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Financial Institutions and Insurance

F-1 Consumer Credit Reports and Security Freezes

Protecting Consumer Data – COVID-19 Concerns

Social Media Scams. According to data released in October 2020 from the Federal Trade Commission (FTC), there has been a surge in reports from consumers who say they lost money to a scam that started on social media, including what the FTC calls "a spike of complaints" at the height of the COVID-19 pandemic. The data show the number of complaints about social media-based scams more than tripled in the last year, with reported losses of more than $117 million attributed to this type of scam in the first 6 months of 2020 ($134 million for all of 2019). Additional information about COVID-19 resources, including tips to avoid pandemic-related scams, is available at: https://www.ftc.gov/coronavirus.

Unemployment Benefits Fraud. Another emerging scam during this pandemic features imposters filing claims for unemployment benefits using the names and personal information of persons who have not filed claims. People learn about this fraud when they receive notice from their state unemployment benefits agency or their employer about a supposed application for benefits. In this instance, consumers are advised by the FTC to report this fraud to their employers and the state unemployment benefits agency. In Kansas, individuals may file such reports with the Kansas Department of Labor, filing with this form: https://www.fraudreport.ks.gov/. Individuals will also need to take steps to report the fraud to the FTC and monitor their consumer credit reports. Information about these steps follows.

Identity Theft

Identity theft, including fraudulent claims for unemployment benefits described above, is a fast-growing crime in the United States. Consumers can combat identity theft by placing a security freeze on their credit reports (known as "consumer reports" under Kansas law), making it more difficult for identity thieves to open new accounts in the consumer's name. In recent years, various states, including Kansas, and the federal government have taken action to allow consumers to place and remove security freezes on their credit reports for free.

Security Freezes

The FTC provides consumer information on security freezes. A consumer may place a security freeze, also known as a credit freeze, on the consumer's credit report. The security freeze allows a consumer to restrict access to the credit report (the credit report or any consumer information contained in the report cannot be released without authorization from the consumer), which makes it more difficult for identity thieves to open new accounts in the consumer's name. A security freeze does not affect the consumer's credit score or prevent the consumer from obtaining a free annual credit report. However, if the consumer wants to open a new account, apply for a job, rent an apartment, or buy insurance, the consumer will need to temporarily lift the freeze.

Consumer Reporting Agencies and Credit Reports

Consumer reporting agencies (CRAs), also known as credit bureaus or credit reporting companies, compile and sell credit reports. According to the Consumer Financial Protection Bureau (CFPB), CRAs collect credit account information about consumer borrowing and repayment history, including the original amount of a loan; the credit limit on a credit card; the balance on a credit card or other loan; the payment status of the account, including whether the consumer has repaid loans on time; items sent for collection; and public records, such as judgments and bankruptcies. Credit reports also contain personal information, including the consumer's name and any name used in the past in connection with a credit account, including nicknames; current and former addresses; birth date; Social Security number; and phone numbers.

CRAs sell the information in a consumer's report to creditors, insurers, employers, and other businesses. Lenders use these reports to help determine whether they will loan a consumer money, what interest rates to offer, and whether the consumer will meet the terms of a credit account. Other businesses might use these credit reports to determine whether to offer the consumer insurance; rent a home to a consumer; or provide the consumer with cable television, Internet, utilities, or cellphone service.

The FTC specifies CRAs may not provide information about the consumer to the employer or a prospective employer without the consumer's written consent. (*Note*: Kansas law contains provisions governing release of consumer report information to employers; see KSA 50-705 and 50-712.)

The FTC's role is to protect consumers and promote competition. The FTC enforces the Fair Credit Reporting Act (FCRA) with respect to CRAs. The FCRA is a federal law that provides directions and limits on how CRAs disclose credit report information. The FCRA requires each of the nationwide CRAs (Equifax, Experian, and TransUnion) to provide a consumer with a free copy of the consumer's credit report, at the consumer's request, every 12 months. A consumer may order reports from each of the three nationwide CRAs at the same time or separately.

Equifax, Experian, and TransUnion have set up a central website, a toll-free telephone number, and a mailing address through which a consumer may obtain a free annual report. Additionally, a consumer is entitled to a free credit report if a company takes adverse action against the consumer, such as denying an application for credit, insurance, or employment, and the consumer asks for the report within 60 days of receiving notice of action. The consumer is also entitled to one free report a year, if the consumer is unemployed and plans to look for a job within 60 days; the consumer is on public assistance; or the report is inaccurate due to fraud or identity theft. Otherwise, a CRA may charge the consumer a reasonable amount for another copy of the report within a 12-month period. Kansas also has a state version of the FCRA, codified at KSA 50-701 *et seq*.

