leader; and the House Minority Leader.

The Chairperson of the Task Force would be designated by the House Speaker from the membership, and the Vice-Chairperson would be designated by the Senate President from the membership. The Task Force would meet on call of the Chairperson, or on the request of seven members, subject to

the approval of the Legislative Coordinating Council. Seven members would be a quorum.

The Task Force would be charged with the study and adoption of recommendations regarding the physician workforce in the state and accreditation issues at the WCGME. The Task Force would be staffed by the Revisor of Statutes, Legislative Research Department, and Legislative Administrative Services. The Task Force would be required to report to the House Committee on Appropriations and the Senate Committee on Ways and Means prior to the beginning of the 2009 regular session. **(Sections 26; 29)**

Kansas Health Policy Authority – Outreach Pilot Program

The bill would allow the Kansas Health Policy Authority to establish, subject to appropriations, a pilot program implementing access to care programs for outreach to increase enrollment of children in Medicaid and HealthWave with priority given to rural and safety net clinics. The cost of the two-year pilot shall not exceed \$550,000 per year.

The KHPA would be required to report its findings and any recommendations it may have concerning the pilot program to the Governor, Joint Committee on Health Policy Oversight, and the Legislature annually. **(Section 27)**

Effective Date

The Task Force provisions would take effect upon publication in the *Kansas Register*. All other provisions of the bill would be effective upon publication in the statute book.

Conference Committee Action

The Conference Committee agreed to the House amendments to House Sub. for SB 81 (as amended by the

House Committee of the Whole) and agreed to amend the bill further to:

- Delete provisions relating to studies to be conducted by:
 - The Kansas Health Insurance Association (Section 4 of H. Sub. for SB 81 in the HCOW version); and
 - Legislative Committee(s) appointed by the Legislative Coordinating Council (New Section 20 of H. Sub. for SB 81 in the HCOW version).
- Reduce the proposed increase in the maximum lifetime benefit under the High Risk Pool by \$1.0 million to a total benefit of \$2.0 million (Section 5 of H. Sub. for SB 81 in the HCOW version).
- Specify in two of the state's COBRA statutes that an employer must give its employees and employee's dependents reasonable notice of the right to continuation of coverage. An amendment also is made to the HMO/Medicare provider COBRA statute to include language from the Accident & Sickness insurance COBRA statute.
- Clarify the cost savings provision for state employees who choose to participate in a High Deductible Health Plan.
- Create an exception to the provision for the medical home delivery system and the State Employee Health Benefit Plan for those program participants who receive treatment in accordance with a religious method of healing.
- Delete the amount established for funding (*subject to appropriations*) of the Premium Assistance program (\$4.0 million in New Section 21 of H. Sub. for SB 81 in the HCOW version).
- Reduce the amount established for funding (*subject to appropriations*) of the program for certain cancer

screenings from \$4.0 million to \$1.5 million (New Section 22 of H. Sub. for SB 81 in the HCOW version).

- Include provisions amending the state's SCHIP law from 2008 SB 541 (SCOW version). Technical amendments also were recommended.
- Delete statutory references to the Premium Assistance Program established under 2007 SB 11. This amendment was proposed in 2008 SB 541 (SCOW version).
- Specify a funding recommendation of \$2.5 million from the State General Fund for primary care safety net clinics.
- Clarify statutory references to the regulatory authority in the SCHIP law.
- Specify FY 2009 appropriations for the Wichita Center for Graduate Medical Education (WCGME) contingent upon submission of a request to the Kansas Bioscience Authority.
- Establish the Physician Workforce and Accreditation Task Force (language from the HCOW version of HB 2983).
- Limit the establishment of the enrollment outreach program to a two-year project, with recommended appropriations (subject to appropriations) of \$550,000 for each year. Require annual reporting to the Governor and Legislature.

Conference Committee – Fiscal Information

Listed below are the known FY 2009 expenditures from the State General Fund that have not been previously reported and the recommended FY 2009 appropriations from the State General Fund for the provisions agreed to by the Conference Committee:

- *Cost Savings, State Employee Health Benefit Plan.* Deposit of difference between the state's cost for the High Deductible Health Plan and the state's cost for any fully insured plan into the Health Savings Account of each state employee enrolling in an High Deductible Plan - \$671,000.
- *SCHIP expansion* (subject to availability of state and federal funds) - \$1.2 million program costs; \$150,000 citizenship verification costs.
- *Physician Workforce and Accreditation Task Force.* According to the fiscal note for the introduced version of HB 2983, the bill is silent as to the compensation for Task Force members, so for the purposes of this fiscal note, the assumption is made that only the four legislative members would receive compensation or reimbursement. Included in those cost estimates per meeting is \$466 for mileage, \$692 per diem, \$872 subsistence, \$218 travel, and \$83 in benefits. Secretarial costs would be \$740. The total estimated cost would be \$3,071 per meeting all from the State General Fund. The bill does not specify a required number of meetings to be held. Any fiscal effect resulting from enactment of this bill is not included in *The FY 2009 Governor's Budget Report*.
- *Wichita Center for Graduate Medical Education.* The bill would make a FY 2009 appropriation from the State General Fund to the Kansas University Medical Center in the amount of \$1.5 million and would allow WCGME to receive moneys from the Kansas Bioscience Authority in FY 2009 for non-research expenditures, contingent upon the submission of the request to the Bioscience Authority for \$7.1 million in research-oriented grant funding.
- *Funding recommendations:*
 - Dental care for pregnant women - \$545,833.

