

SESSION OF 2009

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2214**

As Agreed to May 7, 2009

Brief*

HB 2214 would enact the Controlled Insurance Programs Act, would amend the Kansas Fairness in Private Construction Contract Act, would make amendments to the Kansas Mental Health Parity Act, and would amend the continuation of health insurance coverage requirements.

Controlled Insurance Programs Act

The bill would establish the Controlled Insurance Programs Act, an act that would create requirements for programs of liability insurance coverage that are established by an owner or contractor who contractually requires participation by contractors or subcontractors who are engaged in work required by a construction contract, and authorize the Insurance Commissioner to adopt rules and regulations required under the Act.

Controlled insurance programs would mean a program of liability or workers compensation insurance coverage, or both, established by an owner or contractor and would include coverage programs that are for a fixed term of coverage on a single construction site, or project or multiple projects, and a consolidated or wrap-up insurance program. A controlled insurance program would not include surety or Builder's risk.

The bill would provide that the Insurance Commissioner, by rules and regulations, shall require controlled insurance programs to:

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- Establish a method for quarterly reporting of the participant's claims details and loss information to that participant;
- Provide that cancellation of any or all of the coverage provided to a participant prior to completion of work on the applicable project shall require the owner or contractor who establishes a controlled insurance program to either replace the insurance or pay the subcontractor's cost to do so;
- Not charge enrolled participants who are not the sponsoring participants, a deductible in excess of \$2,500 per occurrence or a per claim assessment by the sponsor;
- Keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program (would not apply to deductible programs);
- Disclose specific requirements for safety or equipment prior to accepting bids from contractors and subcontractors on a construction project; and
- Allow monetary fines for alleged safety violations to be assessed only by government agencies.

The bill would establish requirements for a controlled insurance program that includes either general liability coverage or workers compensation liability coverage for the participants. Further, the bill provides that for controlled insurance programs that includes general liability coverage for its participants, coverage for completed operating liability cannot, after substantial completion of the project, be cancelled, lapse, or expire before the statutory limitation on actions has expired [KSA 60-513(b)], but in no case greater than ten years. If another carrier takes responsibility for completed operations coverage, any and all prior carriers will be released from completed operations liability unless specified otherwise in

subsequent policies. Among the requirements for general liability coverage under the controlled insurance program is a requirement that participants be given the same shared limits of liability coverage as applies to the sponsoring participants. Additionally, participants cannot be required, under the Act, to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program.

Among the requirements for workers compensation coverage under the controlled insurance program is a provision stating that participants are not required to provide employment to a worker who has been injured on the job unless certain conditions have been met. The bill also states that nothing in the provisions relating to workers compensation or any rules and regulations adopted pursuant to the Controlled Insurance Program Act shall affect any rights, remedies or duties under the Workers Compensation Act or any other state or federal law.

The Insurance Commissioner, in addition to the other rules and regulations adopted as required by the Act, would be permitted to adopt rules and regulations relating to the controlled insurance programs, as necessary, to carry out provisions of the Act. The Commissioner would be required to adopt all rules and regulations required by the Act by January 1, 2010.

The bill also would amend a subrogation waiver provision in the Kansas Fairness in Private Construction Contract Act to specify an exception for the waiver of rights to recovery (covered by the general liability insurance under the controlled insurance program) provision in the Controlled Insurance Program Act. **(New Sections 1-5; Section 6)**

Kansas Mental Health Parity Act Amendments

The bill would amend three statutes in the Kansas Mental Health Parity Act to require health insurance policies, on and after November 1, 2009, to provide the same benefits for the

treatment of mental illness, alcoholism, drug abuse or other substance use disorder as are provided for mental illness. The mental illness, alcoholism, drug abuse, or other substance use disorder benefits would include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. Additionally, an increased life time benefit for outpatient services would apply to small group plans and treatment limitations would be applicable to large group plans.