COVID-19. Each CRA has published resources for consumers:

- Equifax: https://www.equifax.com/personal/education/covid-19/

- Experian: https://www.experian.com/blogs/ask-experian/coronavirus/
- TransUnion: https://www.transunion.com/covid-19

Equifax Data Breach and Subsequent Action by Kansas and the Federal Government

On July 29, 2017, Equifax learned of a cybersecurity incident potentially impacting approximately 147 million U.S. consumers. According to Equifax, criminals exploited a U.S. website application vulnerability to gain access to certain files from May 13, 2017, through July 30, 2017. The information accessed primarily included names, Social Security numbers, addresses, and, in some instances, driver's license numbers. Criminals also accessed credit card numbers for approximately 209,000 U.S. consumers and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers. As part of Equifax's investigation into application vulnerability, Equifax identified unauthorized access to limited personal information for certain residents of the United Kingdom and Canada.

Equifax Settlement

In July 2019, the CFPB, FTC, 48 states (including Kansas), the District of Columbia, and Puerto Rico announced a $425.0 million settlement with Equifax as the result of an investigation into the 2017 data breach. Under the settlement, all U.S. consumers may request up to 6 free copies of their Equifax credit report during any 12-month period, starting in January 2020 and extending for 7 years. These reports are in addition to the free reports consumers are entitled to under current law. For information about filing a claim, consumers should visit https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement.

Kansas Law

In 2018, the Kansas Attorney General requested introduction of a bill that would prohibit CRAs from charging consumers for placing or removing a security freeze in light of the Equifax data breach. The Kansas Legislature passed 2018 HB 2580, which amended the state's FCRA to clarify that continuing statutes governing security freezes on consumer reports fall within the FCRA. The legislation also amended KSA 2018 Supp. 50-723 to remove a provision allowing a $5 fee to place, temporarily lift, or remove a freeze, and instead prohibited CRAs from charging a fee for these services.

Further, the bill amended KSA 2018 Supp. 50-725 governing security freezes for "protected consumers" (defined under the state's FCRA as an individual under 16 years of age when the request for a security freeze is made or an individual for whom a guardian or conservator has been appointed) to remove a provision allowing a $10 fee to place or remove a security freeze.

Federal Law

In May 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155). The bill, among other things, amended the FCRA to require a CRA to provide consumers with free credit freezes and to notify consumers of their availability, established provisions related to placement and removal of these freezes, and created requirements related to the protection of the credit records of minors.

As of September 21, 2018, CRAs may not charge a fee for the placement or removal of a security freeze on consumer credit reports. If a consumer requests a security freeze online or by phone, the CRA must place the freeze within one business day. If the consumer requests a freeze to be lifted, the CRA must lift the freeze within one hour. If the consumer makes the request by mail, the agency must place or lift the freeze within three business days after the CRA receives the request.

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Financial Institutions and Insurance

F-2 Kansas Health Insurance Mandates

This article provides an overview of benefit, provider, and other coverage requirements placed on certain health insurance companies in Kansas. Also discussed is the impact of the federal Patient Protection and Affordable Care Act (commonly referred to as the ACA) and recent trends in enacted requirements in Kansas law.

Mandates in Kansas Law

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. [*Note:* 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 (Employee Retirement Income Security Act of 1974 [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; and
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

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). The Legislature more recently authorized the study of proposed benefit mandates. (*Note:* See Table A on the next page for a comprehensive list of enacted 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 several attempts, 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	Benefit 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
Pharmacists	1994	Maternity Stays	1996
Advanced Practice Registered Nurses	1995	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 periodically review all state mandated health insurance coverage. 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 an impact report that assesses both the social and financial effects of the proposed mandated coverage to the legislative committees assigned to review the proposal. The law also requires the Commissioner of Insurance (Commissioner) 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 persons being unable to obtain necessary health care treatment;
- 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 change 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 Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature would only apply to the state health care benefits program (State Employee Health Plan [SEHP]) 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 SEHP, 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 SEHP or whether additional utilization and cost data are required.

