

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2103**

As Recommended by House Committee on  
Insurance

**Brief\***

Sub. for HB 2103 would require the State Employees Health Care Commission (which administers the State health care benefits program for state employees and other qualified entities) to provide coverage for amino acid-based elemental formula, regardless of delivery method, for the diagnosis or treatment of food protein-induced enterocolitis syndrome, eosinophilic disorders, or short bowel syndrome if this formula is prescribed by a prescriber as defined in and authorized by the state Pharmacy Act who is also licensed by the applicable medical professional licensure entity in Kansas. This coverage would begin at the start of the next plan year (January 1, 2019).

The bill would require the Health Care Commission, pursuant to the requirements of the Insurance Code regarding mandated health insurance benefits, to submit on or before March 1, 2020, a report to the Senate President and the Speaker of the House of Representatives. The report is to include the following information pertaining to the mandated coverage for amino acid-based elemental formula provided during the 2019 Plan Year:

- The impact this mandated coverage had on the State health care benefits program (also referred to as the State Employee Health Plan [SEHP]);

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Data on the utilization of coverage for amino acid-based elemental formula by covered individuals and the cost of providing such coverage; and
- A recommendation whether such mandated coverage should continue for the SEHP or whether additional utilization and cost data are required.

Under the bill, the Legislature would be permitted to consider in the next session following the report, the 2020 Legislative Session, whether to mandate coverage for amino acid-based elemental formula in individual or group health insurance policies, medical service plans, health maintenance organizations, or other contracts that provide for accident and health services delivered, issued for delivery, amended, or renewed on or after July 1, 2021.

The bill would be in effect upon publication in the *Kansas Register*.

## **Background**

The bill was introduced by the House Committee on Insurance. As introduced, the bill would have mandated health insurance plans and contracts subject to Kansas law, on and after July 1, 2017, to provide coverage for amino acid-based elemental formula regardless of the delivery method. The House Committee recommended a substitute bill that would limit this coverage to the SEHP for a one-year (“test track”) period and require a report to the 2020 Legislature.

In the House Committee hearing in 2017, proponents of the bill included Representative Trimmer; children, and parents of children, affected with disorders that include eosinophilic esophagitis (EoE), eosinophilic gastritis, eosinophilic colitis, and eosinophilic gastrointestinal disease; and a pediatric gastroenterologist who serves as the Co-Director for the Eosinophilic Esophagitis Center. Written-only proponents included the President of the Campaign Urging

Research for Eosinophilic Disease (CURED) Board, Co-Director of the Food Protein-Induced Enterocolitis Syndrome (FPIES) Foundation, and family members of affected children.

Parents and children spoke to the challenges in diagnosing and treating the symptoms of eosinophilic diseases, including illness and frequent absences from school; problems with swallowing, vomiting, stomach pain, and weight loss; and the use of elimination diets to determine the cause(s). One child with EoE detailed the first signs and symptoms, the elimination of favorite foods, the start of medications and elemental formula, doctors' visits, the inability to attend school or be an active teenager, and worrying about how his family will afford his formula and care. His parent stated out-of-pocket formula will cost \$1,500 or more per month. The pediatric gastroenterologist spoke about treatments for EoE and other eosinophilic gastrointestinal disorders, FPIES, and short bowel syndrome, noting amino acid-based formulas are a medical food prescribed as a treatment and 97 percent of patients with EoE improve on an amino acid-based diet. She further stated a child who is able to drink this formula should not be required to obtain a nasogastric tube (NG-tube) or a surgically placed gastrostomy tube (G-tube) to have insurance financially cover the formula.

Opponents of the bill were representatives of America's Health Insurance Plans (AHIP) and Blue Cross Blue Shield of Kansas. Written-only opponent testimony was submitted by a representative of the Kansas Chamber. The AHIP representative outlined the association's opposition to any state health insurance mandate: mandates can hinder health plans' ability to respond in today's current environment requiring coverage of specified treatments, services, or conditions; health plans routinely exclude non-prescription material, regardless of cost; Kansas has been very hesitant to require mandates and equipment related to health care because such mandates often misallocate resources by requiring consumers or their employers to spend available

funds or receive benefits they would otherwise not purchase; and the Legislature must carefully analyze whether the mandate in the bill is above and beyond the Essential Health Benefits, which could lead to additional costs to the State. The Kansas Chamber representative cited its Business Leader poll where business leaders voiced concerns about managing health care costs and obtaining affordable basic health care coverage for employees.

No neutral testimony was provided.

Following hearings on the bill in 2017, the House Committee on Insurance Chairperson submitted a Committee request to the SEHP for assistance in its consideration of this bill. The Committee's request cited the bill's fiscal note, which stated the SEHP provides coverage, but it is limited to only certain treatments (not food formulas or other food replacements) in Plan C. The House Committee requested data analysis and study review using the social and financial impact factors required to be reported by proponents of proposed mandate legislation found in KSA 40-2249. In January 2018, the Director of the SEHP, with the assistance of a consultant, provided its response, including other states' studies of the mandate proposed in the bill. The report concluded that the average prevalence rate of the conditions (specified in the original bill) was 0.01 percent (85 SEHP members). The usage rate of affected people seeking treatment would be 22 percent (19 members). The estimated annual formula cost per user would be \$16,000. The total annual cost for treatment in the SEHP would be \$304,000 (19 members at \$16,000 annually). This data estimate is similar to the cost estimate provided with the fiscal note on the bill, as introduced (\$339,200 in the first full year of coverage).