

Approved:

Date: 4-3-02

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 26, 2002 in Room 234 N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list.

Discussion and Action on HB 2879 - Automobile insurance - cancellation of policy for non-payment of dues to Organization

After discussion on the bill, Senator Teichman made a motion the Committee recommend HB 2879 favorable for passage, seconded by Senator Brungardt. The motion carried.

Discussion and Action on HB 2247 - Business Health Partnership

The Chair briefed the Committee on a balloon of **HB 2247** which consisted mostly of technical changes to the bill. (Attachment 1) Representatives from the insurance industry present at the meeting expressed their agreement with the amendments as shown in the balloon of the bill.

Senator Teichman made a motion to adopt the amendments as shown in the balloon of the bill, and that the Committee recommend HB 2247 as amended favorable for passage, seconded by Senator Brungardt. The motion carried.

Discussion and Action on HB 2640 - NAIC Model Viatical Settlement Act

Roger Walter, representing Viatical and Life Settlement Association of America, briefed the Committee on amendments supported by the Viatical industry as shown in a balloon of **HB 2640**. (Attachment 2)

Marlyn Burch, Kansas Insurance Department, expressed his opposition to the amendments presented by Mr. Walter, and noted that five states have passed the model legislation as shown in **HB 2640**.

Senator Corbin made a motion the Committee recommend HB 2640 favorable for passage, seconded by Senator Brungardt. The motion carried.

The Chair called the Committee's attention to a balloon of **SB 389** dealing with repealing the sunset provision on tax credit for small businesses and HIPAA compliance legislation that could be amended into **HB 2640**. (Attachment 3)

Senator Corbin made a motion to reconsider his actions on HB 2640, seconded by Senator Teichman. The motion carried.

Senator Allen made a motion to adopt the amendments to HB 2640 as shown in the balloon of SB 389, seconded by Senator Teichman. The motion carried. The provisions of the original **SB 389** were not included in the amendment. The amendments were requested by the Department of Insurance. The first amendment repeals the sunset on the tax credit for small businesses offering health insurance. The second changes a date in the state's HIPAA legislation to continue our compliance with federal law based on recent changes in the federal law.

Senator Barnett made a motion the Committee recommend HB 2640 as amended favorable for passage, seconded by Senator Teichman. The motion carried.

Approval of Minutes

Senator Brungardt made a motion to approve the Committee minutes of March 19, 20, 21, 2002, seconded by Senator Salmans. The motion carried.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for March 27, 2002.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 3-26-02

NAME	REPRESENTING
John Gann	KAIFA
Kevin Davis	Am. Family Ins.
Sandy Braden	KAIFA
Linda McCoskey	KS Insurance Dept
Bill Speed	KIAA
Marilyn Bush	Ks. Insurance Dept
LARRY MAGILL	KAIA
Rich Hayes	Vertical & Life
Roger Walter	Vertical & Life Self. Ass. of Am.

HOUSE BILL No. 2247

By Committee on Insurance

2-1

9 AN ACT concerning the Kansas business health partnership act; relating
10 to the removal of the sunset provision; amending K.S.A. 40-4707 and
11 repealing the existing section.

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

14 Section 1. K.S.A. 40-4707 is hereby amended to read as follows: 40-
15 4707. (a) K.S.A. 40-4701 through 40-4707 and amendments thereto shall
16 be known as the Kansas business health partnership act.

17 (b) ~~The provisions of the Kansas business health partnership act shall~~
18 ~~expire on July 1, 2002.~~

and making other clarifications of
the act

40-4701, 40-4702, 47-4704, 40-4706 and

sections

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Date: 3-26-02
Attachment No. 1

40-4701. Kansas business health partnership act; definitions. As used in K.S.A. 40-4701 through 40-4707 and amendments thereto:

(a) "Carrier" means any insurance company, nonprofit medical and hospital service corporation, nonprofit optometric, dental, or pharmacy service corporation, municipal group-funded pool, fraternal benefit society or health maintenance organization, as these terms are defined by chapter 40 of the Kansas Statutes Annotated, and amendments thereto, that offers health benefit plans covering eligible employees of one or more small employers in the state.

(b) "Health committee" means the Kansas business health policy committee as specified in K.S.A. 40-4702, and amendments thereto.

(c) "Dependent" means the spouse or any child of an eligible employee.

(d) "Eligible employee" shall have the meaning ascribed to it in K.S.A. 40-2209d and amendments thereto.

(e) "Health benefit plan" means any hospital or medical expense policy, health, hospital or medical services corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by any employer or any certificate issued under any such policy, contract or plan.

(f) "Kansas business health partnership" or "health partnership" means a nonrisk bearing nonprofit corporation that has responded to a request for a proposal by the health committee and has been selected by the health committee to provide health insurance through multiple unaffiliated participating carriers to small employers and their employees.

(g) "Low wage or modest wage employee" means any employee whose family income does not exceed 200% of the poverty level.