Recent Review and Legislative Trends

Table B on page 5 illustrates recent legislation and enacted law with coverage requirements and related provisions placed on health insurance companies in Kansas.

2009 Session—Mandates Review

Kansas legislative review (KSA 40-2249a). The Senate Committee on Financial Institutions and Insurance and the House Committee on Insurance 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 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 SEHP 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 SEHP (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.

In addition, 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 as HB 2075).

During the 2010 Session, the House Committee on Insurance considered the reimbursement of services provided by certain Behavioral Sciences Regulatory Board 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; the proviso was vetoed by the Governor and the veto was sustained.

Autism benefit and oral anticancer medications study and law. The 2010 Legislature considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorder (ASD). Senate Sub. for HB 2160 required 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 Plan Year 2011. The services provided and limitations on benefits also were prescribed. 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 provided for accident and health services and was 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 SEHP, including data on the utilization and costs of such coverage. The report was required to include a recommendation on whether the coverage should continue for the SEHP or whether additional utilization and cost data was required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

Table B
Kansas Provider and Benefit Mandates

Legislation	Proposed Mandate	Mandate Type	Action Status
2009 SB 12/ HB 2387; 2010 SB 554	Autism, coverage of	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 195; 2010 SB 390	Anticancer medications, orally-administered; genetic testing (introduced version, SB 390)	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 288; Sub. for HB 2075	Colorectal cancer screening	Benefit (substitute bill contained a study only)	Referred to Senate Committee on Financial Institutions and Insurance. Died in Committee (SB 288); Substitute bill passed. Re-referred to House Committee on Insurance; no action taken by 2010 Legislature.
2009 SB 104/ HB 2088; 2010 HB 2546	Clinical professional counselors, therapists, psychotherapists	Provider	Hearings held (SB 104, HB 2546); bills died in committee.
2009 HB 2344	Dietary formulas	Benefit	Hearing held; died in House Committee on Health and Human Services.
2009 SB 49/ SB 181/ HB 2244/ HB 2231	Mental health, substance abuse	Benefit	See HB 2214 (modifies existing Mental Health Parity Act/ mandate)
2009 HB 2329	Procedures, implants approved by the FDA	Benefit	Died in Committee.
2010 HB 2424	Telemedicine, payment for (telecommunications services)	Benefit	Jointly referred, later separately referred. Died in Committee.
2011 SB 226; HB 2216; HB 2764	Autism Spectrum Disorder, coverage of	Benefit	SB 226 and HB 2216 died in Committee. HB 2764 passed the House; died in Senate Committee. *The bills exempted the proposed mandate from the test track requirements (study).
2011 HB 2228	Hearing aids, coverage of	Benefit	Died in Committee.
2013 SB 175, HB 2317, HB 2395; 2014 HB 2704; HB 2759; HB 2744	Autism Spectrum Disorder, coverage of	Benefit	See HB 2744 (benefit mandate).
2014 HB 2690	Telemedicine mental health services, coverage of	Benefit	Died in Committee.
2015 SB 303	Autism Spectrum Disorder, coverage of	Benefit	See HB 2352 (modified existing mandate).
2017 SB 165	Abuse-deterrent opioid analgesic drug products; emergency opioid antagonists	Benefit	Hearing held. Died in Committee.
2017 HB 2103	Amino acid-based elemental formula	Benefit	Hearing held. Study requested.

Table B
Kansas Provider and Benefit Mandates

Legislation	Proposed Mandate	Mandate Type	Action Status
2017 HB 2119, HB 2255	Dental services	Contract/ Network	Hearing held. Died in Committee.
2017 HB 2021	Hearing aids	Benefit	Hearing held. Died in Committee.
2017 HB 2254; HB 2206; 2018 HB 2674	Telehealth; telemedicine	Benefit	See Senate Sub. for HB 2028.
2018 SB 417; HB 2679	Contraceptives	Benefit	Died in Committee.
2019 SB 163; HB 2124	Contraceptives	Benefit	Died in Committee.
2019 HB 2307; 2020 HB 2633	Dental Services	Contract/ Network. Establishes non-covered dental benefits and plan limitations.	Passed House; Died in Senate Committee. Died in House Committee.
2019 HB 2074	Preexisting Conditions	Contract (Individual market only).	Hearing held. Died in Committee.
2020 SB 401	Hearing Aids	Benefit	Died in Committee.
2020 HB 2556	Prosthetic Devices	Benefit	Died in Committee.

