

As Amended by House Committee

Session of 2011

SENATE BILL No. 65

By Committee on Financial Institutions and Insurance

1-27

1 AN ACT concerning ~~health~~ insurance; pertaining to review of health care
2 decisions; **excluding coverage for certain abortions; relating to state**
3 **employee health savings accounts**; amending K.S.A. 40-22a13, 40-
4 22a14 and 40-22a15 **and K.S.A. 2010 Supp. 40-2,103 and 40-19c09**
5 and repealing the existing sections.

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

8 Section 1. K.S.A. 40-22a13 is hereby amended to read as follows: 40-
9 22a13. On and after ~~January 1, 2000~~ *July 1, 2011*, for the purposes of
10 K.S.A. 40-22a13 through 40-22a16, and amendments thereto:

11 (a) "Adverse decision" means a utilization review determination by a
12 third-party administrator, a health insurance plan, an insurer or a health
13 care provider acting on behalf of an insured that a proposed or delivered
14 health care service which would otherwise be covered under an insured's
15 contract is not or was not medically necessary or the health care treatment
16 has been determined to be experimental or investigational and;

17 (1) If the requested service is provided in a manner that leaves the
18 insured with a financial obligation to the provider or providers of such
19 services; or

20 (2) the adverse decision is the reason for the insured not receiving the
21 requested services.

22 (b) "Emergency medical condition" means:

23 (1) The sudden, and at the time, unexpected onset of a health
24 condition that requires immediate medical attention, where failure to
25 provide medical attention would result in a serious impairment to bodily
26 functions, serious dysfunction of a bodily organ or part or would place a
27 person's health in serious jeopardy;

28 (2) *a medical condition where the time frame for completion of a*
29 *standard external review would seriously jeopardize the life or health of*
30 *the insured or would jeopardize the insured's ability to regain maximum*
31 *function; or*

32 (3) *a medical condition for which coverage has been denied based on*
33 *a determination that the recommended or requested health care service or*
34 *treatment is experimental or investigational, if the insured's treating*
35 *physician certifies, in writing, that the recommended or requested health*
36 *care service or treatment for the medical condition would be significantly*

1 *less effective if not promptly initiated.*

2 (c) "External review organization" means an entity that conducts
3 independent external reviews of adverse decisions pursuant to a contract
4 with the commissioner. Such entity shall have experience serving as the
5 external quality review organization in health programs administered by
6 the state of Kansas, or be a nationally accredited external review
7 organization which utilizes health care providers actively engaged in the
8 practice of their profession in the state of Kansas who are qualified and
9 credentialed with respect to the health care service review. In the event no
10 Kansas providers are qualified and credentialed with respect to the review
11 of any case, the external review organization shall have the discretion to
12 employ health care providers who actively engage in such health care
13 provider's practice outside the state of Kansas.

14 (d) "Health insurance plan" means any hospital or medical expense
15 policy, health, hospital or medical service corporation contract, and a plan
16 provided by a municipal group-funded pool, or a health maintenance
17 organization contract offered by an employer or any certificate issued
18 under any such policies, contracts or plans.

19 (e) "Insured" means the beneficiary of any health insurance company,
20 fraternal benefit society, health maintenance organization, nonprofit
21 hospital and medical service corporation, municipal group-funded pool,
22 and the self-funded coverage established by the state of Kansas, or any
23 hospital or medical expense, health, hospital or medical service
24 corporation contract or a plan provided by a municipal group-funded pool.

25 (f) "Insurer" means any health insurance company, fraternal benefit
26 society, health maintenance organization, nonprofit hospital and medical
27 service corporation, provider sponsored organizations, municipal group-
28 funded pool and the self-funded coverage established by the state of
29 Kansas for its employees.

30 Sec. 2. K.S.A. 40-22a14 is hereby amended to read as follows: 40-
31 22a14. On and after January 1, 2000:

32 (a) The provisions of K.S.A. 40-22a13 through 40-22a16, and
33 amendments thereto, shall not apply to any policy or certificate which
34 provides coverage for any specified disease, specified accident or accident
35 only coverage, credit, dental, disability income, hospital indemnity, long-
36 term care insurance as defined by K.S.A. 40-227, and amendments thereto,
37 vision care or any other limited supplemental benefit nor to any medicare
38 supplement policy of insurance as defined by the commissioner of
39 insurance by rule and regulation, coverage under a plan through medicare,
40 medicaid, or the federal employees health benefits program, any coverage
41 issues as a supplement to liability insurance, workers compensation or
42 similar insurance, automobile medical-payment insurance or any insurance
43 under which benefits are payable with or without regard to fault, whether

1 written on a group, blanket or individual basis.

2 (b) The right to external review under K.S.A. 40-22a13 through 40-
3 22a16, and amendments thereto, shall not be construed to change the terms
4 of coverage under a health insurance plan or insurance policy.

5 (c) The insurer or health insurance plan shall provide written notice to
6 the insured of a final adverse decision and the opportunity for requesting
7 an external review.

