

SENATE BILL No. 348

AN ACT concerning insurance; relating to health insurance; authorizing electronic delivery as the standard method of delivery for certain health benefit plan documents; coverage for amino acid-based elemental formula; amending K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2017 Supp. 40-5802 is hereby amended to read as follows: 40-5802. (a) This act allows the use of electronic notices and documents in lieu of any other provision of law for the sending of insurance notices and documents. *Except as provided in subsection (b)*, in order to send electronic notices and documents to another party the insurer must obtain the consent of the other party as provided in this act.

(b) (1) *Notwithstanding any other provision of law, a health benefit plan may utilize electronic delivery as its standard method to send the explanation of benefits and policy, including federally required summary of benefit and coverage documents, to a party only if: (A) Paper documents are readily available; and (B) notification has been provided to the party explaining the party's option to receive paper documents via U.S. mail.*

(2) *If a party notifies a health benefit plan that the party wishes to receive paper documents via U.S. mail, the health benefit plan shall comply.*

Sec. 2. K.S.A. 2017 Supp. 40-5803 is hereby amended to read as follows: 40-5803. For the purposes of this act:

(a) "Delivered by electronic means" includes:

(1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(2) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet or any other electronic device, together with separate notice of the posting, which shall be provided by electronic 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.

(b) "Party" means 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.

(c) "Health benefit plan" means the same as in K.S.A. 40-4602, and amendments thereto. "Health benefit plan" shall also include any: (1) Individual health insurance policy; (2) individual or group dental insurance policy; or (3) nonprofit dental services corporation.

(d) "Nonprofit dental services corporation" means a nonprofit corporation organized pursuant to the nonprofit dental service corporation act, K.S.A. 40-19a01 et seq., and amendments thereto.

Sec. 3. K.S.A. 2017 Supp. 40-5804 is hereby amended to read as follows: 40-5804. (a) Subject to subsection (c), any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored and presented by electronic means so long as it meets the requirements of this act.

(b) Delivery of a notice or document in accordance with this section shall be 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.

(c) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

(2) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) Any right or option of the party to have the notice or document provided or made available in paper or another non-electronic form;

(B) the right of the party to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions or consequences imposed in the event consent is withdrawn;

(C) whether the party's consent applies: (i) Only to the particular transaction as to which the notice or document must be given; or (ii) to identified categories of notices or documents that may be delivered by electronic means during the course of the parties' relationship;

(D) (i) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and (ii) the fee, if any, for the paper copy; and

(E) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(3) the party, before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(4) after consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of: (A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and (B) the right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under subsection (c)(2).

(d) This act does not affect requirements related to content or timing of any notice or document required under applicable law.

(e) If a provision of this act or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(f) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection (c)(3).

(g) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. 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 an insurer to comply with subsection (c)(4) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(h) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this act to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(i) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically and the party's right to withdraw consent to have notices or documents delivered by electronic means.

(j) Notwithstanding any other provisions of this section, insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's website. If the insurer elects to post insurance policies and endorsements on its website in lieu of mailing or delivering such policies and endorsements to the insured, such insurer shall comply with all of the following conditions:

(1) The policy and endorsements shall be easily accessible and remain that way for as long as the policy is in force;

(2) after the expiration of the policy, the insurer shall archive its expired policies and endorsements for five years and make them available upon request;

(3) the policies and endorsements shall be posted in a manner that enables the insured to print and save the policy and endorsements using programs or applications that are widely available on the internet and free to use;

(4) the insurer shall provide notice, at the time of issuance of the initial policy forms and any renewal forms, of a method by which insureds may obtain, upon request and without charge, a paper or electronic copy of their policy or endorsements;

(5) on each declarations page issued to an insured, the insurer shall clearly identify the exact policy and endorsement forms purchased by the insured; and

(6) the insurer shall provide notice of any changes to the forms or endorsements, and of the insured's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

(k) Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section. If a provision of this title or applicable law requires a signature or notice or document to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice or document.

(l) This section shall not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured.

(m) This section shall not be construed to modify, limit or supersede the provisions of the federal electronic signatures in global and national commerce act, public law 106-229, or the provisions of the uniform electronic transactions act, K.S.A. 16-1601 et seq., and amendments thereto.

(n) The provisions of ~~this act~~ *the electronic notice and document act* shall not apply to any mutual insurance company organized pursuant to article 12a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(o) *The provisions of this section shall not apply to the electronic delivery of explanation of benefits and policies, including federally required summary of benefit and coverage documents, to a party by a health benefit plan.*

New Sec. 4. (a) In the coverage for the next health plan coverage year commencing on January 1, 2019, the state employees health care commission shall provide for the 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 prescribed by a prescriber, as defined by K.S.A. 65-1626, and amendments thereto, authorized by the pharmacy act of the state of Kansas and the applicable medical professional licensure entity in the state of Kansas.

(b) (1) Pursuant to the provisions of K.S.A. 40-2249a, and amendments thereto, on or before March 1, 2020, the state employees health care commission shall submit to the president of the senate and to the speaker of the house of representatives a report including the following information pertaining to the mandated coverage for amino acid-based elemental formula provided during the plan year commencing on January 1, 2019, and ending on December 31, 2019:

(A) The impact that the mandated coverage for amino acid-based elemental formula required by subsection (a) has had on the state health care benefits program;

(B) data on the utilization of coverage for amino acid-based elemental formula by covered individuals and the cost of providing such coverage for amino acid-based elemental formula; and

(C) a recommendation whether such mandated coverage for amino acid-based elemental formula should continue for the state health care benefits program or whether additional utilization and cost data is required.

(2) At the next legislative session following receipt of the report required in paragraph (1), the legislature may consider whether or not to require the coverage for amino acid-based elemental formula required by subsection (a) to be included in any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal ben-

efit society or health maintenance organization that provides coverage for accident and health services and that is delivered, issued for delivery, amended or renewed in this state on or after July 1, 2021.

Sec. 5. K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.