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. The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee on Insurance and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required, subject to limitations on benefits and services provided, 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 SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018 Biennium Study, Special Committee

The House Committee on Insurance 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 was requested relating to HB 2103 to provide more information on economic and social impact factors associated with the requirements of KSA 40-2249. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 Interim Special Committee on Health.

Amino acid-based elemental formula. Following receipt of the SEHP report, the House Committee on Insurance recommended a substitute bill limiting the coverage of formula to the SEHP enrollees for a one-year (“test track") period in Plan Year 2019 and requiring a report to the 2020 Legislature. These provisions ultimately were enacted in 2018 SB 348. (*Note:* The report, submitted in March 2020, indicates in 2019, the SEHP had 4 members for whom prior authorizations for the formula were submitted. One of the requests met the guidelines for coverage and was approved. This member submitted one claim, for a total allowed amount of $203.80. The SEHP elected to continue the pilot program for the elemental formula for Plan Year 2020.)

Telemedicine. The 2017 Special Committee on Health did not recommend the 2017 legislation (HB 2206 and HB 2254), but did recommend the introduction of comprehensive telemedicine legislation in the 2018 Session.

The Kansas Telemedicine Act (Senate Sub. for HB 2028) provides that coverage for a health care service delivered *via* telemedicine is not mandated if such service is not already covered when delivered by a health care provider and subject to the terms and conditions of the covered individual's health benefits plan.

2019-2020 Biennium; Amendments to Existing Mandates, Coverage Requirements

In addition to the legislation highlighted in Table B, legislation was introduced to expand existing mandated benefits—breast cancer screening and mental health treatment. SB 464 would have required a health insurer that provides benefits for diagnostic breast cancer examinations to ensure that the cost-sharing requirements and treatment limitations that are applicable to a diagnostic examination are not less favorable than the requirements and limitations that apply to a screening examination for an insured patient. The bill died in Senate Committee.

HB 2459/SB 249 would have amended provisions in the Kansas Mental Health Parity Act previously applying to coverage of mental illness, alcoholism, drug abuse, or other substance use disorders to expand the coverage associated with treatment of mental illness or substance use disorders. Among amendments, the bill would have required insurers to provide coverage without the imposition of prior authorization, concurrent review or retrospective review or other forms of utilization review for the first 14 days of medically necessary inpatient and 180 days of medically necessary outpatient treatment and services provided in-network. The bill would further designate the amendments to this act as "The Kristi L. Bennett Mental Health Parity Act." Following its hearing in the House Committee on Insurance, HB 2459 was assigned to a subcommittee for further review. The bill died in House Committee; SB 249 died in Senate Committee.

ACA Requirements—Essential Health Benefits

The 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 the required coverage of at least the following ten 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. 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 K health plan or health insurance issuer must cover certain items and services, without costsharing." 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 defray 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 rulemaking for defining "essential benefits." The bulletin outlined a "benchmark approach" allowing 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 not select a benchmark, the default option would become the small group plan with the largest enrollment in the state. In 2010, the Kansas 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 submitted the following recommendations and conclusions to the Governor for consideration of a state essential health benefits benchmark: selection of the largest small group plan, by enrollment (the Blue Cross Blue Shield of Kansas Comprehensive Plan); supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas Children's Health Insurance Program; and anticipation of further guidance from HHS on the definition of "habilitative services" later in fall 2012. No specific recommendation was made by the Commissioner.

Including Kansas, 25 states 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).

Recent developments. On April 9, 2018, the Centers for Medicare and Medicaid Services finalized its Benefits and Payment Parameters rule for 2019. Among changes prescribed in the rule, beginning in Plan Year 2020, states are given additional flexibility to define their benchmark plan and can update plans on an annual basis. States will also be permitted to maintain their current 2017 benchmark plan without taking any action.

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F-3 Payday Loan Regulation and Update on Small Dollar Lending in Kansas

The Kansas Legislature began its review of payday lending during the 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner violating the Kansas Uniform Consumer Credit Code (generally referred to as either the UCCC or Code). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time and were collecting charges exceeding those allowed under the UCCC.

The Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check-cashing service. The Attorney General, concurring such practice violated the UCCC, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 (1991) addressed the concern about excessive interest charges and fees. In some instances, the annual percentage rate on these short-term loans ranged from 600.0 percent to 1,600.0 percent. Despite these rates, neither the Consumer Credit Commissioner nor the Office of the Attorney General had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to the Senate Committee for possible action .