(h) "Small employer" shall have the meaning ascribed to it in K.S.A. 40-2209d and amendments thereto.

History: L. 2000, ch. 147, § 47; July 1.

[eligible

[eligible

40-4702. Same; Kansas business health policy committee; membership; organization powers and duties. (a) The governor of the state of Kansas shall appoint a cabinet level committee which shall be known as the Kansas business health policy committee.

(b) The Kansas business health policy committee, hereinafter referred to as the health committee, shall consist of:

- (1) The secretary of the department of commerce and housing or the secretary's designee;
- (2) the secretary of the department of social and rehabilitation services or the secretary's designee;
- (3) the commissioner of insurance or the commissioner's designee;
- (4) one member appointed by the president of the senate;
- (5) one member appointed by the speaker of the house of representatives;
- (6) one member appointed by the minority leader of the senate;
- (7) one member appointed by the minority leader of the house of representatives; and
- (8) three members at large from the private sector appointed by the governor.

The secretary of each state agency represented in this committee shall provide such staff and other resources as the health committee may require.

(c) (1) The initial meeting of the health committee shall be convened within 60 days after the effective date of this act by the governor at a time and place designated by the governor.

(2) Meetings of the health committee subsequent to its initial meeting shall be held and conducted in accordance with policies and procedures established by the health committee.

(3) Commencing at the time of the initial meeting of the health committee, the powers, authorities, duties and responsibilities conferred and imposed upon the health committee by this act shall be operative and effective.

(d) The health committee shall develop and approve a request for proposals for a qualified entity to serve as the Kansas business health partnership, hereinafter referred to as health partnership, which shall provide a mechanism to combine federal and state subsidies with contributions

1-3

from employers and employees to purchase health insurance in accordance with guidelines developed by the health committee.

small

eligible

(e) The health committee shall evaluate responses to the request for proposals and select the qualified entity to serve as the health partnership.

(f) The health committee shall:

(1) Develop and approve subsidy eligibility criteria provided that:

(A) Low wage and modest wage employees of small employers shall be eligible for subsidies if:

(1) The small employer has not previously offered health insurance coverage; or

(2) the small employer has previously offered health insurance coverage and a majority of such small employer's employees are low wage or modest wage employees as defined in K.S.A. 40-4701;

the eligible employees are paid an hourly wage which does not exceed an amount specified by the health committee

(B) any small employer's employee with a child who is eligible for coverage under the state childrens' health insurance program established by K.S.A. 38-2001 *et seq.*, and amendments thereto, or in the state medical assistance program shall be eligible automatically for a subsidy and shall be included in the determination of eligibility for the small employer and its low-and-modest wage employees; and

eligible

(C) at least 70% of the small employer's employees are insured through the partnership; and

eligible

(2) determine and arrange for eligibility determination for subsidies of low wage or modest wage employees; and

without health insurance coverage from another source

(3) develop subsidy schedules based upon employee wage levels.

eligible

(g) The health committee shall oversee and monitor the ongoing operation of any subsidy program and the financial accountability of all subsidy funds.

(h) The health committee is hereby authorized to accept funds from the federal government, or its agencies, or any other source whatsoever for research studies, investigation, planning and other purposes related to implementation of the objectives of this act. Any funds so received shall be deposited in the state treasury and shall be credited to a special revenue fund which is hereby created and shall be known as the health committee insurance fund and used in accordance with or direction of the contributing federal agencies. Expenditures from such fund may be made for any

If, in the judgment of the health committee, the entity selected to serve as the health partnership fails to perform as intended, the health committee may terminate its selection and designation of that entity as the health partnership and may issue a new request for proposal and select a different qualified entity to serve as the health partnership

purpose keeping with the responsibilities, functions and authority of the department. Warrants and such fund shall be drawn in the same manner required of other state agencies upon vouchers issued by the secretary of the department of social and rehabilitation services upon receiving prior approval of the health committee.

(i) The health committee is authorized to develop policies, for the use of additional federal or private funds to subsidize health insurance coverage for low-and-modest wage employees of predominantly low-wage small employers.

(j) The health committee is hereby authorized to organize, or cause to be organized, one or more advisory committees. No member of any advisory committee established under this subsection shall receive any payment or other compensation from the health partnership. The membership of each advisory committee established under this subsection shall contain at least one representative who is a small employer and one representative who is an eligible employee as defined in K.S.A. 40-4701 and one representative of the insurance industry.

