

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2064**

As Agreed to March 31, 2015

**Brief\***

HB 2064 would make several amendments to the Insurance Code to:

- Add insurance against the cost of legal services to the classes of insurance that could be provided by authorized insurance companies and exempt companies meeting certain criteria from the definition of prepaid service plan and related requirements;
- Expand the types of payments received by nonprofit dental service corporations that could be used in a calculation of certain expenses;
- Modify the definitions of a “fraudulent insurance act” and an “external review organization” and require insurers to submit an anti-fraud plan to the Insurance Commissioner;
- Modify uniform accident and sickness insurance policies provisions to create exclusions relating to individual insurance policies; and
- Modify the Health Care Provider Insurance Availability Act (HCPIAA) to clarify exemptions from the defined term “health care provider,” add a definition for “health care facility,” and allow certain

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health care systems to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance.

***Classes of Insurance; Definition of “Prepaid Service Plan” (Sections 1-2)***

Specifically, the bill would add insurance against the cost of legal services to the classes of insurance that could be provided by any insurance company organized under state law or authorized to transact business in the state, other than a life insurance company. The bill would exempt these property and casualty insurance companies from the definition of prepaid service plans. The bill also would create an exemption for companies providing products and services for a fee where customers receive consultations with a licensed attorney connected to the customer by the company, so long as the company does not directly provide legal service, pay for legal services beyond a minimal administrative fee per customer, or indemnify or reimburse the customer for any legal expenses incurred.

***Nonprofit Dental Service Corporations (Section 3)***

Additionally, the bill would expand the types of payments received by nonprofit dental service corporations that could be used in calculating the percentage of allowable disbursements as expenditures for solicitation or as administrative expenses. Under the bill, nonprofit dental service corporations would not be limited to the use of a percentage of the aggregate amount of payments received from subscribers in calculating the overhead limit, but would be permitted to include all payments allowed under the nonprofit dental service corporations’ enabling statute.

#### ***Fraudulent Insurance Acts (Section 4)***

The bill would amend the definition of a “fraudulent insurance act” to add electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication to the means by which fraudulent insurance acts may be committed. The bill also would amend law that makes optional the submission of an anti-fraud plan by an insurer to the Commissioner as part of the required anti-fraud initiatives, and instead would require the anti-fraud plan to be submitted.

#### ***External Review Organizations—Accreditation (Section 5)***

Further, the bill would amend the definition of an “external review organization,” which is an entity that conducts independent external reviews of adverse health care decisions in utilization reviews, to remove the option such an entity have experience serving in that capacity in health programs administered by the state. The bill would leave as the only option the requirement the external review organization be nationally accredited and utilize health care providers actively engaged in the practice of their profession in the state who are qualified and credentialed with respect to the health care service review.

#### ***Accident and Sickness Insurance—Individual Policies (Section 6)***

The bill would create an exclusion for individual policies in two provisions within the uniform policy requirements in KSA 40-2203 governing insurance with other insurers. Under current law, group insurance and other coverages are excepted from the definition of “other valid coverage.” The bill would exclude individual accident and sickness policies from these two provisions. (This exclusion would appear to prevent a “stacking” of insurance coverages or policies per occurrence or loss.)

“Accident and sickness insurance” is defined in current law as “any policy or contract insuring against loss resulting from sickness or bodily injury or death by accident, or both, issued by a stock, or mutual company or association or any other insurer.”

***HCPIAA—Amendments (Sections 7-8)***

The bill would clarify exemptions from the term “health care provider” under the HCPIAA to designate certain health care providers who would not be subject to a requirement to purchase basic professional liability insurance coverage or pay surcharges as required with such coverage. The bill would specify “health care provider” does not include any person holding an exempt license from the State Board of Nursing and would clarify language in the exclusion provision for advanced practice registered nurses (APRNs) and physician assistants (PAs) who are employed in or on active duty in the federal government or who provide professional services as a charitable health care provider and would extend this exclusion from the definition to nurse anesthetists.

The bill also would amend the HCPIAA to allow a health care system that owns or operates more than one medical care facility or more than one health care facility to aggregate insurance premiums for the purpose of obtaining a certificate of self-insurance from the Health Care Stabilization Fund Board of Governors. The bill would define the term “health care facility” to mean a nursing facility, an assisted living facility, or a residential health care facility as such terms are defined in the Adult Care Home Licensure Act.

Under current law, the self-insurance provisions of the HCPIAA apply to a health care provider or system owning or operating two or more medical care facilities, the Kansas Soldiers’ Home, the Kansas Veterans’ Home, persons engaged in certain post-graduate training, and persons engaged in residency training.