Review of payday loan regulation, continued. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action in the House, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36.0 percent to 360.0 percent. Several members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Attorney General and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender ($680) and subject to the following conditions:

- On any amount up to and including $50, a finance charge of $5.50 could be charged; on amounts in excess of $50 but not more than $100, the finance charge could be 10.0 percent of the amount, plus a $5.00 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7.0 percent of the amount with a $10 minimum, plus a $5.00 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of $17.50, plus a $5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3.0 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Consumer Credit Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans. The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. During the 1999 Session, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272.

The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify. The Acting Consumer Credit Commissioner commented to the Senate Committee the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General advised that while the "Office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy." Opponents of the bill, several operators of payday loan shops, argued that reducing the allowable interest rate charge to 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, as enacted during the 1999 Session, made several significant changes to the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans.

During the 2001 Session, the Deputy Commissioner (who is the Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a “Notice to Borrower” appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner. During the 2002 Session, HB 2877 was introduced, which would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including $50, the charge would have been reduced from $5.50 to $4.00; on amounts in excess of $50 but not more than $100, the charge would have been reduced from 10.0 percent to 8.0 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7.0 percent to 5.0 percent and the minimum allowable charge would have been reduced from $10 to $8; and on amounts of $250 but not greater than $860, the charge would have been reduced from 6.0 percent to 4.0 percent and the minimum allowable charge reduced from $17.50 to $12.50.

HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee requested, and the Legislative Coordinating Council (LCC) created, an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the regulation of payday loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation. The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim, nor complete a report on its assigned topic.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans. The bill:

- Revised the maximum cash advance from $860 to $500;
- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions, which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: “Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution”;
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and
- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee also reviewed a payday loan bill, SB 439, that would have created a maximum loan amount ($500, rather than $860, which was adopted in HB 2685) and a flat fee (not more than $15 per $100 loaned). The bill received a hearing, but no action was taken on the bill, and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's (OSBC) representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, which included provisions for both mortgage brokers and supervised lenders. In addition to the new enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than $500 is to be an amount not to exceed 15.0 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the U.S. Armed Forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A "military borrower" is defined as any member of the U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository lending model, a closed-end installment loan (proposed in 2005 HB 2278 and 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Legislative Proposals (2007-2010)

The regulation of payday lending again was addressed during the 2007, 2008, and 2010 Sessions. SB 217 (2007) and HB 2244 (2007) would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time, and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717 (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 Biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a $1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to the OSBC. The moneys would have been transferred to the Professional Development Fund (Kansas State Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note the bill would generate approximately $1.2 million from the estimated 1.2 million payday and title loans that would be issued in FY 2011. The bill was referred to the Senate Committee; the bill died in Committee.

Recent Legislative Proposals (2013-2019)

The 2013 Legislature introduced legislation (SB 30 and HB 2036) that would have amended the UCCC to prevent lenders from making payday loans to a consumer who already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator to establish an Internet database; a verification fee of up to $1 could be charged by the OSBC or its vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee.

During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the "Respectful Lending to Kansas Seniors Act." The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen's federal adjusted gross income for the taxable year. A hearing was not held on the bill, and it died in Committee.

The 2017 Legislature introduced SB 234, which would have set a 36.0 percent cap and restricted the terms of payday loans. The bill was referred to the Senate Committee on Federal and State Affairs. A hearing was not held on the bill, and the bill died in the Committee. (*Note:* The Senate Committee on Federal and State Affairs held an informational briefing on payday lending during the 2017 Session, but did not hold a hearing on a specific piece of legislation.) The 2017 Legislature also introduced HB 2267, which would have, among other things, amended provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would have amended the definition of "consumer loan" and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill was originally referred to the House Committee on Financial Institutions and Pensions, but was referred to the House Committee on Federal and State Affairs.

HB 2267 and related regulatory review was assigned by the LCC to the interim Special Committee on Financial Institutions and Insurance (Special Committee). The Special Committee met in October 2017. As part of the Report of the Special Committee to the 2018 Legislature, the Special Committee noted its discussion on HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB). The Special Committee also encouraged the OSBC to hold regular stakeholder meetings to assist in drafting changes to the UCCC and requested regular updates during the 2018 Session.

