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Financial Institutions and Insurance

E-1 Kansas Health Insurance Mandates

Background

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas; and
- Group health insurance policies issued or renewed in Kansas. (The individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.
- Health Maintenance Organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (ERISA plans*). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans.
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

* ERISA = The Employee Retirement Income Security Act of 1974; states' laws that relate to employee benefits are pre-empted under this act.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates).

Provider mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists, chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners received recognition for reimbursement for services in 1990. In a

1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit mandates. The first benefit mandate was passed by the 1974 Legislature to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage, which could be rejected only in writing. This mandate also has been broadened over

time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients and cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After a number of attempts over the course of more than a decade, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease, as well as for educational costs associated with self-management training.

TABLE A—KANSAS PROVIDER AND BENEFIT MANDATES

Provider Mandates	Year	Mandates	Year
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Registered Nurse Practitioners	1990	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001
		Autism Spectrum Disorder	2014

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration (FDA) for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to review all State-mandated health insurance coverage periodically. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies to submit to the legislative committees assigned to review the proposal an impact report that assesses both the social and financial effects of the proposed mandated coverage. The law also requires the Commissioner of Insurance to cooperate with, assist, and provide information to any person or organization required to submit an impact report.

The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249.

Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact factors include the extent to which the proposal would increase or decrease the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to

which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Benefit Plan Study.

KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature is to apply only to the state health care benefits program for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after this one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the state health care benefits program, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the state health care benefits program or whether additional utilization and cost data are required.

Recent Review and Legislation

2009 Session

During the 2009 Session, both provider and benefits coverage requirements legislation was introduced. The legislation introduced included: certain professionals, Behavioral Sciences Regulatory Board (BSRB) (SB 104, HB 2088); assignment of benefits (HB 2128); autism spectrum disorder (SB 12, HB 2367); dietary formulas (HB 2344); colorectal cancer screening (HB 2075/Sub. for HB 2075, SB 288); mental health parity—full coverage (SB 181, HB 2231); and orally administered anticancer medications (SB 195). Additionally, the Insurance Department requested language to clarify the state's existing

mental health parity requirements to meet compliance requirements of the federal HR 1424. The language of SB 49 was amended during the conference committee process and was incorporated in 2009 HB 2214.

Legislative review (KSA 40-2249a). The Senate Financial Institutions and Insurance Committee and the House Insurance Committee also received briefings, during the regular session, from Committee staff on the current and recently considered health insurance mandates. Testimony was also received from interested parties.

2010 Session—An Emerging Trend: the Study Directive

The 2010 Legislature reviewed carryover mandates legislation and also introduced new measures for consideration. A modified version of 2009 SB 195 (oral anticancer medications; parity of pharmacy and medical benefits) was amended into 2010 SB 390, a bill updating requirements on insurers for genetic testing. Ultimately, the oral anticancer medication provisions were enacted in Senate Sub. for HB 2160, a bill that incorporated both oral anticancer medication provisions and an autism benefits study in the State Employee Health Plan (SEHP). Those provisions, introduced in 2010 SB 554, are discussed below. The Legislature further considered the reimbursement of services provided by certain licensees of the BSRB, as proposed in 2010 HB 2546 (identical to 2009 SB 104 and 2009 HB 2088, with technical amendments). The Legislature again considered a bill that would have required health insurance plans to provide coverage for telemedicine, defined by the bill as using telecommunications services to link health care practitioners and patients in different locations. The bill was jointly referred to two House committees and died in Committee.

The study before the law. The Legislature's review and response to health insurance mandates has recently included a new direction: the study before the mandate is considered and passed by the Legislature. As prescribed by the 1999 statute, a mandate is to be passed by the

Legislature, applied to the SEHP for at least one year, and then a recommendation is made about continuation in the Plan or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the State Employee Health Benefit Plan (corresponding mandate legislation in 2008: SB 511, HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Biennium.

Sub. for HB 2075 (2009) would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the SEHP, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288, introduced HB 2075). The study bill was re-referred to the House Insurance Committee and no action was taken by the 2010 Legislature.

During the 2010 Session, the House Insurance Committee again considered the reimbursement of services provided by certain BSRB licensees (SB 104; HB 2088 and HB 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the SEHP, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies that provide reimbursement for these provider services to the amounts of premiums charged by insurers that do not provide direct reimbursement. Under SB 388, KHPA would also have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in conference committee. The study requirement was also included as a proviso to the Omnibus appropriations bill (SB 572, section 76). The proviso was vetoed by the Governor; the veto was sustained.