History: L. 2000, ch. 147, § 48; July 1.

for the administration of the subsidy program and

The health committee also may revise the subsidy eligibility criteria and subsidy eligibility criteria and subsidy schedules developed pursuant to subsection (f) from time to time

have previously received or currently

40-4704. Same; health partnership; du-
The health partnership shall develop and of-
two more health benefit plans to small em-
ers. In any health benefit plan developed
er this act, any carrier may contract for cov-
ge within the scope of this act notwithstanding
mandated coverages otherwise required by
e law. Except for preventative and health
eening services, the provisions of K.S.A. 40-
00 to 40-2,105, inclusive, 40-2114 and subsec-
a (i) of 40-2209 and 40-2229 and 40-2230, and
2,163, 40-2,164, 40-2,165 and 40-2,166, and
endments thereto, shall not be mandatory with
pect to any health benefit plan developed un-
this act. In performing these duties, the health
tnership shall:

a) Develop and offer two or more lower-cost
enefit plans such that:

1) Each health benefit plan is consistent with
criteria established by the health partnership;

2) each health benefit plan shall be offered
all participating carriers except that no partic-
ing carrier shall be required to offer any health
enefit plan, or portion thereof, which such par-
ticipating carrier is not licensed or authorized to
er in this state;

3) no participating carrier shall offer any
alth benefit plan developed under this act to
small employer unless such small employer is
ered through the health partnership.

b) Develop and make available one or more
plemental health benefit plans or one or more
er benefit options so that the total package of
alth benefits available to all eligible children
o receive health benefits through the health
tnership] meets, at a minimum, standards es-
lished by the federal health insurance program.

c) Offer coverage to any qualifying small em-
yer.

d) Offer employees of participating small
mployers a choice of participating carriers.

e) (1) Include centralized and consolidated
rollment, billing and customer service func-
ns;

(2) use one standard enrollment form for all
arti- ing carriers; and

(3) submit one consolidated bill to the small
mployer.

children

for the state children's health insurance program
established pursuant to K.S.A. 38-2001 et seq., and
amendments thereto,

eligible

where feasible

(f) Issue or cause to be issued a request for proposal and contract with a qualified vendor for any administrative or other service not performed by the health committee or provided to the health committee under subsection (b) of K.S.A. 40-4702.

(g) Issue a request for proposals and selectively contract with carriers.

(h) Establish conditions of participation for small employers that conform with K.S.A. 40-2209b *et seq.*, and amendments thereto, and the health insurance portability and accountability act of 1996 (Public Law 104-191).

(i) Enroll small employers and their eligible employees and dependents in health benefit plans developed under this act.

(j) Bill and collect premiums from participating small employers including any share of the premium paid by such small employer's enrolled employees.

(k) Remit funds collected under subsection (h) to the appropriate contracted carriers.

(l) Provide that each eligible low-or-modest wage employee shall be permitted to enroll in such employee's choice of participating carrier.

where available

(m) Develop premium rating policies for small employers.

(1) In consultation with the health committee, the health partnership shall ensure, to the maximum extent possible, that the combined effect of the premium rating and subsidy policies is that subsidized workers and the dependents of such subsidized workers can afford coverage.

eligible employees

eligible employees

(2) Any rating policy developed under this subsection may vary with respect to subsidy status of workers and the dependents of such workers.

eligible employees

(n) Be authorized to contract for additional group vision, dental and life insurance plans, and other limited insurance products.

eligible employees

(o) Take whatever action is necessary to assure that any adult or child who receives health benefit coverage through the health benefit partnership and who is eligible for the state medical assistance program shall remain eligible to participate in the state health insurance premium payment program.

eligible employee or dependent of such eligible employee

(p) Coordinate with the department of social and rehabilitation services to assure that any funds available for the coverage of infants and pregnant women under the state medical assistance program also available for the benefit of eligible infants and pregnant women who receive health benefit coverage through the health partnership.

as an eligible employee or dependent of such eligible employee

History: L. 2000, ch. 147, § 50; July 1.

40-4706. Same; department of social and rehabilitation services; duties. The department of social and rehabilitation services shall investigate and pursue all possible policy options and bring into this partnership title XIX and the title XIX eligible families of any employees employed by a small employer. Further, the department of social and rehabilitation services shall develop and seek federal approval of any appropriate variance to the state plan amendment for the state children's health insurance program established by K.S.A. 1999-2001 *et seq.*, and amendments thereto, and the state medical assistance program required to accomplish the purposes of this act.

History: L. 2000, ch. 147, § 52; July 1.

[eligible

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6-1

[40-4701, 40-4702, 47-4704, 40-4706
and 40-4707 are

19 Sec. 2. K.S.A. [40-4707 is] hereby repealed.

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

HOUSE BILL No. 2640

By Committee on Insurance

1-16

AN ACT relating to insurance companies; relating to viatical settlements and investments; amending K.S.A. 2001 Supp. 17-1262 and repealing the existing section; also repealing K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-2,183.

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

New Section 1. Sections 1 through 16 inclusive, and amendments thereto, may be cited as the viatical settlements act of 2002.

New Sec. 2. As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

(b) "Business of viatical settlements" means an activity involved in, but not limited to, offering, soliciting, negotiating, procuring, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging or hypothecating any viatical settlement contract.

(c) "Chronically ill" means:

(1) Being unable to perform at least two activities of daily living including eating, toileting, transferring, bathing, dressing, continence or such other activity as determined by rules and regulations adopted by the commissioner; or

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(d) "Commissioner" means the commissioner of insurance.

