

HOUSE BILL No. 2136

By Committee on Health and Human Services

2-3

1 AN ACT concerning certain prescription medications; relating to health
2 insurance coverage for prescription medications; establishing an
3 unlawful discriminatory practice relating to certain prescription
4 medications; amending K.S.A. 44-1009 and K.S.A. 2010 Supp. 40-
5 2,103 and 40-19c09 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) Any individual or group health insurance policy,
9 medical service plan, contract, hospital service corporation contract,
10 hospital and medical service corporation contract, fraternal benefit
11 society or health maintenance organization which provides coverage for
12 accident and health services and which is delivered, issued for delivery,
13 amended or renewed on or after July 1, 2011, which provides coverage
14 for prescription medications and for which cost-sharing, deductibles or
15 coinsurance obligations are determined by category of prescription
16 medications shall not impose cost-sharing, deductibles or coinsurance
17 obligations for any prescription medication that exceeds the dollar
18 amount of cost-sharing, deductibles or coinsurance obligations for non-
19 preferred brand medication or its equivalent, or brand medications if there
20 is no non-preferred brand medication category.

21 (b) For the purposes of this section, "prescription medication" shall
22 have the meaning ascribed to such term in K.S.A. 65-1626, and
23 amendments thereto.

24 (c) The provisions of K.S.A. 40-2249a, and amendments thereto,
25 shall not apply to the provisions of this section.

26 Sec. 2. K.S.A. 2010 Supp. 40-2,103 is hereby amended to read as
27 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
28 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-
29 2,170, inclusive, 40-2250, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b ~~and~~
30 ~~40-2,184, 40-2,184 and section 1~~, and amendments thereto, shall apply to
31 all insurance policies, subscriber contracts or certificates of insurance
32 delivered, renewed or issued for delivery within or outside of this state or
33 used within this state by or for an individual who resides or is employed
34 in this state.

35 Sec. 3. K.S.A. 2010 Supp. 40-19c09 is hereby amended to read as
36 follows: 40-19c09. (a) Corporations organized under the nonprofit

1 medical and hospital service corporation act shall be subject to the
2 provisions of the Kansas general corporation code, articles 60 to 74,
3 inclusive, of chapter 17 of the Kansas Statutes Annotated, *and*
4 *amendments thereto*, applicable to nonprofit corporations, to the
5 provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222,
6 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-
7 236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254,
8 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116,
9 40-2,117, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-
10 2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215
11 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250,
12 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301
13 to 40-3313, inclusive, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b ~~and 40-~~
14 ~~2,184, 40-2,184~~ *and section I*, and amendments thereto, except as the
15 context otherwise requires, and shall not be subject to any other
16 provisions of the insurance code except as expressly provided in this act.

17 (b) No policy, agreement, contract or certificate issued by a
18 corporation to which this section applies shall contain a provision which
19 excludes, limits or otherwise restricts coverage because medicaid benefits
20 as permitted by title XIX of the social security act of 1965 are or may be
21 available for the same accident or illness.

22 (c) Violation of subsection (b) shall be subject to the penalties
23 prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

24 Sec. 4. K.S.A. 44-1009 is hereby amended to read as follows: 44-
25 1009. (a) It shall be an unlawful employment practice:

26 (1) For an employer, because of the race, religion, color, sex,
27 disability, national origin or ancestry of any person to refuse to hire or
28 employ such person, to bar or discharge such person from employment or
29 to otherwise discriminate against such person in compensation or in
30 terms, conditions or privileges of employment; to limit, segregate,
31 separate, classify or make any distinction in regards to employees; or to
32 follow any employment procedure or practice which, in fact, results in
33 discrimination, segregation or separation without a valid business
34 necessity.

35 (2) For a labor organization, because of the race, religion, color, sex,
36 disability, national origin or ancestry of any person, to exclude or to expel
37 from its membership such person or to discriminate in any way against
38 any of its members or against any employer or any person employed by
39 an employer.

40 (3) For any employer, employment agency or labor organization to
41 print or circulate or cause to be printed or circulated any statement,
42 advertisement or publication, or to use any form of application for
43 employment or membership or to make any inquiry in connection with

1 prospective employment or membership, which expresses, directly or
2 indirectly, any limitation, specification or discrimination as to race,
3 religion, color, sex, disability, national origin or ancestry, or any intent to
4 make any such limitation, specification or discrimination, unless based on
5 a bona fide occupational qualification.

6 (4) For any employer, employment agency or labor organization to
7 discharge, expel or otherwise discriminate against any person because
8 such person has opposed any practices or acts forbidden under this act or
9 because such person has filed a complaint, testified or assisted in any
10 proceeding under this act.

11 (5) For an employment agency to refuse to list and properly classify
12 for employment or to refuse to refer any person for employment or
13 otherwise discriminate against any person because of such person's race,
14 religion, color, sex, disability, national origin or ancestry; or to comply
15 with a request from an employer for a referral of applicants for
16 employment if the request expresses, either directly or indirectly, any
17 limitation, specification or discrimination as to race, religion, color, sex,
18 disability, national origin or ancestry.

19 (6) For an employer, labor organization, employment agency, or
20 school which provides, coordinates or controls apprenticeship, on-the-
21 job, or other training or retraining program, to maintain a practice of
22 discrimination, segregation or separation because of race, religion, color,
23 sex, disability, national origin or ancestry, in admission, hiring,
24 assignments, upgrading, transfers, promotion, layoff, dismissal,
25 apprenticeship or other training or retraining program, or in any other
26 terms, conditions or privileges of employment, membership,
27 apprenticeship or training; or to follow any policy or procedure which, in
28 fact, results in such practices without a valid business motive.

