

Approved 2-12-85  
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Rex B. Hoy at  
Chairperson

3:30 a.m./p.m. on February 7, 1985 in room 521-S of the Capitol.

All members were present except: Representatives Sprague, King and Lowther, who were excused.

Committee staff present:

Gordon Self, Revisor of Statutes Office  
Melinda Hanson, Research Department  
Margaret Gentry, Secretary

Conferees appearing before the committee:

Dr. Robert Harder, SRS  
Homer Cowan, Western Insurance Companies  
Larry Magill, Independent Insurance Agents  
Wayne Morris, Security Benefit Life

Dr. Robert Harder appeared before the Committee to request the introductions of two bills. One proposes to amend the statutes relating to reimbursement for treatment of alcoholism, drug abuse and nervous or mental conditions, and would prohibit insurance companies and HMOs from excluding or limiting coverage for persons eligible for Medicaid/MediKan Programs or emotionallh handicapped children. The other would prohibit Medicaid/MediKan exclusionary clauses in Kansas insurance contracts. (Attachment I.)

Homer Cowan told the Committee that "no fault" bills have been before the legislature before, but that in order for the intent of the law to be carried out, changes are needed. He explained that the concept in Attachment II is different and he believes it will make the law fair and workable. He also offered an amendment to the statutes (Attachment III) relating to automobile liability insurance. He told the Committee that under present law, safe drivers are subsidizing offenders.

Larry Magill, asked the Committee to introduce a bill changing notice requirement for cancellation of insurance policies from 120 days to one year. He explained this would give agents adequate time to adjust coverage. (Attachment IV)

Wayne Morris offered two proposals relating to reinvestment by insurance companies; and authority for insurance companies to invest in mutual funds. The secondproposal eliminates money market mutual funds. (Attachment V.)

It was moved by Rep. DeBaun and seconded by Rep. Cribbs that all of the proposals be introduced as Committee bills and referred back to the Committee for study. Motion carried.

The minutes of January 30 and February 5, 1985, were approved.

The meeting was adjourned.

Rex B Hoy



\_\_\_\_\_ BILL NO. \_\_\_\_\_

By

2-7-85  
Attachment I

AN ACT concerning insurance; relating to reimbursement or indemnity for treatment of alcoholism, drug abuse or nervous or mental conditions; amending K.S.A. 40-2,105 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-2,105 is hereby amended to read as follows: 40-2,105. ~~Unless--refused--in-writing~~ On or after the effective date of this act, every insurer which issues any individual or group policy of accident and sickness, medical or hospital expense which provides for reimbursement or indemnity for services rendered to a person covered by such policy in a medical care facility, must provide for reimbursement or indemnity under such individual policy, unless the individual in writing refuses such coverage, or under such group policy which shall be limited to not less than ~~thirty-(30)-days~~ \$4,000 per year when such person is confined for treatment of alcoholism, drug abuse or nervous or mental conditions in a medical care facility licensed under the provisions of K.S.A. ~~1978--Supp~~ 65-429 or and amendments thereto, a treatment facility for alcoholics licensed under the provisions of K.S.A. ~~1978--Supp~~ 65-4014 and amendments thereto, a treatment facility for drug abusers licensed under the provisions of K.S.A. ~~1978--Supp~~ 65-4605 and amendments thereto, a community mental health center or clinic licensed under the provisions of K.S.A. 75-3307b and amendments thereto or a psychiatric hospital licensed under the provisions of K.S.A. 75-3307b and amendments thereto. ~~Unless refused-in-writing,~~ Such individual policy, unless the individual in writing refuses such coverage, or group policy shall also provide for reimbursement or indemnity of the costs of treatment

Attachment I

of such person for alcoholism, drug abuse or nervous or mental conditions, limited to not less than ~~one-hundred-percent--(100%)~~ ~~of--the--first--one--hundred--dollars--(\$100)~~ and ~~eighty-percent--(80%)~~ ~~of--the--next--five--hundred--dollars--(\$500)~~ \$1,000 in any year, in said the facilities hereinbefore enumerated in this section when confinement therein is not necessary for said treatment or by a physician licensed or psychologist certified to practice under the laws of the state of Kansas.

