

SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 65

As Amended by House Committee on
Insurance

Brief*

SB 65, as amended, would amend certain provisions associated with the external review of an adverse decision (a denial of coverage for a proposed or delivered health care service), would provide for the exclusion of insurance coverage for and require an optional rider of coverage for certain abortions, and would prohibit state employees from being eligible for coverage or reimbursement for elective abortions.

Adverse Health Care Decisions

Specifically, the bill would increase the time, from 90 to 120 days, an insured person has to request an external review. Under current law, an external review must be completed within seven business days when an emergency medical condition exists; the bill would reduce that time frame to 72 hours after the date of the request for an expedited external review, or as expeditiously as the insured's medical condition or circumstances require.

The bill also would expand the definition of "emergency medical condition" to include:

- A medical condition where the time frame for completion of a standard external review would seriously jeopardize the insured's ability to regain maximum function; or

*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>

- A medical condition for which coverage has been denied on a determination that the recommended or requested health care service or treatment is experimental or investigational, if the insured's treating physician certifies, in writing, that the recommended or requested health care service or treatment for the medical condition would be significantly less effective if not promptly initiated.

The bill also would provide that when an insurer or health insurance plan has failed to strictly adhere to all internal appeal procedure requirements as prescribed by state or federal law, the claimant (insured) shall be deemed to have exhausted the internal claims and appeal process regardless of whether the insurer or the health plan asserts its substantial compliance with the appeal procedure or any error it committed was minimal.

Exclusion of Coverage for Certain Abortions: Optional Rider for Coverage

The bill also would require all individual or group health insurance policies or contracts (including the municipal group-funded pool and the State Employee Health Plan) which are issued or renewed on and after July 1, 2011, to exclude coverage for abortions unless the procedure is necessary to preserve the life of the mother. The bill would provide that coverage may be obtained through an optional rider for which an additional premium is paid. The bill also would provide a method of calculation for the premium of the optional rider of coverage.

The bill would further prohibit a health insurance exchange, established by either the State of Kansas or the federal government, from offering health insurance contracts, plans or policies that provide coverage for elective abortions. A health insurance exchange also would be prohibited from offering coverage for elective abortions through the purchase of an optional rider.

Provisions of the bill would apply to all policies, contracts, and certificates of insurance delivered, renewed, or issued within Kansas or for an individual who resides or is employed in the state and to nonprofit medical and hospital service corporations.

Exclusion of Coverage for Certain Abortions: State Employee Health Benefit Program and Cafeteria Plan (Section 125 Plans) – Health Care Flexible Spending Accounts and Health Savings Accounts

The bill would, notwithstanding any law, rule or regulation to the contrary, prohibit state employees from being eligible for coverage or reimbursements for an elective abortion under the State Health Care Benefits Program and its cafeteria program (KSA 75-6512).

Definitions

Among the definitions included for both provisions relating to elective abortions are:

“Abortion” is defined in the bill to mean “the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma or a criminal assault on the pregnant woman or her unborn child and which causes the premature termination of the pregnancy.”

“Elective” is defined to mean an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.

Background

SB 65 was introduced at the request of the Kansas Insurance Department whose representative indicated that states are required by the interim final rules for group health plans and health insurance issuers (internal claims and appeals and external review processes) under the federal health reform law to either adopt the federal rules or comply with the Uniform Health Carrier External Review Model Act. Compliance with the Uniform Model Act requires a state external review process to include, at a minimum, the Act's consumer protections. Current Kansas external review law, the representative stated, includes all but four provisions of the Uniform Model Act and these amendments will ensure Kansas avoids becoming subject to federal regulation of its external review process. There were no opponents to the bill at the time of the Senate Committee hearing.

The House Committee on Insurance amended the bill to include provisions that would require insurance policies issued or renewed on and after July 1, 2011, to exclude coverage for "elective abortions" (HB 2292, as introduced) and would prohibit state employees from using Flexible Spending Account dollars for elective abortions (HB 2293, as introduced).

Proponents of HB 2292 included Representative DeGraaf, Kansans for Life, and the Kansas Catholic Conference. Proponents of the bills generally indicated that the bill is intended to ensure that private citizens and businesses do not end up financing other person's abortions through premium payments. The proponents noted that seven states have passed similar legislation and individuals who want abortion coverage could purchase such coverage via a rider. A representative of Kansans for Life suggested an amendment to the definition of "abortion" in testimony. Opponents of the bill included Planned Parenthood of Kansas and Mid-Missouri. The Planned Parenthood representative stated that the bill provides no consideration for the health of the mother and proposes an unworkable, impractical rider

system. The representative also stated that, under the provisions of the Affordable Care Act, there are no taxpayer dollars that would be paying for elective abortion coverage in any private insurance plan sold in the exchange. The Kansas Association of Health Plans submitted neutral testimony, stating that in a number of member plans, coverage is provided if this procedure is medically necessary and that decision is made by the provider. Further, some group plans have requested specific “opt-out” language (allows groups to opt-out of coverage for abortion, unless the life of the mother is at risk if she cannot carry to full-term or has an ectopic pregnancy). The representative's comments indicated that handling this opt-out clause or having a rider in the non-group market will make these policies difficult to administer.

Proponents of HB 2293 included Representative DeGraaf, Kansans for Life, and the Kansas Catholic Conference. Representative DeGraaf indicated that state employees have the option to set up a reimbursement plan tax-free for eligible expenses. The State of Kansas, as an employer, the Representative noted, can and should have the ability on behalf of taxpayers to outlaw the payment for and/or the reimbursement of costs associated with abortions by state employees under any State Employee Benefit Program. Planned Parenthood of Kansas and Mid-Missouri appeared in opposition to HB 2293. The Planned Parenthood representative stated that the bill would ban state employees from using their own dollars, held in health savings accounts, to cover the cost of unreimbursed, legal medical care expenses and the bill seeks only to place more unnecessary burdens on women seeking abortion care.

The fiscal note prepared by the Division of the Budget on the original bill [SB 65] states that both the Kansas Insurance Department and the Kansas Health Policy Authority indicate that passage of the the bill would have no fiscal effect on agency operations.

The fiscal note for HB 2292 indicates that the Kansas Health Policy Authority states that the State Employee Health

Plan (SEHP) would need to work with its health care consultants to prepare a coverage rider and develop a sufficient contribution rate for the above optional rider. The plan would incur programming cost to modify the membership and payroll system as well as the open enrollment portal to able to track and bill for this optional coverage. The programming cost with the vendors to create an additional rider and premium assessment would be \$59,000 from within the health benefits plan funding. This is a one-time cost to make the modifications. As the SEHP is self funded, the fiscal note continues, any shortfall as a result of underpayment of premiums would have to be paid out of the plan reserves. The effect upon private insurance carriers and local governments and their health plans would depend upon what is currently covered and the plans' ability to administer a separate rider with this unique premium structure. Any fiscal effect associated with HB 2292 is not reflected in *The FY 2012 Governor's Budget Report*.

The fiscal note for HB 2293 indicates that the bill would have no fiscal effect for the state.