(e) "Financing entity" means any underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a

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1 direct ownership in a policy or certificate which is the subject of a viatical
2 settlement contract, but:

3 (1) Whose principal activity related to the transaction is providing
4 funds to effect the viatical settlement or purchase of one or more viati-
5 cated policies; and

6 (2) who has an agreement in writing with one or more licensed vi-
7 atical settlement providers to finance the acquisition of viatical settlement
8 contracts.

9 Financing entity shall not include any nonaccredited investor or viatical
10 settlement purchaser.

11 ~~(f) "Fraudulent viatical settlement act" means and includes:~~

12 ~~(1) Any act or omission committed by any person who, knowingly or
13 with intent to defraud, for the purpose of depriving another of property
14 or for pecuniary gain, commits, or permits such person's employees or
15 agents to engage in acts including:~~

16 ~~(A) Presenting, causing to be presented or preparing with knowledge
17 or belief that it will be presented to or by a viatical settlement provider,
18 viatical settlement broker, viatical settlement purchaser, financing entity,
19 insurer, insurance producer or any other person, false material informa-
20 tion, or concealing material information, as part of, in support of or con-
21 cerning a fact material to one or more of the following:~~

22 ~~(i) An application for the issuance of a viatical settlement contract or
23 insurance policy;~~

24 ~~(ii) the underwriting of a viatical settlement contract or insurance
25 policy;~~

26 ~~(iii) a claim for payment or benefit pursuant to a viatical settlement
27 contract or insurance policy;~~

28 ~~(iv) premiums paid on an insurance policy;~~

29 ~~(v) payments and changes in ownership or beneficiary made in ac-
30 cordance with the terms of a viatical settlement contract or insurance
31 policy;~~

32 ~~(vi) the reinstatement or conversion of an insurance policy;~~

33 ~~(vii) in the solicitation, offer, effectuation or sale of a viatical settle-
34 ment contract or insurance policy;~~

35 ~~(viii) the issuance of written evidence of viatical settlement contract
36 or insurance; or~~

37 ~~(ix) a financing transaction.~~

38 ~~(B) Employing any device, scheme or artifice to defraud related to
39 viaticated policies;~~

40 ~~(2) any act done or committed in the furtherance of a fraud or to
41 prevent the detection of a fraud any person commits or permits its em-
42 ployees or its agents to:~~

43 ~~(A) Remove, conceal, alter, destroy or sequester from the commis-~~

(f) "Fraudulent viatical settlement act": For purposes of this act a "fraudulent viatical settlement act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, viatical settlement provider, viatical settlement broker or any agent thereof, any written statement as part of, or in support of, an application for a viatical settlement issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals for the purpose of misleading, information concerning any fact material thereto.

2-3

1 ~~viator the assets or records of a licensee or other person engaged in the~~
2 ~~business of viatical settlements;~~
3 ~~(B) misrepresent or conceal the financial condition of a licensee, fi-~~
4 ~~ancing entity, insurer or other person;~~
5 ~~(C) transact the business of viatical settlements in violation of laws~~
6 ~~requiring a license, certificate of authority or other legal authority for the~~
7 ~~transaction of the business of viatical settlements; or~~
8 ~~(D) file with the commissioner or the chief insurance regulatory of-~~
9 ~~ficial of another jurisdiction a document containing false information or~~
10 ~~otherwise conceals information about a material fact from the~~
11 ~~commissioner;~~
12 ~~(3) embezzlement, theft, misappropriation or conversion of moneys,~~
13 ~~funds, premiums, credits or other property of a viatical settlement pro-~~
14 ~~vider, insurer, insured, viator, insurance policy owner or any other person~~
15 ~~engaged in the business of viatical settlements or insurance; or~~
16 ~~(4) recklessly entering into, brokering, otherwise dealing in a viatical~~
17 ~~settlement contract, the subject of which is a life insurance policy that~~
18 ~~was obtained by presenting false information concerning any fact material~~
19 ~~to the policy or by concealing, for the purpose of misleading another,~~
20 ~~information concerning any fact material to the policy, where the viator~~
21 ~~or the viator's agent intended to defraud the policy's issuer. "Recklessly"~~
22 ~~means engaging in the conduct in conscious and clearly unjustifiable dis-~~
23 ~~regard of a substantial likelihood of the existence of the relevant facts or~~
24 ~~risks, such disregard involving a gross deviation from acceptable standards~~
25 ~~of conduct;~~
26 ~~(5) attempting to commit, assisting, aiding or abetting in the com-~~
27 ~~mission of, or conspiracy to commit the acts or omissions specified in this~~
28 ~~subsection.~~
29 (g) "NAIC" means the national association of insurance
30 commissioners.
31 (h) "Person" means a natural person or a legal entity, including, but
32 not limited to, an individual, partnership, limited liability company, as-
33 sociation, trust or corporation.
34 (i) "Policy" means an individual or group policy, group certificate,
35 contract or arrangement of life insurance affecting the rights of a resident
36 of this state or bearing a reasonable relation to this state, regardless of
37 whether delivered or issued for delivery in this state.
38 (j) "Related provider trust" means a titling trust or other trust estab-
39 lished by a licensed viatical settlement provider or a financing entity for
40 the sole purpose of holding the ownership or beneficial interest in pur-
41 chased policies in connection with a financing transaction. The trust shall
42 have a written agreement with the licensed viatical settlement provider
43 under which the licensed viatical settlement provider is responsible for

2-4

(5) the viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this act;

(6) the viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(7) the licensee no longer meets the requirements for initial licensure;

(8) the viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect on the effective date of this act, financing entity, special purpose entity or related provider trust; or

(9) the licensee or any officer, partner, member or key management personnel has violated any provision of this act.