Sec. 2. K.S.A. 40-2,105 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

STATE DEPARTMENT OF SOCIAL & REHABILITATION SERVICES  
YOUTH SERVICES

Proposed Bill No. \_\_\_\_\_

Summary

This bill prohibits insurance companies and health maintenance organizations (hereinafter referred to as HMO) from excluding or limiting coverage for persons eligible for the Medicaid/MediKan Programs or emotionally handicapped children.

Background

At the present time, insurance companies are not prohibited from writing policies or plans which exclude or limit coverage to persons eligible for the Medicaid/MediKan Program. This practice allows insurance companies to utilize the Medicaid/MediKan Program to provide first payment before the private insurer's funds are used. In addition, Federal Regulations prohibit the use of federal monies "if a private insurer would have been obligated to pay for the service except that its insurance contract limits or excludes payments if the individual is eligible for Medicaid" (CFR 42-433.140 (3)). Stated more simply, the federal program has mandated that in all instances the federal dollar is the last dollar to be used when there is potential coverage from a third party.

At the present time neither insurance carriers nor HMOs are required to extend coverage for "emotionally handicapped children" in a residential care setting.

The State of Minnesota has successfully established a substitute care program for residential facilities that has been operational since 1976. The provisions of this bill relating to emotionally handicapped children is patterned on their model which has averaged a net savings to their public welfare system of approximately \$500,000 annually.

Kansas currently has a similar program for insurance coverage for treatment of alcoholism, drug abuse and nervous or mental conditions (K.S.A. 40-2,105). These programs generally promote the early care and treatment of symptoms in less costly settings than found in public and private hospitals.

Alternatives

No action: There would continue to be a drain on state dollars for certain types of residential treatment for emotionally disturbed children.

Passage: This bill would provide families an option for an emotionally disturbed member other than just psychiatric hospitalization, i.e., group home/residential center.

Recommendation

Passage.

9/26/84  
dh

## PROPOSAL FOR LEGISLATION

Summary

We propose legislation which would preclude insurance companies doing business in Kansas to utilize a clause precluding payment for medical services to clients covered under governmental programs.

Background

It has become apparent that most insurance companies are including a clause in their basic coverage. This clause precludes coverage for medical services when the insured is also covered under a governmental program, i.e., Medicare/Medicaid/MediKan. S.R.S. has previously adopted an Administrative Regulation (K.A.R. 30-5-70 (b) (1) (D)) to exclude Medicaid/MediKan Program coverage in such instances. This creates a situation where both the insurance company and S.R.S. (Medicaid/MediKan) may be denying liability. Such dual denial creates frustration on the part of providers and clients. Further, S.R.S. from time to time may make payments to providers not knowing that the only reason for private insurance coverage denial was an exclusionary clause. Recovery of the overpayment from the provider creates a public relations problem. Recovery from the insurance company is difficult at best.

In the instances where payment was made by the Medicaid/MediKan program because of the denial by the third party payor's clause excluding government program coverage, Medicaid/MediKan must repay the federal share and utilize only State funds. Refer to the Code of Federal Regulations 433.

Alternative

Alternative One: Adopt legislation prohibiting Medicaid/MediKan (governmental) exclusionary clauses in Kansas insurance contracts.

Alternative Two: Revoke K.A.R. 30-5-70 (b) (1) (D); make Medicaid/MediKan payments in such instances out of all State funds.

Recommendations

Adopt legislation prohibiting Medicaid/MediKan (governmental) exclusionary clauses in Kansas insurance contracts. (example House Bill Number 2999 attached)

DRAFT  
11/16/84

Bill No. \_\_\_\_\_

By \_\_\_\_\_

AN ACT concerning health care services; prohibiting certain exclusions and limitations in health, accident and sickness insurance policies, plans and contracts which relate to emotionally handicapped children or recipients of medical assistance.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) "Emotionally handicapped child" means a child who in the judgment of a licensed social worker, psychologist or psychiatrist is exhibiting those symptoms and behavior patterns that are determined to be of such a nature that the child needs the care and treatment given by a boarding home for children.