29 (7) For any person, whether an employer or an employee or not, to
30 aid, abet, incite, compel or coerce the doing of any of the acts forbidden
31 under this act, or attempt to do so.

32 (8) For an employer, labor organization, employment agency or joint
33 labor-management committee to: (A) Limit, segregate or classify a job
34 applicant or employee in a way that adversely affects the opportunities or
35 status of such applicant or employee because of the disability of such
36 applicant or employee; (B) participate in a contractual or other
37 arrangement or relationship, including a relationship with an employment
38 or referral agency, labor union, an organization providing fringe benefits
39 to an employee or an organization providing training and apprenticeship
40 programs that has the effect of subjecting a qualified applicant or
41 employee with a disability to the discrimination prohibited by this act;
42 (C) utilize standards criteria, or methods of administration that have the
43 effect of discrimination on the basis of disability or that perpetuate the

1 discrimination of others who are subject to common administrative
2 control; (D) exclude or otherwise deny equal jobs or benefits to a
3 qualified individual because of the known disability of an individual with
4 whom the qualified individual is known to have a relationship or
5 association; (E) not make reasonable accommodations to the known
6 physical or mental limitations of an otherwise qualified individual with a
7 disability who is an applicant or employee, unless such employer, labor
8 organization, employment agency or joint labor-management committee
9 can demonstrate that the accommodation would impose an undue
10 hardship on the operation of the business thereof; (F) deny employment
11 opportunities to a job applicant or employee who is an otherwise
12 qualified individual with a disability, if such denial is based on the need
13 to make reasonable accommodation to the physical or mental
14 impairments of the employee or applicant; (G) use qualification
15 standards, employment tests or other selection criteria that screen out or
16 tend to screen out an individual with a disability or a class of individuals
17 with disabilities unless the standard, test or other selection criteria, as
18 used, is shown to be job-related for the position in question and is
19 consistent with business necessity; or (H) fail to select and administer
20 tests concerning employment in the most effective manner to ensure that,
21 when such test is administered to a job applicant or employee who has a
22 disability that impairs sensory, manual or speaking skills, the test results
23 accurately reflect the skills, aptitude or whatever other factor of such
24 applicant or employee that such test purports to measure, rather than
25 reflecting the impaired sensory, manual or speaking skills of such
26 employee or applicant (except where such skills are the factors that the
27 test purports to measure).

28 (9) For any employer to:

29 (A) Seek to obtain, to obtain or to use genetic screening or testing
30 information of an employee or a prospective employee to distinguish
31 between or discriminate against or restrict any right or benefit otherwise
32 due or available to an employee or a prospective employee; or

33 (B) subject, directly or indirectly, any employee or prospective
34 employee to any genetic screening or test.

35 (b) It shall not be an unlawful employment practice to fill vacancies
36 in such way as to eliminate or reduce imbalance with respect to race,
37 religion, color, sex, disability, national origin or ancestry.

38 (c) It shall be an unlawful discriminatory practice:

39 (1) For any person, as defined herein being the owner, operator,
40 lessee, manager, agent or employee of any place of public
41 accommodation to refuse, deny or make a distinction, directly or
42 indirectly, in offering its goods, services, facilities, and accommodations
43 to any person as covered by this act because of race, religion, color, sex,

1 disability, national origin or ancestry, except where a distinction because
2 of sex is necessary because of the intrinsic nature of such
3 accommodation.

4 (2) For any person, whether or not specifically enjoined from
5 discriminating under any provisions of this act, to aid, abet, incite,
6 compel or coerce the doing of any of the acts forbidden under this act, or
7 to attempt to do so.

8 (3) For any person, to refuse, deny, make a distinction, directly or
9 indirectly, or discriminate in any way against persons because of the race,
10 religion, color, sex, disability, national origin or ancestry of such persons
11 in the full and equal use and enjoyment of the services, facilities,
12 privileges and advantages of any institution, department or agency of the
13 state of Kansas or any political subdivision or municipality thereof.

14 (4) (A) *For any employer, labor organization, insurer, health*
15 *maintenance organization or other entity to limit health care coverage*
16 *such that cost-sharing, deductibles or coinsurance obligations for any*
17 *prescription medication exceeds the dollar amount of cost-sharing,*
18 *deductibles or coinsurance obligations for any category of non-preferred*
19 *brand medication or its equivalent, or brand medication if there is no*
20 *non-preferred brand medication category. This paragraph shall not apply*
21 *to any self-insured employee welfare benefit plan, as defined in the*
22 *employee retirement income security act of 1974, as amended.*

23 (B) *For the purposes of this section:*

24 (i) *"Health maintenance organization" shall have meaning ascribed*
25 *to such term in K.S.A. 40-3202, and amendments thereto.*

26 (ii) *"Insurer" shall have the meaning ascribed to such term in K.S.A.*
27 *40-2118, and amendments thereto.*

28 (iii) *"Prescription medication" shall have the meaning ascribed to*
29 *such term in K.S.A. 65-1626, and amendments thereto.*

30 Sec. 5. K.S.A. 44-1009 and K.S.A. 2010 Supp. 40-2,103 and 40-
31 19c09 are hereby repealed.

32 Sec. 6. This act shall take effect and be in force from and after its
33 publication in the statute book.

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