(b) If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

New Sec. 5. No person shall use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material to the commissioner.

New Sec. 6 (a) Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule and regulation.

(b) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure is:

(1) Necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(2) provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of paragraph (c) of section 12, and amendments

contract

2-5

and the viatical settlement provider's interest in those benefits.

(6) State the name, business address and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

New Sec. 9. (a) (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(A) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(B) a document in which the insured consents to the release of such insured's medical records to a viatical settlement provider, ~~viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.~~ or

(2) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. ~~The notice shall be accompanied by the documents required by paragraph (3).~~

(3) The viatical settlement provider shall deliver a ~~copy of the medical release required under clause (B) of paragraph (1), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph (2) and a~~ request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The form for verification shall be developed by the commissioner.

(4) ~~The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.~~

(5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that such viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that such viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy

was issued.

2 ~~(6)~~ If a viatical settlement broker performs any of these activities
3 required of the viatical settlement provider, the viatical settlement pro-
4 vider is deemed to have fulfilled the requirements of this section.

(5)

5 (b) (1) All medical information solicited or obtained by any licensee
6 shall be subject to the applicable provisions of state law relating to con-
7 fidentiality of medical information.

8 (2) The provisions of this subsection shall expire July 1, 2007, unless
9 the legislature acts to reenact such provisions. The provisions of this sec-
10 tion shall be reviewed by the legislature prior to July 1, 2007.

11 (c) All viatical settlement contracts entered into in this state shall
12 provide the viator with an unconditional right to rescind the contract for
13 at least 15 calendar days from the receipt of the viatical settlement pro-
14 ceeds. If the insured dies during the rescission period, the viatical settle-
15 ment contract shall be deemed to have been rescinded, subject to repay-
16 ment to the viatical settlement provider or purchaser of all viatical
17 settlement proceeds, and any premiums, loans and loan interest that have
18 been paid by the viatical settlement provider or purchaser.

19 (d) The viatical settlement provider shall instruct the viator to send
20 the executed documents required to effect the change in ownership, as-
21 signment or change in beneficiary directly to the independent escrow
22 agent. Within three business days after the date the escrow agent receives
23 the document, or from the date the viatical settlement provider receives
24 the documents, if the viator erroneously provides the documents directly
25 to the provider, the provider shall pay or transfer the proceeds of the
26 viatical settlement into an escrow or trust account maintained in a state
27 or federally-chartered financial institution whose deposits are insured by
28 the federal deposit insurance corporation. Upon payment of the settle-
29 ment proceeds into the escrow account, the escrow agent shall deliver
30 the original change in ownership, assignment or change in beneficiary
31 forms to the viatical settlement provider or related provider trust. Upon
32 the escrow agent's receipt of the acknowledgment of the properly com-
33 pleted transfer of ownership, assignment or designation of beneficiary
34 from the insurance company, the escrow agent shall pay the settlement
35 proceeds to the viator.

36 (e) Failure to tender consideration to the viator for the viatical set-
37 tlement contract within the time disclosed pursuant to clause (6) of sub-
38 section (a) of section 8, and amendments thereto, renders the viatical
39 settlement contract voidable by the viator for lack of consideration until
40 the time consideration is tendered to and accepted by the viator.

41 (f) Contacts with the insured for the purpose of determining the
42 health status of the insured by the viatical settlement provider or viatical
43 settlement broker after the viatical settlement has occurred shall only be

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(H) the viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

(I) the viator or insured disposes of such viator's or insured's ownership interests in a closely held corporation.

(2) Copies of the independent evidence described in paragraph (1) of this subsection and documents required by subsection (a) of section 9, and amendments thereto shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(e) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in subsection (d) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

New Sec. 11. ~~The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees.~~

The commissioner shall adopt regulations governing the advertisement of viatical settlements.

(a) This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(b) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement licensee as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once

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2 a year, to agents and others authorized by the viatical settlement licensee
3 who disseminate advertisements of the requirements and procedures for
4 approval prior to the use of any advertisements not furnished by the
5 viatical settlement licensee.

