

Approved: _____
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on March 24, 1999 in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
 Ken Wilke, Office of Revisor
 Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Kathleen Sebelius, Insurance Commissioner
 Jerry Slaughter, Kansas Medical Society
 Linda DeCoursey, Kansas Insurance Department
 Brad Smoot, Blue Cross/Blue Shield
 Gerard Grimaldi, Kaiser Permanente
 Bill Sneed, HIAA

Others attending: See Attached

Discussion on SB 80-External Review

Chairman Steffes reported to the Committee the likelihood of the federal government to put in place external review. In this particular case, state statutes would pre-empt federal law. Such legislation would be an attempt to protect both providers in the health care services and enrollees in HMO's. There is a delicate balance between patient protection and cost containment. A balloon amendment prepared by the Insurance Department and healthcare provider industry was presented to the Committee for their review and study (Attachment 1).

Commissioner Sebelius highlighted their areas of concern which included definitions of "insurer" and deletes third party administrators from such definition. Other persons involved in the discussion of the bill were Linda DeCoursey of the Insurance Department, Jerry Slaughter representing the Kansas Medical Society, Brad Smoot of Blue Cross/Blue Shield; Gerard Grimaldi of Kaiser Permanente, and Bill Sneed of HIAA. The group, including the Kansas Trial Lawyers Association, was asked to work out their differences on the bill and report their findings to the Chair.

Senator Becker moved for the approval of the minutes of March 17, 18, and 22. Motion was seconded by Senator Corbin. Motion carried.

The meeting was adjourned at 10:00 a.m.

Guest list for meeting of March 24, 1999

Jerry Slaughter, Kansas Medical Society
Kevin Davis, American Family Insurance
Lori Callahan, KaMMCO
Pat Morris, Kansas Association of Insurance Agents
Larrie Ann Brown, Kansas Association of Health Plans
Rich Guthrie, Health Midwest
Bill Sneed, HIAA
John Federico, Humana
Gerard Grimaldi, Kaiser Permanente
John Peterson, Kaiser Permanente
Mary Spink, Department of Personnel Services
Paul Davis, Kansas Insurance Department
Linda DeCoursey, Kansas Insurance Department
Commissioner Sebelius, Kansas Insurance Department
Brad Smoot, Blue Cross/Blue Shield
Terry Humphrey, Kansas Trial Lawyers Association

SENATE BILL No. 80
By Committee on Financial Institutions and Insurance
1-21

9 AN ACT relating to accident and health insurance; concerning an exter-
10 nal review process; providing certain requirements.

11

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

13 Section 1. (a) For purposes of this section:

14 (1) "Adverse decision" means a utilization review determination by a
15 third-party administrator, an insurer, or a health care provider acting on
16 behalf of an insurer that a proposed or delivered health care service which
17 would otherwise be covered under an insured's contract is not or was not
18 medically necessary or the health care treatment has been determined to
19 be experimental or investigational,

and, (a) if the requested service is provided, coverage is denied or reduced in a manner that leaves the insured with a financial obligation to the provider or providers of such services, or (b) the adverse decision is the reason for the insured not receiving the requested services.

"emergency medical condition" means the sudden, and at the time, unexpected onset of a health condition that requires immediate medical attention, where failure to provide medical attention would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

"external review organization" means an entity that conducts independent external reviews of adverse decisions pursuant to a contract with the commissioner. Such entity shall have experience serving as the external quality review organization in health programs administered by the state of Kansas.

20 (2) "Health insurance plan" means any hospital or medical expense
21 policy, health, hospital or medical service corporation contract, and a plan
22 provided by a municipal group-funded pool, or a health maintenance
23 organization contract offered by an employer or any certificate issued
24 under any such policies, contracts or plans. Health insurance plan does

25 not include policies or certificates covering ~~only accident, credit, dental,~~
 26 ~~disability income, long term care, hospital indemnity, medicare supple-~~
 27 ~~ment, vision care, coverage issued as a supplement to liability insurance,~~
 28 ~~insurance arising out of a workers compensation or similar law, automo-~~
 29 ~~bile medical payment insurance, or insurance under which benefits are~~
 30 ~~payable with or without regard to fault and which is statutorily required~~
 31 ~~to be contained in any liability insurance policy or equivalent self-~~
 32 ~~insurance.~~

Any specified disease, specified accident or accident only coverage, credit, dental, disability income, hospital indemnity, long-term care insurance as defined by K.S.A. 40-2227 and amendments thereto, vision care or any other limited supplemental benefit nor to any medicare supplement policy of insurance as defined by the commissioner of insurance by rule and regulation, any coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group, blanket, or individual basis.

33 (3) "Insured" means the beneficiary of any insurance company, fra-
 34 ternal benefit society, health maintenance organization and nonprofit hos-
 35 pital and medical service corporation authorized to transact health insur-
 36 ance business in this state.