(b) No individual or group health or accident and sickness insurance policy, plan, certificate or contract delivered or issued for delivery to any person in this state on or after the effective date of this act shall contain a provision excluding or limiting coverage because an insured's eligibility for medical care under a plan developed by the secretary of social and rehabilitation services pursuant to subsection (s) of K.S.A. 39-708c and amendments thereto.

(c) No health maintenance organization organized under article 32 of chapter 40 of the Kansas Statutes Annotated, on or after the effective date of this act, shall deny or limit the provision of health care services to an enrollee because of the enrollee's eligibility for medical care under a plan developed by the secretary of social and rehabilitation services pursuant to subsection (s) of K.S.A. 39-708c and amendments thereto. The provisions of this paragraph shall not preclude a health maintenance organization from entering into a provider agreement with the secretary of social and rehabilitation services to provide health care services to persons eligible for medical

care under a plan developed by the secretary of social and rehabilitation services pursuant to subsection (s) of K.S.A. 39-708c and amendments thereto.

(d) Any group health or accident and sickness insurance policy, plan, certificate or contract delivered or issued for delivery to any person in this state, on or after the effective date of this act, shall provide coverage for the treatment of emotionally handicapped children in a boarding home for children licensed by the secretary of health and environment if the policy provides coverage for inpatient hospital medical coverage. Coverage shall be on the same basis as inpatient hospital medical coverage provided under the policy.

(e) A health maintenance organization organized under article 32, chapter 40 of the Kansas Statutes Annotated, on or after the effective date of this act, shall provide health care services for the treatment of emotionally handicapped children in a boarding home for children licensed by the secretary of health and environment if the health maintenance organization provides inpatient hospital medical services. Coverage shall be on the same basis as inpatient hospital medical coverage provided by the health maintenance organization.

Sec. 2. The provisions of this act shall be applicable to nonprofit service corporations organized under articles 18, 19, 19a, 19b or 19c of chapter 40 of the Kansas Statutes Annotated.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



*2-7-85  
Attachment II*

HOUSE BILL NO. \_\_\_\_\_  
By Committee on Insurance  
(By request)

AN ACT concerning insurance; relating to the Kansas automobile injury reparations act; concerning personal injury protection benefits and tort threshold; amending K.S.A. 40-3103 and 40-3117 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-3103 is hereby amended to read as follows: 40-3103. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Commissioner" means the state commissioner of insurance.

(b) "Disability benefits" means allowances for loss of monthly earnings due to an injured person's inability to engage in available and appropriate gainful activity, subject to the following conditions and limitations: (1) The injury sustained is the proximate cause of the injured person's inability to engage in available and appropriate gainful activity; (2) subject to the maximum benefits stated herein, allowances shall equal ~~one hundred-percent-(100%)~~ 100% of any such loss per individual, unless such allowances are deemed not includable in gross income for federal income tax purposes, in which event such allowances shall be limited to ~~eighty-five-percent--(85%)~~ 85%; and (3) allowances shall be made up to a maximum of not less than ~~six hundred--fifty--dollars-(\$650)~~ \$1,200 per month for not to exceed one ~~(1)~~ year after the date the injured person becomes unable to engage in available and appropriate gainful activity.

(c) "Director" means the director of vehicles.

(d) "Funeral benefits" means allowances for funeral, burial

*Attachment II*

or cremation expenses in an amount not to exceed ~~one--thousand dollars-(\$1,000)~~ \$2,500 per individual.

(e) "Highway" means the entire width between the boundary lines of every way publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

(f) "Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or moved upon the highways.

(g) "Insurer" means any insurance company, as defined by K.S.A. 40-201 and amendments thereto, ~~duly~~ authorized to transact business in this state ~~and~~, which issues policies of motor vehicle liability insurance covering liability arising out of the ownership, operation, maintenance or use of a motor vehicle.

(h) "Injured person" means any person suffering injury.

(i) "Injury" means bodily harm, sickness, disease or death resulting from an accident arising out of the ownership, maintenance or use of a motor vehicle.

(j) "Lienholder" means a person holding a security interest in a vehicle.

(k) "Medical benefits" ~~shall-mean~~ means and ~~include~~ includes allowances for all reasonable expenses, up to a limit of not less than ~~two-thousand-dollars-(\$2,000)~~ \$5,000, for necessary health care rendered by practitioners licensed by the board of healing arts, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital and nursing services; and such term also ~~shall-include~~ includes allowances for services recognized and permitted under the laws of this state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with ~~his--or--her~~ such person's religious beliefs.

