

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 356** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 1, following line 9, by inserting:

"New Section 1. (a) Each utilization review entity, certified pursuant to K.S.A. 40-22a04, and amendments thereto, shall implement and maintain a prior authorization application programming interface, pursuant to 45 C.F.R. 156.223 (b), as in effect on January 1, 2028.

(b) Nothing in this section shall be construed to apply to a prior authorization request for coverage of drugs.

(c) As used in this section, "drug" means the same as defined in 45 C.F.R. 156.221 (b)(1)(v), as in effect on January 1, 2028.

(d) This section shall be a part of and supplemental to the utilization review organization act.

(e) This section shall be effective on January 1, 2028.

New Sec. 2. (a) The plan sponsor of a health benefit plan may, on behalf of health benefit plan covered persons, provide the consent to the delivery of all communications related to the plan by electronic means, otherwise required by K.S.A. 40-5804, and amendments thereto, and to the electronic delivery of any health insurance identification cards.

(b) Before providing consent on behalf of a health benefit plan covered person, pursuant to subsection (a), a plan sponsor shall confirm that such health benefit plan covered person routinely, at least once every 24 hours during the work week, uses electronic communications during the normal course of employment of such health benefit plan covered

person.

(c) Before utilizing electronic means to deliver any plan communications or health insurance identification cards, the health benefit plan shall:

(1) Provide the health benefit plan covered person with an opportunity to opt out of electronic delivery and select United States mail as the preferred method of delivery for such health benefit plan covered person; and

(2) document that all applicable requirements under K.S.A. 40-5804, and amendments thereto, have been satisfied.

Sec. 3. K.S.A. 12-2620 is hereby amended to read as follows: 12-2620. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner or the attorney general.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool. Each pool shall submit a certified independent audited financial statement ~~no~~ not later than ~~150~~ 180 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Any pool ~~which~~ that does not use rates developed by an approved rating organization shall file with the commissioner an actuarial certification that such rates are actuarially sound. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon

reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner may require any of the actions allowed under K.S.A. 40-222b, and amendments thereto, or suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law or if rehabilitation or corrective action taken under K.S.A. 40-222b, and amendments thereto, is unsuccessful, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

(c) On an annual basis, or within 30 days of any change thereto, each pool shall supply to the commissioner the name and qualifications of the designated administrator of the pools and the terms of the specific and aggregate excess insurance contracts of the pool.";

On page 3, following line 27, by inserting:

"Sec. 5. K.S.A. 2023 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required to address an RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group that is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state that is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, but does not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" means the risk-based capital instructions promulgated by the NAIC that are in effect on December 31, ~~2022~~ 2023, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 40-2c29, and amendments thereto.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control

level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC.

(1) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

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

Sec. 6. K.S.A. 40-1137 is hereby amended to read as follows: 40-1137. A title insurance agent may operate as an escrow, settlement or closing agent, provided that:

(a) All funds deposited with the title insurance agent in connection with an escrow, settlement or closing shall be submitted for collection to, invested in or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day, in accordance with the following requirements:

(1) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement or closing agreement and shall be segregated for each depository by escrow, settlement or closing in the records of the title insurance agent in a manner

that permits the funds to be identified on an individual basis;

(2) the funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(3) an agent shall not retain any interest on any money held in an interest-bearing account without the written consent of all parties to the transaction.

(b) Funds held in an escrow account shall be disbursed only:

(1) Pursuant to written authorization of buyer and seller;

(2) pursuant to a court order; or

(3) when a transaction is closed according to the agreement of the parties.

