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Blue Cross and Blue Shield of Kansas  
Oral Testimony in Opposition of House Bill 2593  
House Committee on Judiciary  
February 12, 2024

Chairwoman Humphries and Members of the Committee:

Blue Cross Blue Shield of Kansas appreciates the opportunity to provide testimony on House Bill 2593, which would amend the Kansas Uniform Arbitration Act to render invalid any agreement contained in a contract of insurance that requires the parties to submit to arbitration to resolve any controversy arising from the contract.

Blue Cross and Blue Shield of Kansas (BCBSKS) is a locally operated mutual insurance company with more than 1,700 Kansas-based employees. We serve approximately 900,000 Kansans in 103 Kansas counties. BCBSKS maintains offices in 11 communities around the state, with corporate headquarters in Topeka.

BCBSKS opposes HB 2593 because the intended scope and effect of the bill is unclear.

Section 1(a)(2) of the bill would create an exception to the general rule that arbitration clauses agreed to by parties to a contract are valid, enforceable, and irrevocable. The bill would disallow *only* arbitration clauses contained in a "contract of insurance," but the term "contract of insurance" is not defined. As the state's largest health insurer, BCBSKS maintains contracts with healthcare providers, vendors, employers, and individual Kansans. It is not clear from the language of the bill whether it is intended to apply to arbitration clauses that may exist in a contract between an insurer and a provider, i.e. a hospital, or in a contract between an insurer and an employer to provide health insurance benefits for employees.

HB 2593 also does not clarify whether it is intended to apply to administrative services only (ASO) health plan contracts, whereby an employer designs and funds its own employee health plan and only contracts with an insurance company for claims processing and other administrative services. ASO arrangements are designed to provide maximum flexibility for the employer because the employer bears the entire financial risk for employee health claims. It is unclear whether HB 2593 is intended to interfere with any arbitration requirements these self-funded groups may have chosen as a cost-saving measure.

Further, the bill does not clarify how it would interact with existing laws on the books, particularly K.S.A. 5-425, which states that K.S.A. 5-423 through 5-453 apply to agreements to arbitrate entered into on and after July 1, 2018. If HB 2593 became law, would K.S.A. 5-425 serve to retroactively invalidate every arbitration agreement in every "contract of insurance" going back to July 1, 2018? The legal effect is unclear.

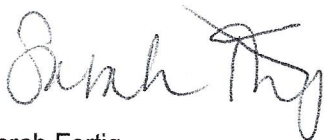
Lastly, we would note that the Uniform Arbitration Act passed in 2018 with zero opponents and zero nay votes in either the House or the Senate.<sup>1</sup> The 2018 bill was supported by the Kansas Bar Association<sup>2</sup> and the Uniform Law Commission,<sup>3</sup> and there have been zero amendments to the Act since that time.

Testimony in support of the 2018 bill focused on the strong public policy toward supporting less costly methods of resolving disputes, and the need to ensure the rules governing arbitration are clear. HB 2593 would be a departure from the broad consensus that the 2018 bill enjoyed, and we would question the need to inject confusion into a uniform act that has served Kansas well for almost six years. From our research, it does not appear that any other states that have adopted the uniform act have excepted insurance contracts from its scope.

We believe HB 2593 would create mass confusion where none currently exists, and would interfere with employers' ability to negotiate health coverage plans that best meet the needs of their employees. We would encourage the committee to vote against HB 2593 and preserve a status quo that is working for Kansans.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,



Sarah Fertig  
Director of Government Relations  
Blue Cross and Blue Shield of Kansas

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<sup>1</sup> See [http://www.kslegislature.org/li\\_2018/b2017\\_18/measures/hb2571/](http://www.kslegislature.org/li_2018/b2017_18/measures/hb2571/).

<sup>2</sup> See [http://www.kslegislature.org/li\\_2018/b2017\\_18/committees/ctte\\_h\\_jud\\_1/documents/testimony/20170201\\_01.pdf](http://www.kslegislature.org/li_2018/b2017_18/committees/ctte_h_jud_1/documents/testimony/20170201_01.pdf).

<sup>3</sup> See [http://www.kslegislature.org/li\\_2018/b2017\\_18/committees/ctte\\_h\\_jud\\_1/documents/testimony/20170201\\_02.pdf](http://www.kslegislature.org/li_2018/b2017_18/committees/ctte_h_jud_1/documents/testimony/20170201_02.pdf).