Small Group Plans (KSA 40-2,105)

The bill would specify the statute applies to small employer group policies (groups of 2-50) and individual policies of accident and sickness insurance. The coverage, as specified in current law and updated by an amendment in the bill, would include coverage for not less than 45 days of in-patient care for mental illness and not less than 30 days per year for in-patient treatment of alcoholism, drug abuse or substance use disorders. The bill would delete requirements that limited reimbursement for costs of treatment to specified percentages and amounts and instead provide that mental illness, alcoholism, drug abuse, or other substance use disorder benefits would include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. The bill also would increase the lifetime benefit for outpatient treatment from \$7,500 (applied to cost of treatment for alcoholism, drug abuse, and nervous or mental condition) to \$15,000, and further specify there would be no annual limits to the costs of treatment.

The bill also would delete a provision that applied to the State Employee Health Care Benefits Program. The bill would delete a provision stating that High Deductible Health Plans purchased in connection with a medical or health savings accounts would not be subject to outpatient coverage provisions.

Under the bill, "treatment limitations" would include limits on the frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of

treatment. The bill also would provide that utilization review for mental illness must be consistent with the current law applying to utilization review for other illnesses.

Large Group Plans (KSA 40-2,105a)

The bill also would make amendments to the statute governing group health insurance (large groups) which provides medical, surgical or hospital expense coverage. Coverage must be provided for the diagnosis and treatment of mental illnesses and alcoholism, drug abuse or other substance use disorders. This coverage must include treatment for in-patient and out-patient care. Reimbursement or indemnity would be provided for treatment in certain facilities and hospitals named in the bill or by a physician or psychologist licensed to practice in the state. Additionally, the bill would provide that mental illness, alcoholism, drug abuse, or other substance use disorder benefits would include the same deductibles, copayments, coinsurance, out-of-pocket expenses, treatment limitations, and other limitations as they apply to other covered services. "Mental illness, alcoholism, drug abuse or substance use" also is defined (identical to amendments to KSA 40-2,105). Further, the bill would specify the provisions under the statute do not apply to small employer group policies or to any Medicare supplement policy.

The bill would include provisions for "treatment limitations" and utilization review identical to those discussed previously in KSA 40-2,105a. The bill would specify further that no coverage would be required to be provided for assessments provided as required by a diversion agreement or by court order (alcohol and drug safety action program) or for evaluations and diagnostic tests ordered or requested in connection with criminal actions, divorce, child custody or child visitation proceedings.

Group Policies (Large), Health and Mental Health Benefits, Parity (KSA 40-2258)

The bill would update references to the term mental health benefits as it applies to group policies or certificates of coverage providing hospital, medical or surgical expense benefits which include mental illness or alcoholism, drug abuse

or other substance use disorder. The bill also would specify that the required coverage provisions would not apply to group policies if there is an increase in the cost under the plan of at least 2.0 percent in the first plan year and 1.0 percent each subsequent plan year. (The limitation for application of group policies and cost increases had been an increase of 1.0 percent under existing law).

Finally, the bill would delete the sunset date that had been previously updated on an annual basis by the Legislature. **(Sections 7-9)**

Continuation of Health Insurance Coverage (state COBRA)

The bill would amend provisions in existing law governing the continuation of coverage requirements for sickness and accident health insurance plans and HMO (health maintenance organizations) plans to provide that a terminated employee pay his or her premiums to the insurance carrier instead of the employer. **(Sections 10-11)**

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill and agreed to further amend the bill by deleting the provisions of Senate Bills 105, 174 and 260 and House Bill 2214. (The contents of HB 2214, as introduced, and SB 105 were enacted in the conference committee report for HB 2052.) The Conference Committee agreed to amend the continuation of coverage provisions in the bill (inserted by the Senate Committee of the Whole) to instead direct employers to provide reasonable notice of the right of continuation of coverage to employees and their dependents (the bill had previously directed insurance carriers to provide this notification. Employers are providing this notice under current law). The Conference Committee further agreed to amend the provisions of SB 49 and SB 126, as detailed below:

SB 49 was amended by the Conference Committee to (original language is stricken and reinserted with amendments in the Conference Committee Report):