(c) A title insurance agent shall not commingle the agent's personal funds or other moneys with escrow funds. In addition, the agent shall not use escrow funds to pay or to indemnify against the debts of the agent or of any other party. The escrow funds shall be used only to fulfill the terms of the individual escrow and none of the funds shall be utilized until the necessary conditions of the escrow have been met. All funds deposited for real estate closings, including closings involving refinances of existing mortgage loans, which exceed \$2,500 shall be in one of the following forms:

(1) Lawful money of the United States;

(2) wire transfers such that the funds are unconditionally received by the title insurance agent or the agent's depository;

(3) cashier's checks, certified checks, teller's checks or bank money orders issued by a federally insured financial institution and unconditionally held by the title insurance agent;

(4) funds received from governmental entities, federally chartered instrumentalities of the United States or drawn on an escrow account of a real estate broker licensed in the state or drawn on an escrow account of a title insurer or title insurance agent licensed to do business in

the state; ~~or~~

(5) other negotiable instruments ~~which~~ that have been on deposit in the escrow account at least 10 days; or

(6) a real-time or instant payment through the FedNow service operated by the federal reserve banks or the clearing house payment company's real-time payments (RTP) system.

(d) Each title insurance agent shall have an annual audit made of its escrow, settlement and closing deposit accounts, conducted by a certified public accountant or by a title insurer for which the title insurance agent has a licensing agreement. The title insurance agent shall provide a copy of the audit report to the commissioner within 30 days after the close of the calendar year for which an audit is required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer, at its expense, may conduct or cause to be conducted an annual audit of the escrow, settlement and closing accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection.

(e) The commissioner may promulgate rules and regulations setting forth the standards of the audit and the form of audit report required.

(f) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow and closing settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.

(g) Nothing in this section is intended to amend, alter or supersede other laws of this state or the United States, regarding an escrow holder's duties and obligations.

Sec. 7. K.S.A. 40-5801 is hereby amended to read as follows: 40-5801. The provisions of K.S.A. 40-5801 through 40-5804, and amendments thereto, and section 2, and amendments thereto, shall be known and may be cited as the electronic notice and document act.

Sec. 8. K.S.A. 40-5803 is hereby amended to read as follows: 40-5803. For the purposes of this act:

(a) "Delivered by electronic means" includes:

(1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(2) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet or any other electronic device, together with separate notice of the posting, which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

(b) "Party" means any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder or an annuity contract holder. "Party" does not include a "health benefit plan covered person."

(c) "Health benefit plan" means the same as in K.S.A. 40-4602, and amendments thereto. "Health benefit plan" shall also include any:

(1) Individual health insurance policy;

(2) individual or group dental insurance policy; or

(3) nonprofit dental services corporation.

(d) "Health benefit plan covered person" means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan.

(e) "Insured" means an individual who is covered by an insurance policy, including a

health benefit plan.

(f) "Nonprofit dental services corporation" means a nonprofit corporation organized pursuant to the nonprofit dental service corporation act, K.S.A. 40-19a01 et seq., and amendments thereto.

(g) "Plan sponsor" means the:

(1) Employer in the case of an employee benefit plan established or maintained by a single employer;

(2) employee organization in the case of a plan established or maintained by an employee organization; or

(3) association, committee, joint board of trustees or similar group of representatives of the parties who establish or maintain the plan in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

Sec. 9. K.S.A. 40-5804 is hereby amended to read as follows: 40-5804. (a) Subject to subsection (c) or section 2, and amendments thereto, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored and presented by electronic means so long as it meets the requirements of this act.

(b) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

(c) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to that method of delivery and has not

withdrawn the consent;

(2) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) Any right or option of the party to have the notice or document provided or made available in paper or another non-electronic form;

(B) the right of the party to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions or consequences imposed in the event consent is withdrawn;

(C) whether the party's consent applies: (i) Only to the particular transaction as to which the notice or document must be given; or (ii) to identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship;

(D) (i) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and (ii) the fee, if any, for the paper copy; and

(E) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(3) the party, before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(4) after consent of the party is given, the insurer, in the event a change in the hardware

or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of: (A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and (B) the right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under subsection (c)(2).

(d) This act does not affect requirements related to content or timing of any notice or document required under applicable law.

(e) If a provision of this act or applicable law requiring a notice or document to be provided to a party or health benefit plan covered person expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(f) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party or health benefit plan covered person may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection (c)(3) or section 2, and amendments thereto.

(g) A withdrawal of consent by a party ~~does~~ or health benefit plan covered person shall not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party or health benefit plan covered person before the withdrawal of consent is effective. A withdrawal of consent by a party or health benefit plan covered person is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subsection (c)(4) may be treated, at the election of the party or health benefit plan covered person, as a withdrawal of consent for purposes of this section.

