

Various Insurance Topics, Including Notifications; the State High Risk Pool; and Mandate Lite Benefit Plans; HB 2107

HB 2107 creates the Electronic Notice and Document Act; amends a provision in the Insurance Code requiring notification to policyholders of adverse underwriting decisions and refunds, increases the maximum lifetime benefit for individuals in the State High Risk Pool, amends existing law regarding dividends for mutual insurance companies organized to provide health care provider liability insurance, updates various statutory references, and enacts the Mandate Lite Health Benefit Plan Act.

Electronic Notice and Document Act

The bill establishes the Electronic Notice and Document Act (Act), which allows the use of electronic notices and documents for sending insurance notices and documents. In order to send electronic notices and documents to another party, the bill requires the insurer to obtain the consent of the other party.

Definitions

The bill defines “delivered by electronic means” to include:

- Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
- Posting on an electronic network or site accessible to the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with a separate notice of the posting, which is required to be provided by e-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.

In addition, the bill defines “party” as 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.

Electronic Delivery

A notice or document may be delivered by electronic means by an insurer to a party if:

- The party has affirmatively consented to the method of delivery and has not withdrawn consent;
- The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:
 - Any right or option to have the notice or document provided in paper or other non-electronic form;

- The right to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences imposed if consent is withdrawn;
- Whether the party's consent applies only to a particular transaction or to identified categories of notices or documents;
- How a paper copy of a notice or document delivered electronically may be obtained and the fee, if any, for the paper copy; and
- The procedure to withdraw consent and to update information needed to contact the party electronically;
- The party, before giving consent, is provided with the hardware and software requirements to access and retain the notice or document and to provide electronic consent that shows the party can access the information electronically; and
- After consent is given, the insurer provides a statement to the party if the hardware and software requirements for access and retaining notice or documents have changed, and the right of the party to withdraw consent without fees, conditions, or consequences.

Any notice or other document in an insurance transaction or that serves as evidence of insurance coverage is allowed to be delivered, stored, and presented by electronic means.

Delivery of a notice or other document is 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.

Posting Online and Delivery

The bill allows insurance policies and endorsements that do not contain personally identifiable information to be mailed, delivered, or posted on the insurer's website. If the insurer elects to post policies and endorsements on its website instead of mailing or delivering to the insured, the insurer is required to comply with all of the following conditions:

- The policy and endorsements must be easily accessible and remain that way for as long as the policy is in force;
- After expiration of the policy, the insurer must archive its expired policies and endorsements for five years, making them available upon request;
- Policies and endorsements must be posted in a way that enables the insured to print and save the documents using programs or applications that are widely available and free to use;

- The insurer must provide notice of the method by which the insured may obtain a paper or electronic copy of the insured's policy or endorsements upon request and free of charge;
- The insurer must clearly identify the exact policy and endorsements forms purchased by the insured on each declarations page issued; and
- The insurer must provide notice of any changes to the forms or endorsements and of the insured's right to obtain a paper or electronic copy upon request and without charge.

Consent and Applicability

The bill does not affect requirements related to content or timing of any notice or document required under applicable law. In addition, the bill allows electronic delivery of a notice or document requiring verification or acknowledgment only if the delivery method used provides for verification or acknowledgment of receipt.

The bill does not allow denial of legal effectiveness, validity, or enforceability of any contract or policy of insurance solely due to the failure to obtain electronic consent or confirmation of consent by a party. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by the insurer to comply with providing revised hardware and software requirements and allowing withdrawal of consent without a fee, conditions, or consequences constitutes, at the election of the party, a withdrawal of consent.

In addition, the bill does not apply to a notice or document delivered electronically by an insurer before the effective date of the Act to a party who has consented to receive the notice or document electronically. However, after the effective date of the Act, the insurer is required to notify the party of the notices or documents that may be delivered electronically under the Act that were not previously delivered electronically. The party has the right to withdraw consent.

The bill also allows an oral communication or recording that could be reliably stored and reproduced by the insurer to qualify as a notice or document delivered electronically. The bill allows electronic signatures that are attached to or logically associated with the signature, notice, or document to satisfy a requirement for a notice or document to be notarized, acknowledged, verified, or made under oath.