## **Conference Committee Action**

The Conference Committee agreed to the Senate amendments to the bill and further agreed to insert provisions relating to fraudulent insurance acts and anti-fraud plans, external review organizations, and individual policies of accident and sickness insurance (HB 2142, as amended by Senate Committee on Financial Institutions and Insurance); and amendments to the HCPIAA, including the authorization of certain health care facilities to self-insure under the Health Care Stabilization Fund (SB 101, as amended by House Committee on Insurance). The Conference Committee also made technical amendments.

## **Background**

The House Committee on Insurance introduced HB 2064 at the request of Hyatt Legal Plans, Inc. (Hyatt). At the House Committee hearing, a representative of Hyatt explained enactment of the bill would clarify the legal plan services provided by Hyatt would be regulated as a property and casualty product and would be exempt from the regulatory requirements associated with a prepaid service plan. The representative indicated such regulation more appropriately would reflect the manner in which the company has been doing business in Kansas since 1998. The representative noted the Kansas Insurance Department (Department) had no objection to the bill. No opposing or neutral testimony was received.

In the Senate Committee, a representative of Hyatt testified in support of the bill. Additionally, a representative of LegalZoom appeared as a proponent and requested consideration of an amendment to exclude certain legal access plans from licensure and regulatory requirements associated with prepaid service plans. The representative explained legal access plans provide access to limited scope legal services provided by independent, state-licensed attorneys. The plans assume no risk of loss and the providers

do not indemnify for, or make payments based on, legal services provided or legal expenses incurred.

The Senate Committee on Financial Institutions and Insurance amendments add a provision relating to an exemption from the definition of prepaid service plan and insert provisions relating to nonprofit dental service corporations (HB 2065, as recommended by House Committee on Insurance).

According to the fiscal note prepared by the Division of the Budget on HB 2064, as introduced, the Department indicates enactment of the bill would have a negligible fiscal effect on insurance premium taxes, as a small number of insurance companies likely would provide this new underwriting. The Department would administer provisions of the bill with its existing staff.

#### ***HB 2065—Nonprofit Dental Service Corporations***

The House Committee on Insurance introduced HB 2065 at the request of Delta Dental of Kansas (Delta Dental). At the House Committee hearing, a representative of Delta Dental explained enactment of the bill would allow all payments received from purchasers of insured products and self-insured groups through administrative fees and related claims payments to be used in determining the percentage of revenue that could be attributed to overhead expenses. The representative indicated the undefined term “subscriber” and the Department’s adoption of codification resulted in Delta Dental being able to report only risk insurance and eliminated the inclusion of the fees and claims payments associated with self-funded plans as revenue, resulting in Delta Dental being able to recognize only about 30 percent of total revenue in calculating its overhead limit. No opposing or neutral testimony was received.

According to the fiscal note prepared by the Division of the Budget on HB 2065, the Department indicates enactment of the bill would have no fiscal effect on the agency.

***HB 2142—Fraudulent Insurance Acts; External Review Organizations; and Individual Policies, Accident and Sickness Insurance***

The House Committee on Insurance introduced HB 2142 at the request of the Department. In the House Committee, a representative of the Department testified in support of the bill. The representative stated the bill would amend the definition of a “fraudulent insurance act” to add other means of communication to the manner in which such acts may be committed. The proponent also noted current state law provides the external review organization used by the Department be nationally accredited or work mostly with Kansas providers. However, the proponent stated the U.S. Department of Health and Human Services (HHS) granted the state a waiver from the federal requirement that the organization be nationally accredited; this waiver expires on January 1, 2016. The proponent explained, if current law is not amended to require the organization to be nationally accredited after the expiration of the waiver, as is proposed by the bill, HHS would assume all external reviews for Kansas residents. According to the proponent, the organization used in Kansas is expected to be nationally accredited prior to the expiration of the waiver. No other testimony was provided at the hearing.

The Senate Committee on Financial Institutions and Insurance amendments inserted uniform policy provisions and created an exclusion for individual accident and sickness insurance policies.

According to the fiscal note prepared by the Division of the Budget, the Department indicates passage of HB 2142, as introduced, would have no fiscal effect.

### ***SB 101—HCPIAA Amendments***

SB 101 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Health Care Stabilization Fund Board of Governors. In the Senate Committee, the Executive Director of the Board of Governors indicated the bill contained technical clarifications of exemptions from the definition of “health care provider” under the HCPIAA. Exemption from this definition would allow those designated health care providers to avoid professional liability insurance requirements, as well as the surcharge requirements associated with Health Care Stabilization Fund coverage. The Executive Director stated the Board of Governors has granted over 30 temporary exemptions to health care providers since enactment of the 2014 law; some of these exemptions were granted to APRNs and PAs who will eventually require permanent exemptions as long as they are covered under the federal Tort Claims Act or the Kansas Tort Claims Act.