(h) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this act to a party or health benefit plan covered person who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(i) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically and the party's right to withdraw consent to have notices or documents delivered by electronic means.

(j) Notwithstanding any other provisions of this section, insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's website. If the insurer elects to post insurance policies and endorsements on its website in lieu of mailing or delivering such policies and endorsements to the insured, such insurer shall comply with all of the following conditions:

(1) The policy and endorsements shall be easily accessible and remain that way for as long as the policy is in force;

(2) after the expiration of the policy, the insurer shall archive its expired policies and endorsements for five years and make them available upon request;

(3) the policies and endorsements shall be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the internet and free to use;

(4) the insurer shall provide notice, at the time of issuance of the initial policy forms

and any renewal forms, of a method by which insureds may obtain, upon request and without charge, a paper or electronic copy of their policy or endorsements;

(5) on each declarations page issued to an insured, the insurer shall clearly identify the exact policy and endorsement forms purchased by the insured; and

(6) the insurer shall provide notice of any changes to the forms or endorsements, and of the insured's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

(k) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section. If a provision of this title or applicable law requires a signature or notice or document to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice or document.

(l) This section shall not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured.

(m) This section shall not be construed to modify, limit or supersede the provisions of the federal electronic signatures in global and national commerce act, public law 106-229, or the provisions of the uniform electronic transactions act, K.S.A. 16-1601 et seq., and amendments thereto.

(n) The provisions of the electronic notice and document act shall not apply to any mutual insurance company organized pursuant to article 12a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(o) The provisions of this section shall not apply to the electronic delivery of explanation of benefits and policies, including federally required summary of benefit and coverage documents, to a party by a health benefit plan.

Sec. 10. K.S.A. 44-584 is hereby amended to read as follows: 44-584. (a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in K.S.A. 44-582(a)(6) through (a)(14), and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the worker compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a).

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool. Each pool

shall submit a certified independent audited financial statement ~~no~~ not later than ~~150~~ 180 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

Sec. 11. K.S.A. 44-590 is hereby amended to read as follows: 44-590. (a) After the inception date of the group-funded workers' compensation pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The

trustees may approve the application for membership pursuant to the bylaws of the pool. The application for membership and approval shall then be filed with the commissioner. Membership takes effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a member, the pool shall ~~notify the commissioner within 10 days and shall~~ maintain coverage of each cancelled or terminating member for 30 days ~~after notice to the commissioner~~ or until ~~the commissioner~~ such cancelled or terminating member gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.";

Also on page 3, in line 28, after "K.S.A." by inserting "12-2620,"; also in line 28, by striking "is" and inserting ", 40-1137, 40-5801, 40-5802, 40-5803, 40-5804, 44-584 and 44-590 and K.S.A. 2023 Supp. 40-2c01 are"; in line 30, by striking "Kansas register" and inserting "statute book";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "relating to examinations" and inserting "updating certain terms, definitions and conditions relating to the requirements of certain insurance reports, examinations and transactions"; in line 6, after "premiums" by inserting "; increasing the deadline for submission of audited financial statements of certain group-funded insurance pools from 150 to 180 days after the end of the fiscal year; updating the version of risk-based capital instructions in effect; requiring certain utilization review entities to implement a prior authorization application programming interface; permitting a plan sponsor to authorize electronic delivery of plan documents and identification cards for certain insured individuals covered by a health benefit plan; allowing title insurance agents to submit escrow, settlement and

closing funds through certain real-time or instant payment systems"; also in line 6, after "K.S.A." by inserting "12-2620,"; also in line 6, after "40-223" by inserting ", 40-1137, 40-5801, 40-5803, 40-5804, 44-584 and 44-590 and K.S.A. 2023 Supp. 40-2c01"; in line 7, by striking "section" and inserting "sections; also repealing K.S.A. 40-5802";

And your committee on conference recommends the adoption of this report.

Conferees on part of House

Conferees on part of Senate