(l) "Monthly earnings" means: (1) In the case of a regularly employed person or a person regularly self-employed, ~~one-twelfth~~ ~~(1/12)~~ 1/12 of the annual earnings at the time of injury; or (2) in the case of a person not regularly employed or self-employed,

or of an unemployed person, ~~one-twelfth--(1/12)~~ 1/12 of the anticipated annual earnings from the time such person would reasonably have been expected to be regularly employed. In calculating the anticipated annual earnings of an unemployed person who has previously been employed, the insurer shall average the annual compensation of such person for not to exceed five ~~(5)~~ years preceding the year of injury or death, during which such person was employed.

(m) "Motor vehicle" means every self-propelled vehicle of a kind required to be registered in this state, including any trailer, semitrailer or pole trailer designed for use with such vehicle, but such term ~~shall~~ does not include a motorized bicycle.

(n) "Operator" means any person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(o) "Owner" means a person, other than a lienholder, having property in or title to a motor vehicle, including a person who is entitled to the use and possession of a motor vehicle subject to a security interest held by another person, but such term does not include a lessee under a lease not intended as security.

(p) "Person" means an individual, partnership, corporation or other association of persons.

(q) "Personal injury protection benefits" means the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits, general benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act.

(r) "Rehabilitation benefits" means allowances for all reasonable expenses, up to a limit of not less than ~~two--thousand dollars--(\$2,000)~~ \$5,000, for necessary psychiatric services, occupational therapy and such occupational training and retraining as may be reasonably necessary to enable the injured person to obtain suitable employment.

(s) "Relative residing in the same household" means a relative of any degree by blood, marriage or adoption, who usually makes ~~his-or-her~~ such person's home in the same family unit, whether or not temporarily living elsewhere.

(t) "Security interest" means an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security.

(u) "Self-insurer" means any person effecting self-insurance pursuant to subsection (d) of K.S.A. 40-3104 and amendments thereto.

(v) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(w) "Substitution benefits" means allowances for appropriate and reasonable expenses incurred in obtaining other ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed for the benefit of ~~himself-or herself~~ such person or ~~his-or-her~~ such person's family, subject to a maximum of ~~twelve-dollars-(\$12)~~ \$22 per day for not longer than ~~three-hundred-sixty-five-(365)~~ 365 days after the date such expenses are incurred.

(x) "Survivor" means a decedent's spouse or child under the age of ~~eighteen--(18)~~ 18 years, where death of the decedent

resulted from an injury.

(y) "Survivors' benefits" means total allowances to all survivors for: (1) Loss of an injured person's monthly earnings after ~~his-or-her~~ such persons's death, up to a maximum of not less than ~~six-hundred-fifty-dollars-(\$650)~~ \$1,200 per month; and (2) substitution benefits following the injured person's death. Expenses of the survivors which have been avoided by reason of the injured person's death shall be subtracted from the allowances to which survivors would otherwise be entitled, and survivors' benefits shall not be paid for more than one ~~(1)~~ year after the injured person's death, less the number of months the injured person received disability benefits prior to ~~his--or--her~~ such person's death.

(z) "Uninsured motor vehicle" means any motor vehicle which is not included under an approved self-insurance plan of a self-insurer or for which there is not in effect a motor vehicle liability insurance policy meeting the requirements of this act.

(aa) "Any workmen's compensation law" means the workmen's compensation act of Kansas, the United States longshoremen's and harbor workers' compensation act, the federal employer liability acts, and any similar state or federal law.

(bb) "General benefits" means an allowance equal to the medical benefits exceeding \$1,000, except that such general benefits shall not exceed \$2,000.