- Specify that KSA 40-2,105 applies to group policies for small employers and further specify that KSA 40-2,105a would not apply to small group plans (applies to large groups).
- Increase coverage for in-patient coverage of mental illness (small group) from 30 to 45 days and separately specify a limitation of not less than 30 days for in-patient treatment of alcoholism, drug abuse or substance use disorders (in the statute applying to small groups).
- Eliminate first dollar coverage requirements from the statutes now applicable to small and large groups [instead, benefits are subject to same deductibles, copays, coinsurance, treatment limitations and out-of-pocket expenses as apply to other covered services].
- Increase the lifetime benefit for costs of out-patient treatment for mental illness, alcoholism, drug abuse and substance use disorders from \$7,500 to \$15,000, with no annual limit for outpatient treatment.
- Replace references to “nervous or mental conditions” and instead define the term “mental illness, alcoholism, drug abuse or substance use” (as defined in the DSM-IV, 1994). The bill also would replace references to “confinement” with “in-patient treatment.” Similarly, the bill would amend the group health insurance statute (KSA 40-2258) to delete references to mental health benefits and instead specify mental illness or alcoholism, drug abuse or other substance use disorder benefit.
- Delete provisions in the small group statute specific to the State Employee Health Care Benefits Program and High Deductible Health Plans.

- Specify the term, “treatment limitations.” (Defined in both small and large group statutes).
- Provide that utilization review for mental illness must be consistent with utilization review provided for other illnesses (small and large group statutes).
- Insert reimbursement provision into large group statute (see current law, KSA 40-2,105).
- Remove a requirement for large group plans specifying covered days for in-patient and out-patient treatment in current law (45 days coverage had been required). (The policies would be subject to treatment limitations defined in the policies.) The bill also would specify when coverage would not be required, including certain assessments, programs, or other evaluations and diagnostic tests associated with diversion agreements and court orders.

SB 126 (as recommended by the Senate Committee) was stricken and the provisions of H. Sub. for SB 126 (as recommended by House Committee) were inserted. The provisions of the substitute bill were further amended to:

- Clarify and separate the rights of recovery under controlled insurance programs for general liability and workers compensation. The Conference Committee inserted language from SB 126 (as recommended by the Senate Committee) as it applies to general liability insurance. Additionally, the Conference Committee inserted a provision of the Kansas Fairness in Private Construction Contract Act to specify an exception for the general liability rights of recovery of claims provision included in the Controlled Insurance Program Act.
- Expand “workers compensation coverage” to include coverage for job-related activities (coming and or going to or from the site or sites);
- Clarify the applicability of the rules and regulations adopted under the Act.

Background

HB 2214 was introduced at the request of the Kansas Insurance Department whose representative indicated that the yearly legislative review process (under current law) comes with a significant drawback, a lag time between the promulgation of new RBC standards and the moment from which companies are to be held to that standards. The representative noted the bill represents a compromise with Kansas Association of Property and Casualty Insurance Companies (KAPCIC) and it will allow the Department to hold insurance companies to the most up-to-date RBC instructions while still allowing for a review process in the event of dramatic RBC changes. The Kansas Association of Property and Casualty Insurance Companies appeared neutral on the bill, indicating that there are a number of unknowns (with the new guidelines for adoption of future changes) and some KAPCIC members are uncertain of the potential impact even at the 2.5 percent threshold and have expressed concern. The representative noted that the association, however, is not opposed to trying this method with the proposed standards.

The Senate Committee on Financial Institutions and Insurance amended the bill to insert the provisions of 2009 SB 49 (as recommended by the Senate Committee on Financial Institutions and Insurance), SB 105 (as amended by the Senate Committee on Financial Institutions and Insurance), SB 174 (as recommended by the Senate Committee on Financial Institutions and Insurance), and SB 260 (as amended by the Senate Committee of the Whole).

The Senate Committee of the Whole amended the bill to require insurance carriers provide administrative services under the state's continuation of coverage requirements (reasonable notification and receipt of premium payments). Prior to enactment of amendments to this law by 2008 H. Sub. for SB 81, insurers had provided this function. Under the 2008 law, employers are charged with these administrative duties.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2214 states that the Kansas Insurance Department indicates the bill could be implemented within its existing staff and resources.

The fiscal notes for SBs 49, 126, and HB 2262 are available in the associated supplemental notes.

Controlled Insurance Programs; Mental Health Parity; Continuation of Coverage