

SESSION OF 2011

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2075**

As Agreed to May 12, 2011

Brief*

HB 2075 would make several amendments to the Insurance Code to delete specified participation percentages required for covered employees to place a group life insurance policy in effect, to amend certain provisions associated with the external review of an adverse decision (a denial of coverage for a proposed or delivered health care service), to provide coverage under the State High Risk Pool for children in certain instances and increase the maximum lifetime benefit for the Pool, and to provide for the exclusion of insurance coverage for and require an optional rider of coverage for certain abortions.

Group Life Insurance—Policy Requirements [Section 1]

Specifically, the bill would amend a statute governing policy requirements for group life insurance to delete specified participation percentages required for covered employees to place a group life policy in effect. Under the bill, policy premiums could be paid by the policyholder, the insured employee, or both. The bill also would delete requirements that group life policies must cover a specified number of individuals at the date of issue. Finally, the bill would delete the limitation of coverage (50.0 percent in the current law) allowed for dependents covered under an employee's group life insurance policy.

*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>

Under current law, employer group life insurance premiums are paid by the policyholder.

External and Internal Review, Health Insurance [Sections 2-5]

The bill also would amend certain provisions associated with the external review of an adverse decision (a denial of coverage for a proposed or delivered health care service), would provide for the exclusion of insurance coverage for and require an optional rider of coverage for certain abortions, and would prohibit state employees from being eligible for coverage or reimbursement for elective abortions.

Adverse Health Care Decisions

Specifically, the bill would increase the time, from 90 to 120 days, an insured person has to request an external review. Under current law, an external review must be completed within seven business days when an emergency medical condition exists; the bill would reduce that time frame to 72 hours after the date of the request for an expedited external review, or as expeditiously as the insured's medical condition or circumstances require.

The bill also would expand the definition of “emergency medical condition” to include:

- A medical condition where the time frame for completion of a standard external review would seriously jeopardize the insured's ability to regain maximum function; or
- A medical condition for which coverage has been denied on a determination that the recommended or requested health care service or treatment is experimental or investigational, if the insured's treating physician certifies, in writing, that the recommended or requested health care service or treatment for the medical

condition would be significantly less effective if not promptly initiated.

The bill also would provide that when an insurer or health insurance plan has failed to strictly adhere to all internal appeal procedure requirements as prescribed by state or federal law, the claimant (insured) shall be deemed to have exhausted the internal claims and appeal process regardless of whether the insurer or the health plan asserts its substantial compliance with the appeal procedure or any error it committed was minimal.

External Review Organizations (EROs)

The bill also would provide that an External Review Organization's fees for the performance of external reviews may be paid by the Insurance Commissioner, by the insurer (health insurance company), or by the health plan. The bill states that in no event would the insured be responsible for any portion of the fees associated with the performance of external reviews.

The bill also would amend existing law governing External Review Organizations to:

- Clarify the frequency allowed for an external review (currently limited to one review during the same year for any request arising out of the same set of facts) to specify that external review would be limited to one external review during a period of twelve consecutive months commencing on the date of the initial request.
- Delete language allowing an insured the option of designating which external review process will be utilized (state or federal), for those instances in which external review processes are available pursuant to federal law.

- Require that, with exception for decisions of the External Review Organizations reviewed directly by the district court, the decision of the ERO is binding on the insured and the insurer or health insurance plan.

**Kansas Uninsurable Health Insurance Plan Act—
Amendments [Sections 6-7]**

The bill would amend the Kansas Uninsurable Health Insurance Plan Act (the Act governing the administration of the State High Risk Pool) to:

- Allow the Kansas Health Insurance Association (the Pool's administrator) to accept children under the age of 19 who are otherwise eligible for the Pool, if no coverage is available under an individual health insurance policy for purchase in the county in which the child lives.
- Increase the statutory lifetime limit from \$2.0 million to \$3.0 million.

**Exclusion of Coverage for Certain Abortions: Optional
Rider for Coverage [New Sections 8; Sections 9-11]**

The bill also would require all individual or group health insurance policies or contracts (including the municipal group-funded pool and the State Employee Health Plan) which are issued or renewed on and after July 1, 2011, to exclude coverage for abortions unless the procedure is necessary to preserve the life of the mother. The bill would provide that coverage may be obtained through an optional rider for which an additional premium is paid. The bill also would provide a method of calculation for the premium of the optional rider of coverage.

The bill would further prohibit a health insurance exchange, established by either the State of Kansas or the federal government, from offering health insurance contracts,

plans or policies that provide coverage for elective abortions. A health insurance exchange also would be prohibited from offering coverage for elective abortions through the purchase of an optional rider.

Provisions of the bill would apply to all policies, contracts, and certificates of insurance delivered, renewed, or issued within Kansas or for an individual who resides or is employed in the state and to nonprofit medical and hospital service corporations.