Sec. 2. K.S.A. 40-3117 is hereby amended to read as follows: 40-3117. In any action for tort brought against the owner, operator or occupant of a motor vehicle or against any person legally responsible for the acts or omissions of such owner, operator or occupant, a plaintiff may recover damages in tort for pain, suffering, mental anguish, inconvenience and other nonpecuniary loss because of injury only in the event ~~the--injury~~ ~~requires--medical--treatment--of--a-kind-described-in-this-act-as~~ ~~medical-benefits,-having--a--reasonable--value--of--five--hundred~~ ~~dollars--(\$500)--or--more,-or~~ the injury consists in whole or in part of permanent disfigurement, ~~a-fracture--to--a--weightbearing~~

bene, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this section upon a showing that the medical treatment received has an equivalent value of at least five hundred dollars (\$500). Any person receiving ordinary and necessary services, normally performed by a nurse, from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this section. For the purpose of this section, the charges actually made for medical treatment expenses shall not be conclusive as to their reasonable value. Evidence that the reasonable value thereof was an amount different than the amount actually charged shall be admissible in all actions to which this subsection applies.

Sec. 3. K.S.A. 40-3103 and 40-3117 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

86. Insured with regularly employed and covered by employer's insurance policy... *DiBassie v. American Standard Ins. Co. of Wisconsin*, 8 K.A.2d 515, 522, 661 P.2d 812 (1983).

87. Not applicable to workers' compensation cases. *Barnett & Lerner, Chrl. v. Aetna Cas. & Sur. Ins. Co.*, 8 K.A.2d 270, 275, 676 P.2d 165 (1983).

88. Section contains language similar to 40-3111, construction of sections considered. *DiBassie v. American Standard Ins. Co. of Wisconsin*, 8 K.A.2d 515, 522, 661 P.2d 812 (1983).

89. Whether insurance company's refusal to pay claim is without just cause depends on circumstances of case; attorney fees not allowed. *Harper v. Prudential Ins. Co. of America*, 234 K. 358, 372, 662 P.2d 1264 (1983).

90. Trial court has discretion to determine if delay in insurance payment is "without just cause and excuse." *DiBassie v. American Standard Ins. Co. of Wisconsin*, 8 K.A.2d 515, 522, 661 P.2d 812 (1983).

91. Noted in case stating and applying rules relating to contract ambiguity. *Mears v. Hartford Fire Ins. Co.*, 8 K.A.2d 760, 765, 667 P.2d 902 (1983).

92. Obtaining judgment against insurer is condition precedent to award of attorney fees; intentional act of defendant excluded coverage. *Bell v. Tilton*, 234 K. 461, 472, 674 P.2d 468 (1983).

93. Amount recovered more than settlement offer; attorney fees allowed where underwriters refused payment unjustly on loan induced by forgery. *Regional Inv. Co. v. Haycock*, 723 F.2d 38, 41 (1983).

94. Excess insurer not entitled to attorney fees against primary insurer in medical malpractice claim. *Ins. Co. of North America v. Med. Protective Co.*, 570 F.Supp. 964, 974 (1983).

95. Award of attorney fees at trial not abuse of discretion; additional fees awarded for appeal. *Hochman v. American Family Ins. Co.*, 9 K.A.2d 151, 154, 155, 673 P.2d 1200 (1984).

96. Attorney fees not allowed to defendant in declaratory judgment action joined in dispute over cancellation and construction of a medical malpractice insurance policy. *Missouri Medical Ins. Co. v. Wong*, 234 K. 811, 825, 676 P.2d 113 (1984).

40-275.

Law Review and Bar Journal References:

"Recent Developments in Kansas Insurance Law: A Survey, Some Analysis, and Some Suggestions," Robert H. Jerry II, 32 K.L.R. 287, 337, 338 (1984).

CASE ANNOTATIONS

4. Payment made by one insurer to another as reimbursement of PIP benefits not advance or partial payment which tolls statute of limitations. *Lytte v. Pepsi Cola General Bottlers, Inc.*, 8 K.A.2d, 332, 333, 334, 335, 336, 656 P.2d 786 (1983).

5. Error to grant summary judgment until discovery completed on questions of equitable estoppel and circumstances of part payments. *Hustead v. Bendix Corp.*, 233 K. 870, 873, 876, 877, 878, 666 P.2d 1175 (1983).

40-277. Automobile liability insurance policies; limitations on policy conditions for cancellation. No insurance company shall issue a policy of automobile liability insurance in this state unless the cancellation

condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company.

