

UPDATED
SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2054

As Amended by House Committee on Insurance

Brief*

HB 2054, as amended, would amend several health insurance provisions in the Insurance Code related to the regulation of association health plans (AHPs) and small employer plans. The bill would also designate certain statutes as the Small Employer Health Insurance Availability Act (Act).

The bill would make several technical updates and grammatical changes in the statutes of the Act subject to the bill.

Effective Dates

Provisions of the bill would be in force and effective on and after April 1, 2019, and publication of the bill in the *Kansas Register*, except that provisions relating to fully-insured AHPs and membership requirements [Section 1] would become effective upon publication in the *Kansas Register*.

Group Insurance Policies—Fully-Insured AHPs and Plan Membership [Section 1]

The bill would remove a membership limitation placed on AHPs that requires the association have at least 25 members, employees, or employees of members to be offered group accident and health insurance coverage.

*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>

***Designation of the Small Employer Health Insurance
Availability Act; Stated Purpose and Intent; Definitions
[Sections 2-3]***

The bill would designate KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Act. The bill would state the purpose and intent of the Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing condition exclusions, to provide for development of ‘basic’ and ‘standard’ health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”

The bill would modify the definition of “small employer” to remove “association” for entities eligible for group sickness and accident insurance and separately require, when determining the number of eligible employees, employees participating in an AHP be counted in the aggregate at the association level.

The bill would also create two definitions:

- “Association health plan” or “AHP” would mean a coverage for the payment of expenses described in KSA 2018 Supp. 40-2222 offered by a qualified trade, merchant, retail or professional association or business league that complies with the provisions of KSA 2018 Supp. 40-2222a and 40-2222b; and
- “Qualified trade, merchant, retail or professional association or business league” would mean any *bona fide* trade merchant, retail or professional association or business league that:

- Has been in existence for at least five calendar years;
- Is composed of five or more employers; and
- Is incorporated in Kansas, has a principal office located in Kansas, or has a principal office within a metropolitan area that has boundaries within Kansas.

***AHPs—Exemption from Regulation under the Act
[Section 4]***

The bill would exempt certain AHPs from regulation under the Act.

***Exemptions from the Commissioner's Jurisdiction;
Computation of Premium Tax [Sections 5-7]***

The bill would amend provisions pertaining to authorized multiple employer welfare arrangements (MEWAs) exempted from the jurisdiction of the Commissioner of Insurance (Commissioner). The bill would amend the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust. The bill would also amend an exemption granted to any other qualified trade, merchant, retail, or professional association or business league to remove a requirement the entity be incorporated in Kansas and instead specify such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

The bill would remove the definition assigned to a qualified trade, merchant, retail, or professional association or business and also eliminate two requirements placed on these entities: the entity be in existence for at least five years and be composed of five or more employers. [Note: A definition for these entities and the associated requirements

deleted in this section would be established in the bill under KSA 2018 Supp. 40-2209d.]

The bill would also amend law providing for the payment of an annual premium tax by self-insured AHPs exempted from the jurisdiction of the Commissioner to provide a computation method for the premium tax applicable to the location of such association. [Note: Under current law, an exempted AHP is subject to a 1.0 percent annual tax on its annual Kansas gross premium and must be incorporated in Kansas.] The bill would provide, for associations having a principal office within a metropolitan area that has boundaries in Kansas and associations having their principal office located within the borders of Kansas and offering policies to non-residents of Kansas, the tax owed shall be based upon the gross premium collected during the preceding year relating to health benefit plans issued to members that have a principal place of business in Kansas.

Background

HB 2054, as amended by the House Committee on Insurance (House Committee), contains provisions of HB 2054 and modified provisions of HB 2055, HB 2056, and HB 2058.

The House Committee did not adopt the language contained in other legislation pertaining to the regulation of AHPs: HB 2057 (specifying the conditions under which a small employer carrier may establish certain classes of business) and HB 2059 (exempting certain AHPs from requirements pertaining to small employer health plans), so current law would be retained on those topics.

The bill, as amended, was passed by the House Committee on February 25, 2019, but was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 27, 2019. The bill was then withdrawn from the House Committee on Appropriations and

rereferred to the House Committee on Insurance on March 6, 2019. The House Committee voted to amend the bill with those amendments previously recommended by the House Committee and pass the bill, as amended, on March 13, 2019.

