

SESSION OF 2008

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 81**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 81, as amended, would enact the Health Care Reform Act of 2008 and would make amendments to several health and insurance statutes.

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 POP or use a vendor for plan establishment. An "insurer" is 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 plan, POP, allows employees to pay for their portion of group insurance premiums with pre-tax dollars]. **(New Section 1)**

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 terms, "health benefit plan" would be defined to include a cafeteria plan

*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>

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—Amendments to the Kansas Uninsurable Health Insurance Plan Act

The bill would amend KSA 40-2119 to require the High Risk Pool Board (the Kansas Health Insurance Association) to study expanding participation in the plan, including expanded eligibility, providing for subsidization of premiums, including accessing federal grants and programs, and using Section 125 (cafeteria) plans and Health Savings Accounts. The Board also would be directed to prepare and submit a report of its findings to legislative leadership and the Joint Committee on Health Policy Oversight on or before November 15, 2008. **(Section 4)**

The bill also would amend the Kansas Uninsurable Health Insurance Plan Act (KSA 40-2124) to increase the maximum lifetime benefit for participants in the state High Risk Pool from \$1.0 million to \$3.0 million. **(Section 5)**

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. **(Sections 3, 6, 8)**

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 7)**

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 be located in a Medicare-certified hospital, nursing facility, or home health agency. This clinic 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 9-10)**

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.

The bill would further provide that the employer contribution for such employees's HDHP and HSA be equal to the employer's contribution for any state benefits plan in which the employee would be eligible to participate. **(Section 11)**

Office of the Inspector General (Kansas Health Policy Authority)

The bill also 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, are not eligible for any state Medicaid contracts, with certain exceptions. A technical change also would be made to clarify the Inspector General reports to the Kansas Health Policy Authority. The bill also 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 12)**

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 13)**

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 17-18)**

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 bill would direct the Kansas Health Policy Authority 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.

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" in Kansas. **(New Section 14)**

Interim Study; Legislative Committees

The bill would amend the scope 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 15)**

The bill would assign the oversight of the state children's health insurance programs to the Joint Committee on Health Policy Oversight. **(Section 16)**

The bill would require the Legislative Coordinating Council to appoint one or more study committees during the 2008 Interim. The Committee(s) are to study:

- Medicaid reform including, but not limited to:
 - Allowing the Inspector General to keep a portion of moneys recovered from persons committing Medicaid fraud;
 - Modernizing Medicaid benefits and payment policies to encourage wellness and efficiency and aligning

- Medicaid payment policies with Medicare payment policies;
 - Allowing Medical Assistance recipients who assistance has ceased to purchase coverage for up to three years; and
 - The experience of other states, long term care, waste, fraud and abuse, health opportunity accounts and other reforms allowed by federal law.
- Expanding commercial insurance including, but not limited to:
 - Individual and small business tax credits;
 - Encouraging Health Savings Accounts, High Deductible Health Plans and Section 125 cafeteria plans;
 - Allowing insurers to provide incentives in return for participating in programs promoting wellness, health and disease prevention;
 - Allowing insurers to offer young adult policies with limited benefit packages and reduced premiums;
 - Changes to the Kansas Health Insurance Association [High Risk Pool Administrator] plans and eligibility, and the use of reinsurance mechanisms; and
 - Small business health policies including creating a Small Business Health Policy Committee, allowing very small employers to obtain group health insurance coverage, and making health insurance more affordable for small business and their employees.
- Other issues of health reforms including, but not limited to, health manpower, physical fitness in schools, transparency and a statutory legislative Committee on Health Futures, in conjunction with the Kansas Health Policy Authority. **(Section 20)**

Program Establishment, Implementation – KHPA

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

- *Premium Assistance Program* for families at or under 50 percent of the federal poverty level (FPL). The program is to include access to a state-procured plan, health opportunity accounts, and employer-provided insurance. The cost is not to exceed \$4.0 million.
- *Dental Coverage for Pregnant Medicaid Beneficiaries*. The cost is not to exceed \$545,833.
- *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 is not to exceed \$550,000.
- *Expansion of Medicaid Eligibility* up to 200 percent FPL and *Smoking Cessation Programs* for pregnant women. The cost is to be approximately \$460,000 from the State General Fund.
- *Statewide Community Health Records Program*. The cost is to not exceed \$383,600. **(New Section 21)**

Program Establishment – KDHE

The bill would require the Kansas Department of Health and Environment, subject to appropriations (State General Fund), to establish a program to increase access to screenings for colon, breast, prostate and cervical cancer, to be used in conjunction with, but not limited to, rural health and safety net clinics. The cost is not to exceed \$4.0 million. **(New Section 22)**

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 23)**

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 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 include:

- *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 renumber of the 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.