

TO: The Honorable Ty Masterson, Chair
Senate Ways and Means Committee

FROM: William W. Sneed, Legislative Counsel
America's Health Insurance Plans

SUBJECT: S.B. 309

DATE: May 21, 2015

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for America's Health Insurance Plans ("AHIP"). AHIP is the national trade association representing the health insurance industry. AHIP members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual and small group insurance markets, and public programs such as Medicare and Medicaid. Members offer a broad range of health insurance products in the commercial marketplace and have also demonstrated a strong commitment to participation in public programs throughout the country. Please accept this memorandum as our opposition to S.B. 309.

Initially, it is difficult to address this bill as written inasmuch as there has been much debate this Legislative Session on the Administration's efforts to impose an "MCO" tax in an effort to leverage additional Federal dollars to supplant the funds available to support the Medicaid program in Kansas. Since we must assume this bill is a stand-alone bill (and not consider the other proposals), we will address our remarks to the bill as introduced.

First, we contend that this bill is in conflict with the Medicaid statute if some of the private managed care organizations are exempt from the tax. Here is a summary of the key statutory provisions:

- A Medicaid provider tax must be a "broad-based health care related tax" that is imposed on a class of health care items or services furnished by all non-Federal, nonpublic providers in the State that are within that class.
- For purposes of imposing a provider tax, the statute lists permissible classes of providers and includes a definition for the class of MCOs: "Services of managed care organizations (including health maintenance organizations, PPOs . . .).

Specifically, the Federal statutes state:

Section 1903(w)(3)(B).

100 SE Ninth Street, Suite 250
Topeka, KS 66612
Telephone: 785.233.1446
Fax: 785.233.1939
wsneed@polsinelli.com

(B) In this subsection, the term “broad-based health care related tax” means a health care related tax which is imposed with respect to a class of health care items or services (as described in paragraph (7)(A)) or with respect to providers of such items or services and which, except as provided in subparagraphs (D), (E), and (F)—

(i) is imposed at least with respect to all items or services in the class furnished by all non-Federal, nonpublic providers in the State (or, in the case of a tax imposed by a unit of local government, the area over which the unit has jurisdiction) or is imposed with respect to all non-Federal, nonpublic providers in the class;

Section 1903(w)(7)(A)(viii)

(A) Each of the following shall be considered a separate class of health care items and services

.
.
.

(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).

Clearly, this is not broad-based. Thus, we would contend that our industry would be forced to apply the tax to all like policies, on or off the Exchange, or the tax would be held invalid.

These additional taxes/assessments create an excessive load on Exchange individual and small group coverage. These assessments create an unfair and abusive taxation on Exchange plans. Health plans must already include KS state premium tax of 2% and federal exchange assessments of 3.5% on Exchange/SHOP coverage. To add another fee of 3.5% would make the tax/assessment load for Exchange coverage in KS 9% - an excessive added tax load. To create fairness for Exchange/SHOP enrollees and health carriers, premiums from Exchange/SHOP policies should be exempt from the KS state premium tax.

In addition to the legal arguments, there are multiple business and public policy concerns.

1. Taxing companies in Kansas places an undue burden on free enterprise and company's ability to expand.
2. This bill is directly contrary to the legislature's attempts to make Kansas a more business friendly climate. Increasing taxes on Kansas businesses will hurt the economy.
3. This additional tax will increase costs for consumers and small businesses throughout Kansas.
4. Increasing the tax liability for Kansas companies will negatively impact resources which would otherwise be used to make investments in technology, etc. to help Kansas consumers.

5. Increasing costs for businesses like this could cause them to pull back on hiring and shrink their workforce.

Based upon the foregoing, we respectfully request that the Committee not act favorably on S.B. 309. I am available for questions at your convenience.

Respectfully submitted,



William W. Sneed

WWS:kjb