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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairman Sutton and the House Committee on Insurance

From: Office of Revisor of Statutes

Date: March 7, 2024

Subject: **HB 2810:** Amending the Kansas life and health guaranty association act to include health maintenance organizations as member insurers and broadening the assessment base for long-term care insurance insolvencies.

HB 2810 enacts the 2017 revisions to the NAIC Life and Health Insurance Guaranty Association Model Act to effectuate two main goals. The first is to allocate long-term care insurance assessments equally between life insurance and health insurance member insurers, and the second is to include health maintenance organizations as member insurers of the association. The bill amends K.S.A. 40-3002, 40-3003, 40-3005 through 40-3013, 40-3013a, 40-3016 and 40-3018 and also repeals K.S.A. 40-3004.

New section 1 of the bill essentially states that any matter relating to a member insurer placed under an order of liquidation before the effective date of the bill will be governed by the provisions of law that were in effective before the effective date of the bill. Similarly, matters occurring after the effective date of this bill will be governed by the provisions of law that are in effect at that time.

Section 2 amends K.S.A. 40-3002, which states the purpose of the act. Here, the amendments consist primarily of drafting cleanup and also specifies that the association consists of member insurers, subject to assessment to provide the funds necessary to carry out the provisions of the act.

Section 3 amends K.S.A. 40-3003, which states the policies and contracts provided coverage by the act. The amendments update certain terms and conditions in the sections. Further, the section adds health maintenance organizations to the definition of "health insurer" as an entity covered by the act. This section also adds an exemption from coverage for "a person who acquires rights to receive payments through a structured settlement factoring transaction."

Section 4 amends K.S.A. 40-3005, which is the definitions section of the act. The bill adds several new defined terms to the act and also amends several other definitions by including health maintenance organization to the language contained therein.

Section 5 amends K.S.A. 40-3006, which is the statute that created the association. The bill changes the term "health insurance account" to "health account" in order to support the addition of health maintenance organizations in the association.

Section 6 amends K.S.A. 40-3007, relating to the association's board of directors. The bill makes some adjustments to the number of members of the board of directors and states that the board members shall be removable for inefficiency, neglect of duty and malfeasance. This amendment is similar in form and content to other amendments proposed by the commissioner of insurance in HB 2714.

Section 7 amends K.S.A. 40-3008, pertaining to powers and duties of the association, the limits of association liability and the mandatory payment of certain claims. This section makes several substantive amendments to the statute. First, the bill would allow the association to provide substitute coverage for policies and contracts covered by the

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association and would allow the association to have authority to file for rate or premium increases. The rates for substitute or reissued coverage must be actuarially justified. Additionally, this section would authorize the association to defer the payment of cash values, policy loans or other rights for the period of a moratorium imposed by the receivership court. This section would also require a deposit held in the state pursuant to law or for the benefit of creditors that is not turned over by the domiciliary liquidator shall be paid to the association, and the association shall be allowed to retain a portion of the amount as a distribution of estate assets pursuant to state receivership law. Additionally, this section would establish that the association shall have common-law rights of subrogation and any other legal remedy that would have been available to the impaired insurer or policyholder, contract holder, beneficiary, enrollee or payee thereof. This subsection also establishes certain circumstances under which the association can recover moneys paid by it for covered obligations.

Section 8 amends K.S.A. 40-3009, pertaining to assessments of member insurers. This section eliminates the annual \$300 Class A assessment maximum. The section also establishes a new provision that allocates assessments for long term care insurance equally between accident and health member insurers and life and annuity member insurers.

Section 9 amends K.S.A. 40-3010, pertaining to the association's plan of operation. The section requires the association to establish procedures whereby a director may be removed for cause, or when a member insurer director becomes impaired or insolvent and further requires the board of directors to establish policies and procedures to resolve conflicts of interest.

Section 10 amends K.S.A. 40-3011 pertaining to powers of the commissioner. The amendment would make any final action or order of the commissioner subject to judicial review.

Section 11 amends K.S.A. 40-3012 pertaining to the duties of the commissioner and board for the detection and prevention of insurer impairment. The amendment to this section strikes the ability of the board of directors, upon majority vote, to request that the commissioner order an examination of a member insurer that the board, in good faith, believes to be an impaired or insolvent insurer.

Section 12 amends K.S.A. 40-3013, pertaining to the liability for unpaid assessments of insureds of impaired or insolvent insurers under the plan. The amendment to this section authorizes the association, as a creditor of the impaired or insolvent insurer, to receive a disbursement of assets out of the marshaled assets, as a credit against contractual obligations under the act.

Section 13 amends K.S.A. 40-3013a pertaining to the summary document that the association must prepare describing the general purpose and limitations of the act. The amendments include updates to terms and conditions relating to the summary document and requires that a member insurer retain evidence of compliance with the preparation of the summary document for so long as the policy or contract for which the notice is given remains in effect.

Section 14 amends K.S.A. 40-3016 by adding a provision to allow tax-exempt insurers to recoup their assessments through surcharges on their premiums.

Finally, Section 15 amends K.S.A. 40-3018 by increasing the length of the stay of proceedings in which the impaired or insolvent insurer is a party to from 60 to 180 days.

If enacted, the bill would become effective on July 1, 2024.