6 (c) Advertisements shall be truthful and not misleading in fact or by
7 implication. The form and content of an advertisement of a viatical set-
8 tlement contract, product or service shall be sufficiently complete and
9 clear so as to avoid deception. It shall not have the capacity or tendency
10 to mislead or deceive. Whether an advertisement has the capacity or
11 tendency to mislead or deceive shall be determined by the commissioner
12 from the overall impression that the advertisement may be reasonably
13 expected to create upon a person of average education or intelligence
14 within the segment of the public to which it is directed.

15 (d) The information required to be disclosed under this section shall
16 not be minimized, rendered obscure, or presented in an ambiguous fash-
17 ion or intermingled with the text of the advertisement so as to be con-
18 fusing or misleading.

19 (1) An advertisement shall not omit material information or use
20 words, phrases, statements, references or illustrations if the omission or
21 use has the capacity, tendency or effect of misleading or deceiving viators
22 as to the nature or extent of any benefit, loss covered, premium payable
23 or state or federal tax consequence. The fact that the viatical settlement
24 contract offered is made available for inspection prior to consummation
25 of the sale, an offer is made to refund the payment if the viator is not
26 satisfied or that the viatical settlement contract includes a "free look"
27 period that satisfies or exceeds legal requirements, shall not remedy mis-
28 leading statements.

29 (2) No advertisement shall use the name or title of a life insurance
30 company or a life insurance policy unless the advertisement has been
31 approved by the insurer.

32 (3) No advertisement shall state or imply that interest charged on an
33 accelerated death benefit or a policy loan is unfair, inequitable or in any
34 manner an incorrect or improper practice.

35 (4) The words "free," "no cost," "without cost," "no additional cost,"
36 "at no extra cost" or words of similar import shall not be used with respect
37 to any benefit or service unless true. An advertisement may specify the
38 charge for a benefit or a service or may state that a charge is included in
39 the payment or use other appropriate language.

40 (5) Testimonials, appraisals or analysis used in advertisements must
41 be genuine; represent the current opinion of the author; be applicable to
42 the viatical settlement contract, product or service advertised, if any; and
43 be accurately reproduced with sufficient completeness to avoid mislead-
ing or deceiving prospective viators as to the nature or scope of the test

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2 testimonials, appraisal, analysis or endorsement. In using testimonials, ap-
3 praisals or analysis, the viatical settlement licensee makes as its own all
4 the statements contained therein, and the statements are subject to all
5 the provisions of this section.

6 (A) If the individual making a testimonial, appraisal, analysis or an
7 endorsement has a financial interest in the viatical settlement provider or
8 related entity as a stockholder, director, officer, employee or otherwise,
9 or receives any benefit directly or indirectly other than required union
10 scale wages, that fact shall be prominently disclosed in the advertisement.

11 (B) An advertisement shall not state or imply that a viatical settlement
12 contract, benefit or service has been approved or endorsed by a group of
13 individuals, society, association or other organization unless that is the
14 fact and unless any relationship between an organization and the viatical
15 settlement licensee is disclosed. If the entity making the endorsement or
16 testimonial is owned, controlled or managed by the viatical settlement
17 licensee, or receives any payment or other consideration from the viatical
18 settlement licensee for making an endorsement or testimonial, that fact
19 shall be disclosed in the advertisement.

20 (C) When an endorsement refers to benefits received under a viatical
21 settlement contract, all pertinent information shall be retained for a pe-
22 riod of five years after its use.

23 (e) No advertisement shall contain statistical information unless it ac-
24 curately reflects recent and relevant facts. The source of all statistics used
25 in an advertisement shall be identified.

26 (f) No advertisement shall disparage insurers, viatical settlement pro-
27 viders, viatical settlement brokers, insurance producers, policies, services
28 or methods of marketing.

29 (g) The name of the viatical settlement licensee shall be clearly iden-
30 tified in all advertisements about the licensee or its viatical settlement
31 contract, products or services, and if any specific viatical settlement con-
32 tract is advertised, the viatical settlement contract shall be identified ei-
33 ther by form number or some other appropriate description. If an appli-
34 cation is part of the advertisement, the name of the viatical settlement
35 provider shall be shown on the application.

36 (h) No advertisement shall use a trade name, group designation,
37 name of the parent company of a viatical settlement licensee, name of a
38 particular division of the viatical settlement licensee, service mark, slogan,
39 symbol or other device or reference without disclosing the name of the
40 viatical settlement licensee, if the advertisement would have the capacity
41 or tendency to mislead or deceive as to the true identity of the viatical
42 settlement licensee, or to create the impression that a company other
43 than the viatical settlement licensee would have any responsibility for the
44 financial obligation under a viatical settlement contract.

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(i) No advertisement shall use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(j) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

(k) No advertisement shall create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(l) The name of the actual licensee shall be stated in all of its advertisements. No advertisement shall use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(m) No advertisement shall, directly or indirectly, create the impression that any division or agency of the state or of the united states government endorses, approves or favors:

(1) Any viatical settlement licensee or its business practices or methods of operation;

(2) the merits, desirability or advisability of any viatical settlement contract;

(3) any viatical settlement contract; or

(4) any life insurance policy or life insurance company.