"Insurer" means any insurance company, fraternal benefit society, health maintenance organization, nonprofit hospital and medical service corporation, municipal group funded pool, third party administrator and the self-funded coverage established by the state of Kansas for its employees.

37 (b) The right to review under this section shall not be construed to
 38 change the terms of coverage under a health insurance plan.

39 (c) The insurer shall provide written notice to the insured of a final
 40 adverse decision and the opportunity ~~and time period~~ for requesting the
 41 commissioner's review.

42 (d) ~~An insured who has exhausted all available internal review pro-~~

~~cedures provided by the health insurance plan or has not received a final~~

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~~1 decision from the insured within 90 days shall have the right to an in-
2 dependent external review of an adverse decision under a health insur-
3 ance plan. The independent review shall be available when the affected
4 person, provider acting on behalf of the insured or legally authorized
5 designee of the insured files a written request with the commissioner of
6 insurance within 60 days from receiving a final written determination
7 from the insured's health insurance plan.~~

An insured has the right to an independent external review of an adverse decision under a health insurance plan when:

- (1) The insured has exhausted all available internal review procedures provided by the health insurance plan; or
- (2) the insured has not received a final decision from the insurer within 90 days of seeking an appeal.
- (c) The independent review may be available when the insured, provider acting on behalf of the insured or legally authorized designee of the insured files a written request with the commissioner of insurance.
(Option: The independent review may be available when the insured, treating physician or provider of the insured, or legally authorized designee of the insured files a request with the commissioner.)

~~8 (e) (f) An insured shall provide all information required by the commis-
9 sioner to make a preliminary determination including the appeal form, a
10 copy of the final decision of denial and a fully executed release to obtain
11 any necessary medical records from the insurer and any other relevant
12 provider.~~

in their possession pertaining to the claim in order for
The insured shall also provide the commissioner with an

~~13 (f) (g) In responding to the commissioner, the insurer shall provide a
14 complete explanation as to the basis of the decision adverse to the insured~~

and all medical and other records pertaining to the insured's claim within 5 days of the notice of appeal.

15 (g) (h) Pursuant to a contract negotiated with the insurance department,

external review

16 an independent reviewer organization shall conduct an external review of

17 the adverse decision under a health insurance plan.

provide that all reviews done pursuant to this section are conducted by health care providers actively engaged in the practice of their profession in the state of Kansas who are qualified and

18 (1) The external reviewer organization shall include health care providers cre-

19 dented with respect to the health care service under review and who

20 have no conflict of interest relating to the performance of their duties

21 under this section.

(3) the external review organization shall maintain and report such data as may be required by the commissioner in order to assess the effectiveness of the external review process.
(4) no external review organization nor any individual working on behalf of such organization shall be liable in damages to any insured for any opinion rendered as part of an external review conducted pursuant to this act.

22 (2) The reviews shall be done in accordance with standards of deci-

23 sion-making based on objective clinical evidence and shall resolve all is-

24 sues in a timely manner and provide expedited resolution when the de-

25 cision relates to emergency or urgent health care services.

26 (h) (i) The commissioner of insurance shall:

27 (1) Notify the insured or health care provider in writing as to whether

request for external review will be granted

28 the complaint will be sent for an external review;

29 (2) allow an insurer, an insured, a health care provider filing a com-

request for external review

30 plaint on behalf of an insured or a legally authorized designee of the

31 insured to provide additional written information as may be relevant for

32 the commissioner to make a final decision on the ~~complaint~~;

request for external review

33 (3) make a decision on a complaint within 30 days after receiving all

34 necessary information; and

35 (4) design an expedited procedure for use in an emergency case for

36 purposes of rendering a decision ▼.

in less than seven days

~~The insured shall not be barred from seeking a private remedy.~~

37 ~~(i) (j) The decision of the independent reviewer organization shall be~~

38 ~~binding on the health insurance plan and the insured.~~

39 ~~(j) (k)~~ The commissioner of insurance is hereby authorized to negotiate

40 and enter into contracts necessary to perform the duties required by this

41 section.

42 ~~(k) (l)~~ The commissioner of insurance shall adopt rules and regulations

43 necessary to carry out the purposes of this section. The rules and regu-

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1 lations shall ensure that the commissioner of insurance is able to provide

2 an effective and efficient external review of health care services.

3 Sec. 2. This act shall take effect and be in force from and after its

4 publication in the statute book.

(j) The decision of the external review organization shall be considered an agency action pursuant to K.S.A. 77-621, and shall be binding on the parties, except to the extent the insured has other remedies available under applicable federal or state law. All records and information used in the external review, and the decision of the external review organization, shall be admissible in any subsequent proceeding or action involving the matter submitted to external review.