The bill does not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured. The bill also will not apply to any mutual insurance company organized pursuant to Kansas law, and the bill will not be construed to modify, limit, or supersede the provisions of the Federal Electronic Signature in Global and National Commerce Act (PL 106-229) or the Uniform Electronic Transactions Act (KSA 16-1601 *et seq.*).

Notification Requirements, Adverse Underwriting Decisions

The bill amends the law relating to notice to policyholders of adverse underwriting decisions and refunds. That law had provided that refunds to the applicant or individual proposed for coverage of the difference between the payment and earned premium, if any, in the event of a declination of insurance coverage, termination, or any other adverse underwriting decision, must accompany the notice of the decision.

The bill allows for applicants, policyholders, or individuals proposed for coverage, both with coverage in effect or not in effect, to receive refunds along with the notice of the adverse underwriting decision, or allow the refund and notice to be provided separately, so long as the refund is provided within ten days from the date of the notice.

The requirement does not apply to life insurance that is in effect, if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium.

State High Risk Pool, Lifetime Limit

The bill amends law regarding the Kansas Uninsurable Health Insurance Plan Act by increasing the maximum lifetime benefit per covered individual in the high risk health insurance pool from \$3.0 million to \$4.0 million.

Health Care Provider Liability Insurance, Certain Mutual Insurance Companies, Dividends

The bill amends the Insurance Code to allow dividends to be credited to a member's account and distributed in accordance with a plan adopted by the board of directors of a mutual insurance company that is organized to provide health care provider liability insurance.

Statutory Updates—Obsolete Penalty Provisions in the Insurance Code, ERO 41 Updates

The bill updates Chapters 39 and 40 of the *Kansas Statutes Annotated* by correcting invalid and obsolete statutory references regarding penalty provisions and state agency names corresponding to changes in agency duties made per 2012 Executive Reorganization Order No. 41 (ERO No. 41).

Mandate Lite Health Benefit Plan Act

The bill enacts the Mandate Lite Health Benefit Plan Act, excludes agent commissions from the calculation of administrative costs associated with medical loss ratio (MLR), and defines specially designed policies and excludes such policies from the definition of group sickness and accident insurance.

The bill defines a "mandate lite health benefit plan" as an individual or group sickness and accident insurance plan that does not contain one or more of the Kansas-mandated

benefits other than coverages for optometrist, dentist, or podiatrist services (KSA 40-2,100) and for reconstructive breast surgery (KSA 40-2,166). The plan may be issued on either a group or individual basis. The bill specifies a plan could offer drug coverages.

The bill requires such plans to:

- Contain the definitions of group or individual sickness and accident insurance with respect to major medical benefits and standard provisions or rights of coverage; and
- Provide insureds with written notice that one or more of the state-mandated benefits are not included in the plan.

The bill provides that the definition of preexisting conditions may not be more restrictive than the definition of preexisting conditions normally used for the corresponding regular or group insurance contracts. Additionally, a mandate lite health benefit plan is allowed to charge additional premiums for each optional benefit offered.

Medical Loss Ratio

Under the bill, portions of health insurance premiums paid by consumers that are passed through as (agent) commissions are not considered part of administrative expenses and will be excluded from all determination of the MLR calculations when totaling the ratio of premiums paid by a consumer used for claims versus administrative expenses for a policy. (To be excluded from MLR calculations, any portion of premiums identified as commissions must be paid to a nonemployee.) Instead, portions of premiums retained by an insurance company or its employees are required to be considered as part of the MLR calculation as administrative related income.

Specially Designed Policies

The bill defines and allows specially designed policies to provide specific coverage of benefits or services that are not required to be included the mandate lite health benefit plans authorized by the bill. These stand-alone policies and coverages may include:

- Chiropractic plans;
- Acupuncture coverage plans;
- Holistic medical treatment plans;
- Podiatrist plans;
- Pharmacy plans;
- Psychiatric plans;
- Allergy plans; and
- Other plans or combinations of plans of accepted traditional and nontraditional medical practice.

The bill defines “specially designed policy” to mean an insurance policy that by design may not meet all or part of the definitions of group or individual sickness and accident insurance

policy, and includes temporary sickness and accident insurance on a short-term basis. The bill excludes specially designed policies from:

- Inclusion under the definition of group sickness and accident insurance, including as short-term policies;
- Continuation coverage provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
- MLR calculations associated with individual sickness and accident insurance unless the calculation excludes any monthly administrative fee associated with the sale of such short-term policies.