(n) If the advertiser emphasizes the speed with which the viatication will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(o) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

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New Sec. 12. (a) No person shall:

(1) Commit a fraudulent viatical settlement act.

(2) Knowingly ~~or~~ intentionally interfere with the enforcement of any provision of this act or any investigation of suspected or actual violations of this act. and

(3) Knowingly ~~or~~ intentionally permit any person, employed by a person in the business of viatical settlements, convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. No person in the business of viatical settlements shall know-

ingly ~~or~~ intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. and

(b) (1) Viatical settlements contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.” and intentionally

(2) The lack of a statement as required in paragraph (1) shall not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) (1) No civil liability shall be imposed on and no cause of action shall arise from a person’s furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(A) The commissioner or the commissioner’s employees, agents or representatives;

(B) federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(C) any person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s agents, employees or representatives;

(D) the NAIC, national association of securities dealers, the north

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american securities administrators association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Paragraph (1) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person identified in paragraph (1) shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) (1) The documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) Paragraph (1) of this subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(B) to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; ~~or~~ ^{or}

~~(C) at the discretion of the commissioner or pursuant to a court order,~~ to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act; ~~or~~

~~(D) at the discretion of the commissioner or pursuant to a court order, to a person that is aggrieved by a fraudulent viatical settlement act.~~

(3) Release of documents and evidence under ~~subparagraphs (A) and (B) of~~ paragraph (2) of this subsection does not abrogate or modify the privilege granted in paragraph (1).

(4) The provisions of this subsection shall expire July 1, 2007, unless

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the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2007.

(f) This act shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(3) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

~~(g) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include:~~

~~(1) Fraud investigators, who may be viatical settlement providers or viatical settlement broker employees or independent contractors; and~~

~~(2) an antifraud plan, which shall be submitted to the commissioner.~~

~~The antifraud plan shall include, but not be limited to:~~

~~(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;~~

~~(B) a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;~~

~~(C) a description of the plan for antifraud education and training of underwriters and other personnel; and~~

~~(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and~~

~~(3) antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.~~

New Sec. 13. (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in

(g) The commissioner may adopt rules and regulations governing antifraud initiatives by viatical settlement providers and viatical settlement brokers.

SENATE BILL No. 389

By Committee on Financial Institutions and Insurance

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relating to health insurance for small employers; relating to group health insurance; amending K.S.A. 40-2240 and 40-2258 and repealing the existing sections

9 AN ACT concerning insurance; authorizing the insurance commissioner
10 to share information with functional regulatory agencies;

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) The commissioner, by agreement, may establish an
14 information sharing and exchange program with a functional regulatory
15 agency with respect to all or part of an affiliated group that includes an
16 insurance company or entity licensed or regulated by the Kansas insur-
17 ance department, to reduce the potential for duplicative and burdensome
18 filings, examinations and other regulatory activities. Each agency party to
19 such an agreement shall agree to maintain confidentiality of information
20 that is confidential under applicable statute or federal law and to take all
21 reasonable steps to oppose any effort to secure disclosure of the infor-
22 mation by such agency.

23 (b) Disclosure of information by or to the commissioner pursuant to
24 this section shall not constitute a waiver of or otherwise affect or diminish
25 a privilege to which the information is otherwise subject, whether or not
26 the disclosure is governed by a confidentiality agreement.

27 (c) As used in this section: (1) "Affiliated group" means two or more
28 persons affiliated through common ownership or a contractual common
29 undertaking involving the sharing of customer information among such
30 persons;

31 (2) "agency" means a department or agency of this state another state
32 the United States or any related agency or instrumentality;

33 (3) "commissioner" shall have the meaning ascribed to it in K.S.A 40-
34 102, and amendments thereto;

35 (4) "functional regulatory agency" means an agency that regulates
36 and charters, licenses or registers persons engaged in activities that are
37 financial in nature, incidental to financial activities, or complementary to
38 financial activities, as those terms are used in the Gramm-Leach Bliley
39 act of 1999 (P.L. 106-102), including activities related to banking, insur-
40 ance or securities, within the jurisdiction of the agency; and

41 (5) "privilege" includes any work product, attorney client or other
42 privilege recognized under federal or state law.

43 (d) All working papers, recorded information, documents and copies

Senate Financial Inst. & Insurance
Date: 3-26-02
Attachment No. 3

1 [thereof produced by, obtained by or disclosed to the commissioner or
 2 any other person pursuant to this section must be given confidential treat-
 3 ment and are not subject to subpoena and may not be made public by
 4 the commissioner or any other person, except to the extent otherwise
 5 specifically provided in K.S.A. 45-212 *et seq.* and amendments thereto.
 6 Access may also be granted to the national association of insurance com-
 7 missioners. Such parties must agree in writing prior to receiving the in-
 8 formation to provide to such information the same confidential treatment
 9 as required by this section, unless the prior written consent of the com-
 10 pany to which such information pertains has been obtained.]