Severability

Further, the bill states that if the provisions of new law pertaining to the exclusion of coverage for certain abortions is held invalid, the invalid provision shall not affect other provisions or applications of the Act.

Effective Date of the Bill's Provisions

The provisions amending the Kansas Uninsurable Health Insurance Plan Act would take effect upon publication in the *Kansas Register*. All other provisions of the bill would become effective upon publication in the statute book.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill and further agreed to delete the contents of the bill (those provisions were included in the Conference Committee Report for HB 2076) and insert several insurance provisions. Those provisions are: SB 14 (State High Risk Pool, coverage for children), as recommended by the Senate Committee on Financial Institutions and Insurance; SB 65 (external review, health insurance), as amended by the House Committee on Insurance and further amended by the Conference

Committee; and SB 85 (group life policy requirements), as amended by the House Committee on Insurance.

The Conference Committee made the following changes to SB 65 (as amended by the House Committee on Insurance):

- Insert a provision regarding the fees for an External Review Organization's performance of an external review. The insured would not be responsible for payment of the fee.
- Insert and amend a statute pertaining to the decision of an External Review Organization. Among the amendments is the clarification of the time frame for requests arising from the same set of facts, deletion of an allowance for insureds to designate which review process will be utilized (state or federal), and a provision that makes the decision of the External Review Organization binding, with the limitation specified in the current law. (The amendments to the external review statutes were requested by a representative of the Kansas Insurance Department to further clarify and bring the law into compliance with the Uniform External Review Model Act and federal law.)
- Delete the provision that would have prohibited state employees (cafeteria benefits plans) from being eligible for coverage or reimbursement for elective abortions [originally introduced in 2011 HB 2293].
- Make technical changes.

Background

HB 2075 was introduced at the request of the Kansas Insurance Department whose representative indicated that insurers are required to develop anti-fraud initiatives or file an anti-fraud plan with the Department. The Senate Committee

on Financial Institutions and Insurance amendments to the bill deleted the contents of the original bill (HB 2075) and inserted the provisions of Sub. for SB 206 (as recommended by Senate Committee). The Senate Committee also made a technical amendment to a provision amending the current surplus lines law, contained in Sub. for SB 206. The Senate Committee of the Whole recommended a technical amendment to the bill. The Conference Committee Report for HB 2076 included both the introduced version of HB 2075 and the Senate Committee of the Whole version, with further technical amendments.

SB 14 was introduced at the request of the Kansas Insurance Department whose representative indicated that in late 2010, the majority of insurance companies that market individual coverage in Kansas advised the agency that they would no longer issue individual coverage to children under the age of 19. As a result of discussions between the agency and insurance industry representatives, the agency determined that amending the eligibility requirements for the Pool through legislation was the preferred way to ensure this type of coverage would be available to children under 19 in the future.

The Department representative also indicated that the increase in the lifetime benefit would allow the Pool to continue to provide coverage for enrollees with ongoing serious health conditions. The representative further stated that the increase in the lifetime benefit likely would increase the expenses incurred by the Pool, which could result in increased premiums or an increase in the amount of the assessment paid by the insurance companies operating in the state. There were no opponents to the bill at the time of the Senate Committee hearing.

A representative for the Kansas Insurance Department appeared as a proponent before the House Committee on Health and Human Services. There was no neutral or opponent testimony at the House Committee hearing.

The House Committee on Health and Human Services amended the bill to remove a provision that would have

allowed the Insurance Commissioner to approve any increases in the maximum lifetime coverage limits recommended by the Board (Kansas Health Insurance Association).

The House Committee of the Whole amended the bill to insert provisions of the Health Care Freedom Act. The bill incorporates the language of HCR 5007 pertaining to the creation of a new statute that would codify the individual right of Kansas residents to choose to purchase or refuse to purchase health insurance. Language specific to a ballot question for the proposed constitutional amendment is not included.

SB 65 was introduced at the request of the Kansas Insurance Department whose representative indicated that states are required by the interim final rules for group health plans and health insurance issuers (internal claims and appeals and external review processes) under the federal health reform law to either adopt the federal rules or comply with the Uniform Health Carrier External Review Model Act. Compliance with the Uniform Model Act requires a state external review process to include, at a minimum, the Act's consumer protections. Current Kansas external review law, the representative stated, includes all but four provisions of the Uniform Model Act and these amendments will ensure Kansas avoids becoming subject to federal regulation of its external review process. There were no opponents to the bill at the time of the Senate Committee hearing.

The House Committee on Insurance amended the bill to include provisions that would require insurance policies issued or renewed on and after July 1, 2011, to exclude coverage for "elective abortions" (HB 2292, as introduced) and would prohibit state employees from using Flexible Spending Account dollars for elective abortions (HB 2293, as introduced).