The Senate Committee amendment inserts nurse anesthetists into an existing list of health care providers who are not included in the definition of “health care provider” under the HCPIAA. The amendment was requested by the Executive Director of the Health Care Stabilization Fund Board of Governors who indicated 2014 HB 2516 (KSA 2014 Supp. 40-3401) exempted federally-employed nurse midwives, but failed to exempt nurse anesthetists who work for the military or a federal agency.

In the House Committee on Insurance, the same proponent testified and was the only conferee.

The House Committee on Insurance amendment inserts provisions relating to authorization of certain facilities to obtain self-insurance coverage under the HCPIAA (SB 117, as recommended by the Senate Committee on Financial Institutions and Insurance) into SB 101, as amended by the Senate Committee on Financial Institutions and Insurance.

The fiscal note prepared by the Division of the Budget on SB 101, as introduced, states the Kansas Insurance Department and Health Care Stabilization Fund Board of Governors both indicate enactment of the bill would have no fiscal effect on agency funds. Fiscal information pertaining to the provisions inserted by the House Committee amendment follow in the background information for SB 117.

### **SB 117**

SB 117 was introduced by the Senate Committee on Financial Institutions at the request of the Kansas Health Care Association. In the Senate Committee, a representative of Midwest Health, Inc. stated adult long-term care facilities are requesting the opportunity to apply for self-insurance just as other defined health care providers are allowed under the law. The representative highlighted an increased focus on risk management and the management of liability claims and the increased premiums associated with being unable to self-insure under the Health Care Stabilization Fund for its Kansas facilities. In order to comply with 2014 law (HB 2516), the representative indicated Midwest Health had to form its own licensed insurance company in Kansas in order to provide the coverage it would have been able to self-insure under the Health Care Stabilization Fund. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living indicated its members are coming into compliance with the new law and requested the same consideration be given to other facilities currently allowed to self-insure.

The Executive Director of the Health Care Stabilization Fund Board of Governors submitted neutral testimony outlining how the agency reviews applications for self-insurance and information on certificates of self-insurance granted by the Board of Governors, as of January 1, 2015. The Executive Director of the Kansas Medical Society submitted neutral testimony, with stated concerns regarding self-insurance. The testimony notes self-insurers must

demonstrate the ability to meet their financial obligation to pay claims; in the event they become insolvent or are unable to pay claims, the Health Care Stabilization Fund would likely be liable to cover any outstanding judgments or settlements against the insolvent self-insurer. Insolvency by a self-insurer would then raise liability costs for the other providers statewide, should the Health Care Stabilization Fund pay for such claims. There was no opposition testimony at the bill hearing.

In the House Committee on Insurance, the same proponents testified. As noted previously, the House Committee added the contents of SB 117, as recommended by the Senate Committee on Financial Institutions and Insurance, to SB 101, as amended by the Senate Committee on Financial Institutions and Insurance. (The House Committee adopted a substitute for SB 117 relating to transportation network companies.)

The revised fiscal note for SB 117 prepared by the Division of the Budget states the Health Care Stabilization Fund Board of Governors estimates enactment of the bill would require additional expenditures totaling \$40,980, all from the Health Care Stabilization Fund. Of this amount, \$34,332 would be for salaries and wages for a 0.50 FTE Compliance Officer and \$6,648 would be for other operating expenditures, including rent, communication expenses, and office equipment. The agency estimates the bill has the potential for 104 applications or renewals each year, with each application or renewal requiring approximately ten hours of review time. The additional expenditures for the Health Care Stabilization Fund would eventually, the fiscal note states, be collected from health care providers that pay premium surcharges to the Fund. At present, 312 nursing facilities and 208 assisted living and residential health care facilities are licensed by the Kansas Department for Aging and Disability Services.

The fiscal note details the staff review time associated with evaluating a health care facility applying for a certificate

of self-insurance. This review for eligibility would include an evaluation of claim-handling procedures, actuarial analysis of liabilities, fiscal solvency, and the proper establishment of a trust for payment of settlements and judgments. In addition, any successful applicant that would be granted a certificate of self-insurance would be required to resubmit the same information annually in order to renew the certificate of self-insurance.

Enactment of the bill may create potential for insurance premium savings for health care facilities that would be approved for a certificate of self-insurance; however, the amount of potential savings cannot be estimated. The Kansas Department of Insurance indicates the bill would have no fiscal effect on the agency. Any fiscal effect associated with SB 117 is not reflected in *The FY 2016 Governor's Budget Report*.

insurance; legal services; nonprofit dental service corporations; fraud; external review; accident and sickness insurance; Health Care Provider Insurance Availability Act

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