Package of AHP Bills (House Bills 2054-2059)

On October 12, 2017, the President issued Executive Order (EO) 13813 (“Promoting Healthcare Choice and Competition Across the United States”), which, among other things, encourages expanded access to AHPs. The EO required, within 60 days of its issuance, the Secretary of Labor to consider the proposal of regulations or revised guidance to expand access to health coverage by “allowing more employers to form AHPs” (the EO encouraged promotion of AHP formation on the basis of common geography or industry).

The Final Rule, issued by the U.S. Department of Labor and published on June 21, 2018, allows employers to form AHPs (termed “small business health plans”) on the basis of geography or industry [*i.e.*, the plan could serve employees in a city, county, state, or multi-state metro area, or certain businesses in a selected trade or industry nationwide] and allow sole proprietors to join these plans. Among the Rule’s provisions, AHPs may not charge higher premiums or deny coverage to people because of pre-existing conditions, or cancel coverage because an employee becomes ill. [*Note:* The Final Rule does not affect AHPs in place prior to its issuance.] Although the Final Rule became effective on August 20, 2018, rollout dates vary for plans, with fully-insured plans permitted to offer coverage beginning September 1, 2018.

Six bills (House Bills 2054-2059) related to AHPs were introduced by the House Committee at the request of its chairperson, Representative Vickrey. Prior to the hearings on these six bills in the House Committee, an Assistant Revisor

of the Office of Revisor of Statutes provided an explanation of the federal Final Rule and requirements for states' conformity to the House Committee.

The House Committee did not adopt the language contained in HB 2057 (specifying the conditions under which a small employer carrier may establish certain classes of business) or HB 2059 (exempting certain AHPs from requirements pertaining to small employer health plans), so current law would be retained on those topics.

Background information on HB 2054, HB 2055, HB 2056, and HB 2058 is provided below.

HB 2054 (Providing for Fully-insured AHPs)

In the House Committee hearing, representatives of Blue Cross and Blue Shield of Kansas, Inc. (BCBSKS), the Kansas Chamber of Commerce, the Kansas Dental Association (KDA), Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce provided proponent testimony, generally stating the bill would align Kansas' small group health insurance laws with the new federal Final Rule. The representatives noted AHPs cannot deny employer groups or their employees coverage based upon their pre-existing health conditions and cannot inflate rates on one person or a single small business based on pre-existing health conditions. Written-only proponent testimony was provided by representatives of the Greater Topeka Chamber of Commerce, the Kansas Restaurant and Hospitality Association (KRHA), and a representative of White Exploration, Inc. on behalf of the Kansas Independent Oil and Gas Association (KIOGA).

A representative of the Kansas Insurance Department (Department) provided neutral testimony, noting the differences between fully insured AHPs, self-funded AHPs in existence, and new self-funded AHPs permitted under the Final Rule. The representative stated, under current Kansas

law, the Commissioner does not have regulatory authority over self-funded AHPs. Written-only neutral testimony was provided by a representative of the Kansas Association of Insurance Agents (KAIA).

A representative of the National Multiple Sclerosis Society provided opponent testimony, noting concern about the potential impact of AHPs on the individual market, especially for individuals with serious and chronic conditions. Written-only opponent testimony was provided by representatives of the American Cancer Society Action Network (ACS CAN) and the Leukemia and Lymphoma Society.

The House Committee amended HB 2054 by modifying the language of HB 2055, HB 2056, and HB 2058, and inserting that modified language into HB 2054.

HB 2055 (Making Certain Self-funded AHPs Subject to the Jurisdiction of the Commissioner)

In the House Committee hearing, representatives of the KDA, Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce were present but provided written-only proponent testimony. The KDA representative requested an amendment to delete reference to a “trust established November 1, 1985” related to the self-funded Voluntary Employee Benefit Association, which is no longer in existence. [Note: The House Committee amended the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust.]

Written-only proponent testimony was provided by a representative of the Greater Topeka Chamber of Commerce.