8 (d) (1) The insured has the right to request an independent external
9 review of an adverse decision by a health insurance plan or insurer when:

10 ~~(1)~~(A) The insured has exhausted all available internal review
11 procedures provided by the health insurance plan or insurer, unless the
12 insured has an emergency medical condition, in which case an expedited
13 procedure is used; or

14 ~~(2)~~(B) the insured has not received a final decision from the insurer
15 within 60 days of seeking the internal review, except to the extent that the
16 delay was requested by the insured.

17 (2) *Whenever an insurer or health insurance plan fails to strictly*
18 *adhere to all appeal procedure requirements as prescribed by state or*
19 *federal law, the claimant shall be deemed to have exhausted the internal*
20 *claims and appeal process regardless of whether such insurer or health*
21 *insurance plan asserts that:*

22 (A) *It has substantially complied with such appeal procedure; or*

23 (B) *any error it committed was de minimis.*

24 (e) Within ~~90~~120 days of receipt of an adverse decision by a health
25 insurance plan or an insurer, any request for external review shall be made
26 in writing to the commissioner from the following persons: (1) The
27 insured; (2) the treating physician or health care provider acting on behalf
28 ~~of~~ of the insured with written authorization from the insured; or (3) a
29 legally authorized designee of the insured.

30 (f) The insured shall provide all information in the possession of the
31 insured pertaining to the adverse decision in order for the commissioner to
32 make a preliminary determination for an external review. The insured also
33 shall provide the commissioner with an appeal form, and a fully executed
34 release for the commissioner and the external review organization to
35 obtain any necessary medical records from the insurer or health insurance
36 plan and any other relevant provider.

37 (g) In responding to the commissioner, the insurer or health insurance
38 plan shall provide a copy of the adverse decision given to the insured and
39 all medical and other records pertaining to the insured's claim within five
40 business days of the request of the commissioner.

41 (h) The confidentiality of any medical information submitted by the
42 insured, on behalf of the insured, insurer or health insurance plan, shall be
43 maintained pursuant to applicable state and federal laws.

1 Sec. 3. K.S.A. 40-22a15 is hereby amended to read as follows: 40-
2 22a15. On and after January 1, 2000:

3 (a) The commissioner shall:

4 (1) Negotiate contracts with external review organizations which are
5 eligible to conduct independent review of the adverse decision by a health
6 insurance plan or insurer;

7 (2) allow the insurer or the health insurance plan, an insured or
8 treating physician or health care provider acting on behalf of the insured,
9 or legally authorized designee filing a request for external review to
10 provide additional written information as may be relevant for the
11 commissioner to make a final decision on whether the request qualified for
12 external review;

13 (3) make a decision on a request for external review within 10
14 business days after receiving all necessary information;

15 (4) notify the insured and treating physician or health care provider
16 acting on behalf of the insured, or legally authorized designee, and insurer
17 or health insurance plan in writing that a request for external review will or
18 will not be granted; and

19 (5) design and implement an expedited procedure for use in an
20 emergency medical condition for purposes of the external review
21 organization rendering a decision.

22 (b) The external review organization as defined in subsection (c) of
23 K.S.A. 40-22a13, and amendments thereto, shall provide that all reviews
24 completed pursuant to K.S.A. 40-22a13 through 40-22a16, and
25 amendments thereto, are conducted by qualified and credentialed health
26 care providers with respect to the health care service under review and
27 who have no conflict of interest relating to the performance of the external
28 review organization's duties in K.S.A. 40-22a13 through 40-22a16, and
29 amendments thereto.

30 (c) The external review organization shall issue a written decision to
31 the insured and concurrently send a copy of such decision to the
32 commissioner including the basis and rationale for its decision within 30
33 business days. The standard of review shall be whether the health care
34 service denied by the insurer or health insurance plan was medically
35 necessary under the terms of the insured's contract. In reviews regarding
36 experimental or investigational treatment, the standard of review shall be
37 whether the health care service denied by the insurer or health insurance
38 plan was covered or excluded from coverage under the terms of the
39 insured's contract.

40 (d) The external review organization shall provide expedited
41 resolution when an emergency medical condition exists, and shall resolve
42 all issues within ~~seven business days~~ *not more than 72 hours after the date*
43 *of receipt of the request for an expedited external review, or as*

1 *expeditiously as the insured's medical condition or circumstances require.*

2 (e) The external review organization shall maintain and report such
3 data as may be required by the commissioner in order to assess the
4 effectiveness of the external review process.

5 (f) No external review organization nor any individual working on
6 behalf of such organization shall be liable in damages to any insured,
7 health insurance plan or insurer for any opinion rendered as part of an
8 external review conducted pursuant to K.S.A. 40-22a13 through 40-22a16,
9 and amendments thereto.

10 (g) The external review organization shall maintain confidentiality of
11 the medical records of the insured in accordance to state and federal law.