No further action was taken on HB 2267 during the 2018 Session. In addition, the 2018 Legislature introduced SB 402, which would have established the Kansas Veterans Loan Act and added a new section to the UCCC regarding consumer loan transactions made with veterans. SB 402 was referred to the Senate Committee. A hearing was not held on the bill; the bill died in Committee.

2019-2020 Biennium. The House Committee on Veterans and Military introduced HB 2363, which would have required certain lenders under the Code to inquire about any potential borrower's veteran status on loan applications. Lenders who extend loans to veterans would have been required to provide veterans with the pamphlet

"Protecting Our Kansas Veterans." The pamphlet would be published by the OSBC and would explain the veteran's rights under the Code. Fines could be assessed on lenders violating provisions of the bill. The bill was referred to the House Committee on Financial Institutions and Pensions.

HB 2254 would have addressed the broader topic of small dollar lending and supervised loans by requiring state-chartered banks to provide subprime loans totaling at least 5.0 percent of the bank's capital. The bill would define "subprime loan" as a loan made to a borrower that has "either a nonexistent credit score or a credit score lower than 620." In addition, the bill would exempt banks from any penalties under the State Banking Code for providing subprime loans. The bill was referred to the House Committee on Financial Institutions and Pensions. Both HB 2254 and HB 2363 died in the House Committee on Financial Institutions and Pensions at the conclusion of the biennium.

On February 17, 2020, the House Committee on Financial Institutions and Pensions held a hearing on the topic of payday lending, with invited conferees representing payday loan regulators, consumers, and the industry. The meeting was informational only, and no action was scheduled or taken on pending legislation.

Small Dollar Lending Activity in Kansas

During the 2017 Interim Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner in November 2020 summarizes small dollar loans provided by licensees: payday only (39); payday only branches (62); payday and title (10); payday and title branches (114); title only (4); and title only branches (41). The number of locations for these loans totals 270 (53 companies, 217 branches). The calendar year (CY) 2019 loan volume for payday loans was an estimated $239.2 million (in CY 2013, the volume was an estimated $396.0 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online database available to the public of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders.

The searchable database contains the license number, company name, company location, date of next renewal, and notes the status of each license. This information is accessible on the OSBC's website at https://www.osbckansas.org/lookup.html.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act," PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established the CFPB within the Federal Reserve System with rulemaking, enforcement, and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010.

The CFPB has been evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). In June 2016, it proposed a rule intended to require lenders to "take steps to make sure consumers have the ability to repay their loans" and include other borrower protections to address debit fees assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its Final Rule. The implementation period would be 21 months following the formal publication of the Final Rule. The Final Rule covered short-term loans less than 45 days in duration that are open-end or closed end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

CFPB actions. On January 16, 2018, the CFPB issued the following statement: "January 16, 2018 is the effective date of the Bureau of Consumer Financial Protection's Final Rule entitled 'Payday, Vehicle Title, and Certain High-Cost Installment Loans' ('Payday Rule'). The Bureau intends to engage in a rulemaking process so that the Bureau may reconsider the Payday Rule."

Proposed Rule. In February 2019, the CFPB issued proposed rules to rescind the mandatory underwriting provisions of the 2017 Final Rule and to delay the August 19, 2019, compliance date for those provisions to November 19, 2020. Public comment was sought on both proposals (the Final Rule delaying the compliance date was issued in June 2019).

The provisions of the Final Rule the CFPB proposes to rescind: (1) provide that it is an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; (2) prescribe mandatory underwriting requirements for making the ability to-repay determination; (3) exempt certain loans from the underwriting requirements; and (4) establish related definitions, reporting, and recordkeeping requirements.

Final Rule. On July 7, 2020, the CFPB issued the Final Rule, rescinding the mandatory underwriting provisions (described above). The CFPB issued a statement indicating the provisions were rescinded after "re-evaluating the legal and evidentiary bases for these provisions and finding them to be insufficient." The Final Rule does not rescind or change the payments provisions of the 2017 rule. In response to the *Seila* Law decision (structure of and rulemaking authority of the CFPB), the payments provisions were separately ratified. Among those provisions retained, the Final Rule prohibits lenders from making a new attempt to withdraw funds from an account after two consecutive failed attempts without consumer consent.

Information about covered loans, payment notices, and payment transfers under the Final Rule is available at:

https://www.consumerfinance.gov/policy-compliance/guidance/consumer-lending-resources/payday-lending-rule/payday-lending-rule-faqs/.

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