

SENATE BILL No. 14

By Committee on Financial Institutions and Insurance

1-14

1 AN ACT concerning **health care; relating to** the Kansas uninsurable health  
2 insurance plan act; pertaining to lifetime limits; pertaining to participation in  
3 plan by certain children; **enacting the health care freedom act** amending  
4 K.S.A. 2010 Supp. 40-2122 and 40-2124 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 40-2122 is hereby amended to read as  
8 follows: 40-2122. (a) The following individuals shall be eligible for plan  
9 coverage provided they meet the criteria set forth in subsection (b):

10 (1) Any person who has been a resident of this state for at least six  
11 months;

12 (2) any person who is a legal domiciliary of this state who previously  
13 was covered under the high risk pool of another state, provided they apply  
14 for coverage under the plan within 63 days of losing such other coverage  
15 for reasons other than fraud or nonpayment of premiums;

16 (3) any federally defined eligible individual who is a legal  
17 domiciliary of this state; or

18 (4) any federally defined eligible individual for FTAA.

19 (b) Those individuals who are eligible for plan coverage under  
20 subsection (a) must provide evidence satisfactory to the administering  
21 carrier that such person meets one of the following criteria:

22 (1) Such person has had health insurance coverage involuntarily  
23 terminated for any reason other than nonpayment of premium;

24 (2) such person has applied for health insurance and been rejected by  
25 two carriers because of health conditions;

26 (3) *Such person is a child under the age of 19 years and has been*  
27 *unable to purchase or obtain coverage under an individual health*  
28 *insurance policy providing health insurance coverage, because such*  
29 *coverage is not available for sale in the county in which the child resides;*

30 ~~(3)~~ (4) such person has applied for health insurance and has been  
31 quoted a premium rate which is in excess of the plan rate;

32 ~~(4)~~ (5) such person has been accepted for health insurance subject to a  
33 permanent exclusion of a preexisting disease or medical condition;

34 ~~(5)~~ (6) such person is a federally defined eligible individual; or

1 (6) (7) such person is a federally defined eligible individual for  
2 FTAA.

3 (c) Each resident dependent of a person who is eligible for plan  
4 coverage shall also be eligible for plan coverage.

5 (d) The following persons shall not be eligible for coverage under the  
6 plan:

7 (1) Any person who is eligible for medicare or is eligible for  
8 medicaid benefits;

9 (2) any person who has had coverage under the plan terminated less  
10 than 12 months prior to the date of the current application, except that this  
11 provision shall not apply with respect to an applicant who is a federally  
12 defined eligible individual;

13 (3) any person who has received accumulated benefits from the plan  
14 equal to or in excess of the lifetime maximum benefits under the plan  
15 prescribed by K.S.A. 40-2124, and amendments thereto;

16 (4) any person having access to accident and health insurance through  
17 an employer-sponsored group or self-insured plan, including coverage  
18 under the consolidated omnibus budget reconciliation act (COBRA),  
19 except that the requirement for exhaustion of any available COBRA or  
20 state continuation is waived whenever such person:

21 (A) Is eligible for the credit for health care costs under section 35 of  
22 the internal revenue code of 1986; and

23 (B) has three months of prior creditable coverage as described in  
24 subsection (c) of K.S.A. 40-2124, and amendments thereto; or

25 (5) any person who is eligible for any other public or private program  
26 that provides or indemnifies for health services.

27 (e) Any person who ceases to meet the eligibility requirements of this  
28 section may be terminated at the end of a policy period.

29 (f) All plan members, insurers and insurance arrangements shall  
30 notify in writing persons denied health insurance coverage, for any reason,  
31 of the availability of coverage through the Kansas health insurance  
32 association.

33 Sec. 2. K.S.A. 2010 Supp. 40-2124 is hereby amended to read as  
34 follows: 40-2124. (a) Coverage under the plan shall be subject to both  
35 deductible and coinsurance provisions set by the board. The plan shall  
36 offer to current participants and new enrollees no fewer than four choices  
37 of deductible and copayment options. Coverage shall contain a  
38 coinsurance provision for each service covered by the plan, and such  
39 copayment requirement shall not be subject to a stop-loss provision. Such  
40 coverage may provide for a percentage or dollar amount of coinsurance  
41 reduction at specific thresholds of copayment expenditures by the insured.