A representative of the Kansas Farm Bureau (KFB) provided neutral testimony and requested consideration of an amendment to allow KFB to develop member health care

benefit coverage, specifically and solely for KFB members in Kansas. [*Note:* The subject of this amendment is contained in 2019 SB 32, which the Senate passed on February 20, 2019. The House Committee did not amend 2019 HB 2054 to include the KFB's proposed amendment.] A representative of the Department was present but provided written-only neutral testimony. Written-only neutral testimony was also provided by a representative of the KAIA.

Representatives of ACS CAN, LeadingAge Kansas, and the Leukemia and Lymphoma Society provided written-only opponent testimony. The written-only testimony provided by the representative of LeadingAge Kansas generally noted concern the bill would outlaw LeadingAge's self-funded MEWA.

The House Committee modified the language of HB 2055 to amend the exemption previously authorized for a professional association of dentists, to remove a specified date and instead provide for the association through an established trust; update language related to "a qualified trade, merchant, retail, or professional association or business league" to remove the requirement that the entity be incorporated in Kansas, specify coverage for the payment of expenses for members of the association, their employees, and dependents, and amend the definition of the term to incorporate the definition contained in KSA 2018 Supp. 40-2209d; and provide a computation method for the premium tax applicable to the location of an association.

HB 2056 (Exempting Health Plans Issued to Associations of Small Employers from Certain Statutory Provisions Governing Small Employer Health Plans)

In the House Committee hearing, representatives of BCBSKS, the Kansas Chamber of Commerce, the KRHA, and the Petroleum Marketers and Convenience Store Association of Kansas provided proponent testimony, noting the bill would amend Kansas' small group health insurance

laws to allow Kansas to take advantage of the new federal Final Rule, which would allow Kansas-based associations the ability to offer high quality and affordable fully-insured AHPs to their members in accordance with federal law. Written-only proponent testimony was provided by representatives of White Exploration, Inc., offered on behalf of KIOGA; the Manhattan, Emporia, Topeka, and Lawrence Chambers of Commerce; Opportunity Solutions Project; The Chamber of Lawrence, Kansas; White Exploration, Inc.; the Wichita Independent Business Association; and the Wichita Regional Chamber of Commerce.

Written-only neutral testimony was provided by representatives of the Department and KAIA. [Note: This written-only testimony was submitted on all of the AHP-related bills.]

Written-only opponent testimony was provided by a representative of ACS CAN.

The House Committee amended the language of HB 2056 to remove a provision in KSA 40-2209e related to health care benefits covering employees of a small employer specific to aggregation and the number of employees. [Note: This language is clarified in the amendment to the definition of “small employer” in KSA 2018 Supp. 40-2209d, contained in HB 2058. HB 2056, as introduced, would have removed only a portion of this language relating to a policy issued to an association of small employers.]

HB 2058 (Updating Definitions Related to Small Employer Health Plans and AHPs)

In the House Committee hearing, representatives of BCBSKS; the KRHA; Opportunity Solutions Project; White Exploration, Inc., on behalf of KIOGA; and Wichita Regional Chamber of Commerce provided written-only proponent testimony.

Representatives of the Department and KAIA provided written-only neutral testimony.

A representative of ACS CAN provided written-only opponent testimony.

The House Committee modified the language of HB 2058 to update the definition of “small employer” to specify the employees participating in an AHP shall be counted in the aggregate and clarifying the determination of the number of eligible employees, include and update a definition of “association health plan” or “AHP,” and include a definition of “qualified trade, merchant, retail or professional association or business league” in KSA 2018 Supp. 40-2209d.

Fiscal Information

According to the fiscal notes prepared by the Division of the Budget on HB 2054, HB 2056, and HB 2058, as introduced, enactment of these bills would have no fiscal effect.

The Department indicates enactment of HB 2055, as introduced, may result in entities converting fully-insured health plans to new AHPs. This likely would result in a decline in premium tax collections because the carriers of fully-insured plans pay a premium tax of 2.0 percent or 5.77 percent, whereas the carriers of AHPs pay a 1.0 percent premium tax. However, the fiscal effect cannot be estimated as the number of entities that would convert fully-insured health plans to association health plans is unknown. Any fiscal effect associated with enactment of HB 2055, as introduced, is not reflected in *The FY 2020 Governor’s Budget Report*.