Autism benefit. Finally, the 2010 Legislature again considered mandating coverage for certain services associated with the treatment of Autism

Spectrum Disorders (ASD). Senate Sub. for HB 2160 requires the Health Care Commission, which administers the SEHP, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age was less than 19 years during the 2011 Plan Year. Services provided by the autism services provider must include applied behavioral analysis when required by a licensed physician, licensed psychologist, or licensed specialist clinical social worker. Benefits limitations were applied for two tiers of coverage: a covered person whose age is between birth and age 7, cannot exceed \$36,000 per year; and a covered person whose age is at least 7 and less than 19, cannot exceed \$27,000 per year. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the House Speaker that included information (e.g. cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for ASD to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract that provides for accident and health services and is delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Senate Sub. for HB 2160 also required all individual or group health insurance policies or contracts (including the municipal group-funded pool and the SEHP) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA 40-2249a, was required to submit a report to the Senate President and the House Speaker that indicated the impact the provisions for orally administered anticancer medications had on the state health care benefits program, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether the coverage

should continue for the state health care benefits program or whether additional utilization and cost data is required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

The 2012 Legislature considered legislation (HB 2764 and SB 226) to enact ASD coverage requirements for covered individuals under the age of 19, similar to those requirements specified in 2010 Senate Sub. for HB 2160; the proposed requirements, however, would have applied to all individual and group health insurance policies, plans, and contracts subject to state law. The 2012 bills exempted the proposed ASD coverage from the test track requirements specified in KSA 40-2249a.

HB 2764, as amended by the House Committee of the Whole, also would have required coverage in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and other Medicaid programs covering children. The bill, among other things, also would have required a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19. HB 2764, as amended, passed the House and was referred to a Senate Committee. Attempts to advance the bill to Senate General Orders failed and the bill died in Committee. ASD legislation was introduced during the 2013 Session (SB 175; HB 2317 and HB 2395.)

The Health Care Commission opted to continue ASD coverage in the SEHP, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit (*Note: Coverage affected by 2014 law*).

The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also created the Applied Behavior Analysis (ABA) Licensure Act. The bill required

large health insurance plans to provide ASD coverage effective January 1, 2015; extended this autism coverage requirement to grandfathered individual or small group plans effective July 1, 2016; placed limits on ABA coverage, with higher limits for the first 4 years beginning with the later of the date of diagnosis or January 1, 2015, for children diagnosed with ASD between birth and 5 years of age and then reduced limits for children less than 12 years of age; defined terms related to ASD; phased in licensure requirements for ABA providers and allowed for exemption from licensure for certain providers; required the BSRB to adopt rules and regulations for the implementation and administration of the Act; authorized the BSRB to take disciplinary action as to the licenses of licensees and applicants for licensure; and applied the ASD coverage requirement to all insurance policies, subscriber contracts or certificates of insurance available to individuals residing or employed in Kansas, and to corporations organized under the Nonprofit Medical and Hospital Service Corporation Act. (The 2015 Legislature modified the definitions of “small employer” and “large employer.”) The SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018. The House Insurance Committee held hearings on two benefit mandate bills, HB 2103 (amino acid-based elemental formula) and HB 2021 (hearing aids). No formal committee action was taken during the 2017 Session; however, a SEHP study has been requested relating to HB 2103. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 interim Special Committee on Health.

Affordable Care Act Requirements— Essential Benefits

The federal Affordable Care Act (ACA) does not directly alter or preempt Kansas or other states’ laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services [HHS]), directs the Secretary of

HHS to determine the “essential health benefits” to be included in the “essential health benefits” package that Qualified Health Plans (QHPs) in the Exchange marketplaces are required to cover (coverage effective beginning in 2014). “Essential health benefits,” as defined in Section 1302(b), include at least the following general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges; additionally, all Medicaid State plans must cover these services by 2014. Women’s preventive health services were separately defined by federal regulation in August 2011 (*Federal Register* Vol. 76, No. 149: 46621-46626) and required that “a group health plan or health insurance issuer must cover certain items and services, without cost-sharing.” Coverages included annual preventive-care medical visits and exams, contraceptives (products approved by the FDA), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS “essential benefits” list of coverages, the State must pay any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rule-making for defining “essential benefits.” The bulletin outlined a “benchmark approach” that would allow states the ability to choose from the following benchmark health plans (a benchmark

plan would reflect the scope of benefits and services offered by a “typical employer plan”):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state’s commercial market by enrollment.

Should a state choose not to select a benchmark, the default option would become the small group plan with the largest enrollment. In 2010, the Insurance Department contracted with Milliman, Inc., to analyze plans and related benefits and services available in Kansas. “The Milliman Report” analyzed nine plans, and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas.

The Commissioner of Insurance submitted the following recommendations and conclusions to

the Governor for consideration of a state Essential Health Benefit benchmark:

- Recommend: Selection of the largest small group plan, by enrollment; the Blue Cross Blue Shield of Kansas Comprehensive Plan.
- Recommend: Supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP.
- Conclusion: Anticipate further guidance from HHS on the definition of “habilitative services” later in the fall of 2012. No specific recommendation was made by the Commissioner.

Twenty-five states, Kansas included, did not provide a recommendation on a benchmark plan to HHS by the September 30, 2012 deadline; therefore, HHS assigned those states the largest small group plan as the benchmark for 2013-2016 (in August 2015, HHS extended the plans to 2017).

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