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

K.S.A. 40-2240 is hereby amended to read as follows:

**40-2240. ~~Same; establishment; cover-
 age; plan of operation; notification of and as-
 sistance by commissioner; issuance of certifi-
 cate authorizing claim for tax credit;
 limitation.~~** (a) Any small employer as defined in
 subsection (4) of K.S.A. 40-2209d, and amend-
 ments thereto, may establish a small employer
 health benefit plan for the purpose of providing a
 health benefit plan as described in subsection (u)
 of K.S.A. 40-2209d, and amendments thereto,
 covering such employers' eligible employees and
 such employees' family members. If an association
 or trust is used for such purposes, the association
 or trust may not condition eligibility or member-
 ship on the health status of members or employ-
 ees.

(b) Employers desiring to offer a small em-
 ployer health benefit plan shall notify the com-
 missioner and provide the commissioner with in-
 formation on the number of employees and family
 members to be covered by the insurance de-
 scribed in K.S.A. 40-2209d, and amendments
 thereto. The commissioner shall provide assis-
 tance to employers desiring to organize and main-
 tain any such benefit plan and may aid in the ac-
 quisition of the health care insurance by the small
 employer health benefit plan. The commissioner
 shall issue a certificate to every employer partici-
 pating in any such small employer health benefit
 plan entitling such employer to claim the tax

credit authorized by K.S.A. 40-2246 and amend-
 ments thereto subject to the following limitation:
 No certificate shall be issued to any employer
 seeking the same after certificates have already
 been issued under this act to employers offering
 health benefits described in K.S.A. 40-2209d, and
 amendments thereto, to employees and family
 members entitling such employers to claim the
 credits for taxable years which commence after
 December 31, 1999 and before January 1, 2002.

History: L. 1990, ch. 157, § 2; L. 1999, ch.
 110, § 2; July 1.

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Section 2. K.S.A. 40-2258 is hereby amended to read as follows:

~~40-2258. Group policies, aggregate lifetime limit, exceptions, definitions.~~ (a) An accident and sickness insurer which offers coverage through a group policy providing hospital, medical or surgical expense benefits pursuant to K.S.A. 40-2209 and amendments thereto which includes

mental health benefits shall be subject to the following requirements:

(1) If the policy does not include an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits, the policy may not impose any aggregate lifetime limit on mental health benefits;

(2) if the policy includes an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits the plan shall either: (A) Apply the applicable lifetime limit both to the hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguished in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit on hospital, medical and surgical expense benefits;

(3) if the policy does not include an annual limit on substantially all hospital, medical and surgical expense benefits, the plan or coverage may not impose any annual limit on mental health benefits; and

(4) if the policy includes an annual limit on substantially all hospital, medical and surgical expense benefits the policy shall either: (A) Apply the applicable annual limit both to hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(b) If the group policy providing hospital, medical or surgical expense benefits is not otherwise covered by subsection (a) and either does not apply a lifetime or annual benefit or applies

different lifetime or annual benefits to different categories of hospital, medical and surgical expense benefits, the commissioner may adopt rules and regulations under which subsections (a)(2) and (a)(4) are applied to such policies with respect to mental health benefits by substituting for the applicable lifetime or annual limits an average limit that is computed taking into account the weighted average of the lifetime or annual limits applicable to such categories.

(c) Nothing in this section shall be construed as either:

(1) Requiring an accident and sickness policy to offer mental health benefits except as otherwise required by K.S.A. 40-2,105 and amendments thereto; or

(2) affecting any terms and conditions of a policy which does include mental health benefits including provisions regarding cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements relating to the amount, duration or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a).

(d) This section shall not apply to any group accident and health insurance policy which is sold to a small employer as defined in K.S.A. 40-2209 and amendments thereto.

(e) This section shall not apply with respect to a group policy providing hospital, medical or surgical expense benefits if the application of this section will result in an increase in the cost under the plan of at least 1%.

(f) In the case of a group policy providing hospital, medical or surgical expense benefits that offers an eligible employee, member or dependent two or more benefit package options under the policy, subsections (a) and (b) shall be applied separately with respect to each such option.

(g) As used in this section:

(1) "Aggregate lifetime limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount that may be paid with respect to such benefits under the policy with respect to an eligible employee, member or dependent;

(2) "annual limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the policy with respect to an eligible employee, member or dependent;

(3) "hospital, medical or surgical expense benefits" means benefits with respect to hospital, medical or surgical services, as defined under the terms of the policy, but does not include mental health benefits;

(4) "mental health benefits" means benefits with respect to mental health services, as defined under the terms of the policy, but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(h) This section shall be effective for group policies providing hospital, medical or surgical expense benefits which are entered into or renewed after January 1, 1998. This section shall not apply to benefits for services furnished on or after September 30, 2001.

*December 31,
2002*

(i) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this section.

History: L. 1997, ch. 190, § 13; July 1.

Section 3. K.S.A. 40-2240 and 40-2258 are hereby repealed.