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance afforded under (here insert the appropriate coverage references) solely because of age or unless

1. The named insured fails to discharge when due any obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or

2. the insurance was obtained through fraudulent misrepresentation; or

3. the insured violates any of the terms and conditions of the policy; or

4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,

(a) has had such person's driver's license suspended or revoked during the policy period, or

(b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to such person's ability to operate a motor vehicle, or

(c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

(1) Any felony, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic in-

*Handwritten note:* "pertained, dependent, a driver's license, suspended or revoked, a..."

2-7-85  
attachment  
III

**40-2,107. Minimum notice requirements for cancellation of insurance agency contract by insurance company.** (a) Insurance companies may contract with independent insurance agents as to binding authority, policy services, adjusting services, commissions and other subjects of interest between agent and company. Such contracts which have been effective for more than one year shall not be terminated or amended by the company except by mutual agreement or unless ~~120 days~~ prior notice has been tendered to the agent, except that this shall not apply to terminations for fraud, material misrepresentation or failure to pay such agent's account less the agent's commission and any disputed items within 10 days after written demand by the company. During such notice period all contractual conditions existing prior to such notice shall continue.

one year's

(b) Any independent insurance agent whose contract with an insurance company has been terminated under the provisions of subsection (a) shall have until the policy renewal date, but not more than one year, to place the business written under such terminated contract with another insurance company.

History: L. 1977, ch. 163, § 2; L. 1982, ch. 199, § 2; July 1.

Attachment  
IV

2-7-85

Attachment IV



An Act relating to investments by insurance companies; concerning investment in financial futures contracts by life insurance companies; and investment in financial futures contracts by companies other than life insurance companies.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Any life insurance company heretofore or hereafter organized under any law of this state shall not enter into financial futures contracts except as part of a hedging transaction. The use of financial futures contracts for hedging purposes must be authorized by the insurer's board of directors.

(b) As used in this section: (1) "Commodity Futures Trading Commission" means the federal regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 1 et seq.) with regulation of the exchanges or any other agency of the federal government which hereafter succeeds or shares such power.

(2) "Deferred gains or losses" are the amounts of unrecognized increase and decrease in the value of financial futures contracts related to uncompleted hedging transactions. These deferred amounts may, in some cases, result from terminated financial futures contracts.

(3) "Exchange-traded" means traded on an exchange designated as a contract market regulated by the Commodity Futures Trading Commission.

(4) "Financial futures contract" means an exchange-traded agreement to make or take delivery of (or to make a cash settlement in lieu thereof) a specified amount of financial instruments on a specified date or period of time, under terms and conditions regulated by the Commodity Futures Trading Commission.

(5) "Financial instrument" means a security, currency or index of a group of securities or currencies authorized or permitted under law.

(6) "Hedge" is a positioning of a hedged item with one or more hedging transactions.

(7) "Hedged item" is a company asset or liability, group of company assets or liabilities, or assets or liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the company in the normal course of business. Such assets or liabilities must bear price or interest rate risk.

(8) "Hedging Transaction" is the opening or closing (as such transaction may be adjusted from time to time) of one or more financial futures contracts which can reasonably be expected to minimize or reduce the price or interest rate risk of the hedged item.

*Attachment V*  
*2-7-85*

(9) "Margin" includes initial and maintenance margins and means any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to ensure performance of the terms of the financial futures contract.

(c) An insurer shall not have initial or maintenance margin outstanding of more than 10% of the excess of its capital and surplus over the minimum requirements of a new stock or mutual company to qualify for a certificate of authority to write the kind of insurance which the insurer is authorized to write.

(d) Prior to engaging in transactions in financial futures contracts, an insurer shall develop and adequately document policies and procedures regarding investment strategies and objectives, recordkeeping needs, and reporting matters. Such policies and procedures shall address authorized investments, investment limitations, authorization and approval procedures, accounting and reporting procedures and controls, and shall provide for review of activity in financial futures contracts by the insurer's board of directors or its designee.

Recordkeeping systems must be sufficiently detailed to permit internal auditors and insurance department examiners to determine whether operating personnel have acted in accordance with established policies and procedures, as set forth in this act. Insurer records must identify for each hedging transaction the related financial futures contracts and the hedged items. Transactions in financial futures must be evidenced by a trade confirmation or other evidence of ownership issued to the insurer by an entity authorized to do so, as described in the definition of "exchange-traded."