12 **New Sec. 4. (a) Any individual or group health insurance policy,**
13 **medical service plan, contract, hospital service corporation contract,**
14 **hospital and medical service corporation contract, fraternal benefit**
15 **society or health maintenance organization, municipal group-funded**
16 **pool and the state employee health care benefits plan which is**
17 **delivered, issued for delivery, amended or renewed on or after July 1,**
18 **2011, shall exclude coverage for elective abortions, unless the**
19 **procedure is necessary to preserve the life of the mother. Coverage for**
20 **abortions may be obtained through an optional rider for which an**
21 **additional premium is paid. The premium for the optional rider shall**
22 **be calculated so that it fully covers the estimated cost of covering**
23 **elective abortions per enrollee as determined on an average actuarial**
24 **basis.**

25 (b) No health insurance exchange established within this state or
26 any health insurance exchange administered by the federal
27 government or its agencies within this state shall offer health
28 insurance contracts, plans or policies that provide coverage for
29 elective abortions, nor shall any health insurance exchange operating
30 within this state offer coverage for elective abortions through the
31 purchase of an optional rider.

32 (c) For the purposes of this section:

33 (1) "Abortion" means the use or prescription of any instrument,
34 medicine, drug or any other substance or device to terminate the
35 pregnancy of a woman known to be pregnant with an intention other
36 than to increase the probability of a live birth, to preserve the life or
37 health of the child after live birth, or to remove a dead unborn child
38 who died as the result of natural causes in utero, accidental trauma or
39 a criminal assault on the pregnant woman or her unborn child and
40 which causes the premature termination of the pregnancy.

41 (2) "Elective" means an abortion for any reason other than to
42 prevent the death of the mother upon whom the abortion is
43 performed; provided, that an abortion may not be deemed one to

1 prevent the death of the mother based on a claim or diagnosis that she
2 will engage in conduct which will result in her death.

3 Sec. 5. K.S.A. 2010 Supp. 40-2,103 is hereby amended to read as
4 follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-
5 2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-
6 2,170, inclusive, 40-2250, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b and,
7 40-2,184, and section 4, and amendments thereto, shall apply to all
8 insurance policies, subscriber contracts or certificates of insurance
9 delivered, renewed or issued for delivery within or outside of this state
10 or used within this state by or for an individual who resides or is
11 employed in this state.

12 Sec. 6. K.S.A. 2010 Supp. 40-19c09 is hereby amended to read as
13 follows: 40-19c09. (a) Corporations organized under the nonprofit
14 medical and hospital service corporation act shall be subject to the
15 provisions of the Kansas general corporation code, articles 60 to 74,
16 inclusive, of chapter 17 of the Kansas Statutes Annotated, and
17 amendments thereto, applicable to nonprofit corporations, to the
18 provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-
19 223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-
20 237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100,
21 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-
22 2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170,
23 inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215 to 40-
24 2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-
25 2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to
26 40-3313, inclusive, K.S.A. 2010 Supp. 40-2,105a, 40-2,105b and, 40-
27 2,184, and section 4, and amendments thereto, except as the context
28 otherwise requires, and shall not be subject to any other provisions of
29 the insurance code except as expressly provided in this act.

30 (b) No policy, agreement, contract or certificate issued by a
31 corporation to which this section applies shall contain a provision
32 which excludes, limits or otherwise restricts coverage because
33 medicaid benefits as permitted by title XIX of the social security act of
34 1965 are or may be available for the same accident or illness.

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

37 New Sec. 7. If any provisions of section 4 or the application
38 thereof to any person or circumstances is held invalid, the invalidity
39 shall not affect other provisions or applications of the act which can be
40 given effect without the invalid provisions or application, and to this
41 end the provisions of this act are severable.

42 New Sec. 8. (a) Notwithstanding any law, rule or regulation to the
43 contrary, no state employee shall be eligible for coverage or

1 reimbursement for an elective abortion under the state health care
2 benefits program as established in K.S.A. 75-6501, and amendments
3 thereto, or the cafeteria plan as established in K.S.A. 75-6512, and
4 amendments thereto.

5 (b) For the purposes of this section:

6 (1) "Abortion" means the use or prescription of any instrument,
7 medicine, drug or any other substance or device to terminate the
8 pregnancy of a woman known to be pregnant with an intention other
9 than to increase the probability of a live birth, to preserve the life or
10 health of the child after live birth, or to remove a dead unborn child
11 who died as the result of natural causes in utero, accidental trauma or
12 a criminal assault on the pregnant woman or her unborn child and
13 which causes the premature termination of the pregnancy.

14 (2) "Elective" means an abortion for any reason other than to
15 prevent the death of the mother upon whom the abortion is
16 performed; provided, that an abortion may not be deemed one to
17 prevent the death of the mother based on a claim or diagnosis that she
18 will engage in conduct which will result in her death.

19 ~~Sec. 9.~~ K.S.A. 40-22a13, 40-22a14 and 40-22a15 and K.S.A. 2010
20 **Supp. 40-2,103 and 40-19c09** are hereby repealed.

21 ~~Sec. 10.~~ This act shall take effect and be in force from and after its
22 publication in the statute book.

23