- Outreach program for children eligible for Medicaid (designated as a two-year pilot project) - \$550,000. A recommendation of \$550,000 also is made for FY 2010.
- Expansion of Medicaid eligibility for pregnant women and tobacco cessation services for all pregnant women receiving Medicaid services - \$460,000.
- Statewide Community Health Record - \$383,600.
- Expand cancer screenings - \$1.5 million.
- Primary care safety net clinics - \$2.5 million.

Background

The House Committee on Health and Human Services recommended the introduction of a substitute bill. The substitute bill incorporates the provisions of HB 2934, as amended by a House Health and Human Services Subcommittee and further amended by the House Committee. Among the other legislative provisions included in the substitute bill are: New section 2, SB 540 (as introduced); and New sections 2 and 3, SB 541 (as amended by Senate Committee). The original bill contained fingerprinting and criminal background history check requirements for licensees and other registrants of the State Board of Healing Arts.

The House Committee of the Whole made several amendments to the bill. Those amendments included:

- *Employers Offering Premium Only Plans* – moving from a requirement of offer to an option of offering a premium only plan (POP). (**New Section 2**, amended substitute)
- *Individual Income Tax Modification; Mandatory Offer, High Risk Pool; Penalties, Inspector General; and Eligibility Requirements, Social Welfare* – striking these provisions in the substitute bill. The Committee of the Whole

amendment includes a study of these provisions, which are discussed below.

- *Kansas Health Insurance Association (High Risk Pool)* – adding to the two study provisions in the original substitute to include a study of using Section 125 plans and HSAs. (**Section 4**, amended substitute)
- *Small Employers' Health Care* – striking the provision that would have allowed any health benefit plan to be offered through a cafeteria plan. The Committee of the Whole amendment includes a study of this provision, which is discussed below.
- *Safety Net Clinics* – making a technical amendment to replacing “nursing home” with “nursing facility.” (**Section 9**, amended substitute)
- *State Employee Health Care Benefits Program* – adding a provision allowing that the employer contribution made (by the State) to an employees' HDHP and HSA be equal to the employer contribution for any other state benefit plan in which the employee is eligible to participate. (**Section 11**, amended substitute)
- *Medicaid Contract Participation* – making a technical amendment to clarify that these provisions are not to be construed to conflict with federal law or require the use of federal funds where prohibited. (**Section 12**, amended substitute)
- *Interim Study Required; Health-related Incentives, Insurers; and Young Adult Policies* – striking these provisions in the substitute bill. The Committee of the Whole amendment includes a study of the health-related incentives and young adult policies, which are discussed below.
- *KHPA Board Membership* – making a technical amendment to restate the language with the appropriate statutory

citation and adjust the number of nonvoting members. (**Section 13**, amended substitute)

- *Kansas Health Futures Committee* – striking the provisions associated with the creation of a legislative committee to study specified issues. Issues assigned to this Committee are discussed below.
- *Joint Committee on Health Policy Oversight Committee* – adding the review of issues associated with the State Children’s Health Insurance Programs (SCHIP). The substitute bill would have assigned this duty to the Kansas Health Futures Committee. The duty currently is assigned to the Joint Committee on Children’s Issues. (**Section 16**, amended substitute)
- *LCC-appointed Study Committee(s)* – adding a number of study topics in the areas of Medicaid reform, commercial insurance expansion, and other health reform. (**New Section 20**, amended substitute).
- *Program Implementation – KHPA and KDHE* – requiring the establishment of certain programs, subject to appropriations, with stated limitations to moneys expended. (**New Sections 21 and 22**, amended substitute)
- *Insurance Card Standardization* – amending existing law to direct KHPA to establish an annual card for Medical Assistance recipients. (**Section 23**, amended substitute)

A fiscal note is not available for the substitute bill. The fiscal notes previously reported for some of the provisions in the substitute bill indicate: for *the refundable tax credit*, the Department of Revenue states that passage of the income tax credit would require additional expenditures of \$442,879 from the State General Fund in FY 2010. This cost estimate includes \$237,600, or 2,970 hours, of contract programming time. The estimated user testing resources necessary to implement the bill are \$29,120, or 860 hours, for testing the

new programs. The agency also would require 3.00 additional FTE positions to help enforce this new tax modification. Ongoing costs for salary and expenses are estimated at \$162,869 and the onetime costs for new workstations is \$13,290.

health; insurance; appropriations