42 (b) Coverage under the plan shall be subject to a maximum lifetime  
43 benefit of ~~\$2,000,000~~ \$3,000,000 per covered individual. ~~In succeeding~~

~~1 years of operation of the plan and subject to the approval of the  
2 commissioner, coverage under the plan shall be subject to a maximum  
3 lifetime benefit per covered individual as determined by the board. Such  
4 recommendation regarding the maximum lifetime benefit per covered  
5 individual shall be submitted to the commissioner and shall become  
6 effective upon approval in writing by the commissioner.~~

7 (c) Coverage under the plan shall exclude charges or expenses  
8 incurred during the first 90 days following the effective date of coverage  
9 as to any condition: (1) Which manifested itself during the six-month  
10 period immediately prior to the application for coverage in such manner as  
11 would cause an ordinarily prudent person to seek diagnosis, care or  
12 treatment; or (2) for which medical advice, care or treatment was  
13 recommended or received in the six-month period immediately prior to the  
14 application for coverage. In succeeding years of operation of the plan,  
15 coverage of preexisting conditions may be excluded as determined by the  
16 board, except that no such exclusion shall exceed 180 calendar days, and  
17 no exclusion shall be applied to *either* a federally defined eligible  
18 individual provided that application for coverage is made not later than 63  
19 days following the applicant's most recent prior creditable coverage *or an*  
20 *individual under the age of 19 years who is eligible for enrollment in the*  
21 *plan under paragraph (3) of subsection (b) of K.S.A. 40-2122, and*  
22 *amendments thereto.* For any individual who is eligible for the credit for  
23 health insurance costs under section 35 of the internal revenue code of  
24 1986, the preexisting conditions limitation will not apply whenever such  
25 individual has maintained creditable health insurance coverage for an  
26 aggregate period of three months, not counting any period prior to a 63-  
27 day break in coverage, as of the date on which such individual seeks to  
28 enroll in coverage provided by this act.

29 (d) (1) Benefits otherwise payable under plan coverage shall be  
30 reduced by all amounts paid or payable through any other health  
31 insurance, or insurance arrangement, and by all hospital and medical  
32 expense benefits paid or payable under any workers compensation  
33 coverage, automobile medical payment or liability insurance whether  
34 provided on the basis of fault or nonfault, and by any hospital or medical  
35 benefits paid or payable under or provided pursuant to any state or federal  
36 law or program.

37 (2) The association shall have a cause of action against an eligible  
38 person for the recovery of the amount of benefits paid which are not  
39 covered expenses. Benefits due from the plan may be reduced or refused  
40 as a set-off against any amount recoverable under this section.

41 **[New Section 3. (a) A resident of this state has the right to purchase**  
42 **health insurance or refuse to purchase health insurance. The**  
43 **government shall not interfere with a resident's right to purchase**

1 health insurance or with a resident's right to refuse to purchase health  
2 insurance.]

3 [(b) A resident of this state has the right to enter into a private  
4 contract with health care providers for lawful health care services.  
5 The government shall not interfere with a resident's right to purchase  
6 lawful health care services.]

7 [(c) A person or employer may pay directly for lawful health care  
8 services and shall not be required to pay penalties or fines for paying  
9 directly for lawful health care services. A health care provider may  
10 accept direct payment for lawful health care services and shall not not  
11 be required to pay penalties or fines for accepting direct payment  
12 from a person or employer for lawful health care services.]

13 [(d) No state agency, board, commission or any other  
14 governmental entity shall require an agreement to participate in  
15 medicare, medicaid or any other insurance plan, health care system or  
16 health information technology or benefit exchange as a condition for  
17 original application or renewal of license, registration or certification  
18 for a health care provider.]

19 [(e) No state agency, board, commission or any other  
20 governmental entity shall prohibit participation in a health  
21 information organization for any health information technology or  
22 benefit exchange purposes by a health care provider based on whether  
23 such health care provider participates in medicare, medicaid or any  
24 other insurance plans or health care systems. ]

25 [(f) The government shall not enact a law that would restrict  
26 these rights or that would impose a form of punishment for exercising  
27 these rights. No provision of this section shall render a resident of this  
28 state liable for any punishment, penalty, assessment, fee or fine as a  
29 result of such resident's failure to procure or obtain health insurance  
30 coverage or participate in any health care system or plan.]

31 [(g) As used in this section:]

32 [(1) "Direct payment or pay directly" means payment for lawful  
33 health care services without a public or private third party, not  
34 including an employer, paying for any portion of the service.]

35 [(2) "Health care provider" shall have the meaning provided in  
36 K.S.A. 40-3401, and amendments thereto.]

37 [(3) "Health care system" means any public or private entity  
38 whose function or purpose is the management of, processing of,  
39 enrollment of individuals for or payment for, in full or in part, health  
40 care services or health care data or health care information for its  
41 participants.]

42 [(4) "Lawful health care services" means any health-related  
43 service or treatment to the extent that the service or treatment is

1 **permitted or not prohibited by law or regulation that may be provided**  
2 **by persons or businesses otherwise permitted to offer such services.]**

3 **[(5) “Penalties or fines” means any civil or criminal penalty or**  
4 **fine, tax, salary or wage withholding or surcharge or any named fee**  
5 **with a similar effect established by law or rule by a government**  
6 **established, created or controlled agency that is used to punish or**  
7 **discourage the exercise of rights protected under this section.]**

8 **[(h) This section shall be known and may be cited as the health**  
9 **care freedom act.]**

10 ~~Sec. 3.~~ **[4.]** K.S.A. 2010 Supp. 40-2122 and 40-2124 are hereby  
11 repealed.

12 ~~Sec. 4.~~ **[5.]** This act shall take effect and be in force from and after its  
13 publication in the Kansas register.