Proponents of HB 2292 included Representative DeGraaf, Kansans for Life, and the Kansas Catholic

Conference. Proponents of the bills generally indicated that the bill is intended to ensure that private citizens and businesses do not end up financing other person's abortions through premium payments. The proponents noted that seven states have passed similar legislation and individuals who want abortion coverage could purchase such coverage via a rider. A representative of Kansans for Life suggested an amendment to the definition of "abortion" in testimony. Opponents of the bill included Planned Parenthood of Kansas and Mid-Missouri. The Planned Parenthood representative stated that the bill provides no consideration for the health of the mother and proposes an unworkable, impractical rider system. The representative also stated that, under the provisions of the Affordable Care Act, there are no taxpayer dollars that would be paying for elective abortion coverage in any private insurance plan sold in the exchange.

The Kansas Association of Health Plans submitted neutral testimony, stating that in a number of member plans, coverage is provided if this procedure is medically necessary and that decision is made by the provider. Further, some group plans have requested specific "opt-out" language (allows groups to opt-out of coverage for abortion, unless the life of the mother is at risk if she cannot carry to full-term or has an ectopic pregnancy). The representative's comments indicated that handling this opt-out clause or having a rider in the non-group market will make these policies difficult to administer.

Proponents of HB 2293 included Representative DeGraaf, Kansans for Life, and the Kansas Catholic Conference. Representative DeGraaf indicated that state employees have the option to set up a reimbursement plan tax-free for eligible expenses. The State of Kansas, as an employer, the Representative noted, can and should have the ability on behalf of taxpayers to outlaw the payment for and/or the reimbursement of costs associated with abortions by state employees under any State Employee Benefit Program. Planned Parenthood of Kansas and Mid-Missouri appeared in opposition to HB 2293. The Planned Parenthood

representative stated that the bill would ban state employees from using their own dollars, held in health savings accounts, to cover the cost of unreimbursed, legal medical care expenses and the bill seeks only to place more unnecessary burdens on women seeking abortion care.

SB 85 was introduced at the request of the American Council of Life Insurers whose representative indicated that the bill would modernize the state's existing group insurance law. The representative noted that 25 percent of the group life insurance market is fully voluntary and by allowing voluntary life benefits through an employer group, employers would be able to continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration. The representative also noted that at present, only three states (Kansas included) have not modernized their group life insurance laws. There were no opponents to the bill at the time of the Senate Committee on Financial Institutions and Insurance hearing.

The House Committee on Insurance amendments delete a premium payment provision that excluded voluntary term life insurance policies (group) and also delete a limitation (50 percent in current law, 100 percent in the bill, as introduced) on coverage allowed for dependents covered under an employee's group life insurance policy. With the deletion, an employee's spouse or other dependent could be covered at a percentage greater than 100 percent of the amount of insurance on the life of that insured employee. The amendments were requested by the American Council of Life Insurers.

Fiscal Information

The fiscal note for the original content of HB 2075 is no longer applicable.

The fiscal note for SB 14 (as introduced – amendments to the State High Risk Pool law) states that the Kansas

Insurance Department indicates that the passage of the bill would have no fiscal effect upon its operations.

The fiscal note prepared by the Division of the Budget on SB 65 (as introduced, internal and external review, health insurance) states that both the Kansas Insurance Department and the Kansas Health Policy Authority indicate that passage of the the bill would have no fiscal effect on agency operations. The fiscal note for HB 2292 indicates that the Kansas Health Policy Authority states that the State Employee Health Plan (SEHP) would need to work with its health care consultants to prepare a coverage rider and develop a sufficient contribution rate for the above optional rider. The plan would incur programming cost to modify the membership and payroll system as well as the open enrollment portal to able to track and bill for this optional coverage. The programming cost with the vendors to create an additional rider and premium assessment would be \$59,000 from within the health benefits plan funding. This is a one-time cost to make the modifications. As the SEHP is self funded, the fiscal note continues, any shortfall as a result of underpayment of premiums would have to be paid out of the plan reserves. The effect upon private insurance carriers and local governments and their health plans would depend upon what is currently covered and the plans' ability to administer a separate rider with this unique premium structure. Any fiscal effect associated with HB 2292 is not reflected in *The FY 2012 Governor's Budget Report*. The fiscal note for HB 2293 indicates that the bill would have no fiscal effect for the state.

The fiscal note on SB 85 (as introduced – deleting certain group life insurance policy requirements) states that the Kansas Insurance Department indicates that implementation of the bill would increase the workload of the Department. However, the additional workload is within the scope of expertise and training of the existing staff and could be handled within existing resources.

State High Risk Pool; Health insurance; Abortion; Group life insurance