(e) Gains and losses from hedged transactions may be deferred for hedged items carried at amortized cost. Until a hedge is terminated, deferred gains and losses are contra-assets and contra-liabilities respectively. After the hedge is terminated, deferred gains and losses shall be included in the amortized cost of the hedged item. If the hedged item is no longer anticipated to be acquired or incurred, the hedge must be terminated and the deferred gain or loss from the hedging transactions must be recognized currently. Allocation of gains or losses to the hedged item shall be recognized in a systematic and rational method, as set forth in accounting procedures required in paragraph (d). For assets and liabilities carried at market value, gains or losses on open hedging transactions shall be recognized currently.

Section 2. (a) Any insurance company other than life heretofore or hereafter organized under any law of this state shall not enter into financial futures contracts except as part of a hedging transaction. The use of financial futures contracts for hedging purposes must be authorized by the insurer's board of directors.

(b) As used in this section: (1) "Commodity Futures Trading Commission" means the federal regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 1 et seq.) with regulation of the exchanges or any other agency of the federal government which hereafter succeeds or shares such power.

(2) "Deferred gains or losses" are the amounts of unrecognized increase and decrease in the value of financial futures contracts related to uncompleted hedging transactions. These deferred amounts may, in some cases, result from terminated financial futures contracts.

(3) "Exchange-traded" means traded on an exchange designated as a contract market regulated by the Commodity Futures Trading Commission.

(4) "Financial futures contract" means an exchange-traded agreement to make or take delivery of (or to make a cash settlement in lieu thereof) a specified amount of financial instruments on a specified date or period of time, under terms and conditions regulated by the Commodity Futures Trading Commission.

(5) "Financial instrument" means a security, currency or index of a group of securities or currencies authorized or permitted under law.

(6) "Hedge" is a positioning of a hedged item with one or more hedging transactions.

(7) "Hedged item" is a company asset or liability, group of company assets or liabilities, or assets or liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the company in the normal course of business. Such assets or liabilities must bear price or interest rate risk.

(8) "Hedging Transaction" is the opening or closing (as such transaction may be adjusted from time to time) of one or more financial futures contracts which can reasonably be expected to minimize or reduce the price or interest rate risk of the hedged item.

(9) "Margin" includes initial and maintenance margins and means any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to ensure performance of the terms of the financial futures contract.

(c) An insurer shall not have initial or maintenance margin outstanding of more than 10% of the excess of its capital and surplus over the minimum requirements of a new stock or mutual company to qualify for a certificate of authority to write the kind of insurance which the insurer is authorized to write.

(d) Prior to engaging in transactions in financial futures contracts, an insurer shall develop and adequately document policies and procedures regarding investment strategies and objectives, recordkeeping needs, and reporting matters. Such policies and procedures shall address authorized investments, investment limitations, authorization and approval procedures, accounting and reporting procedures and controls, and shall provide for review of activity in financial futures contracts by the insurer's board of directors or its designee.

Recordkeeping systems must be sufficiently detailed to permit internal auditors and insurance department examiners to determine whether operating

personnel have acted in accordance with established policies and procedures, as set forth in this act. Insurer records must identify for each hedging transaction the related financial futures contracts and the hedged items. Transactions in financial futures must be evidenced by a trade confirmation or other evidence of ownership issued to the insurer by an entity authorized to do so, as described in the definition of "exchange-traded."

(e) Gains and losses from hedged transactions may be deferred for hedged items carried at amortized cost. Until a hedge is terminated, deferred gains and losses are contra-assets and contra-liabilities respectively. After the hedge is terminated, deferred gains and losses shall be included in the amortized cost of the hedged item. If the hedged item is no longer anticipated to be acquired or incurred, the hedge must be terminated and the deferred gain or loss from the hedging transactions must be recognized currently. Allocation of gains or losses to the hedged item shall be recognized in a systematic and rational method, as set forth in accounting procedures required in paragraph (d). For assets and liabilities carried at market value, gains or losses on open hedging transactions shall be recognized currently.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

WM/hgb