

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 348**

As Agreed to April 2, 2018

Brief*

SB 348 would authorize electronic delivery as the standard method of delivery for certain health insurance-related documents and require the State Employees Health Care Commission (Health Care Commission) to provide coverage for amino acid-based elemental formula, as specified.

Electronic Delivery as the Standard Method of Delivery

The bill would amend the Electronic Notice and Document Act under the Insurance Code.

The bill would authorize a health benefit plan (plan) to utilize electronic delivery as the standard method of delivery for explanation of benefits and policy, including federally required summary of benefit and coverage documents, to a party when paper documents are readily available and notification has been provided to the party explaining the party's option to receive paper documents *via* U.S. mail.

The bill would require a plan to deliver paper documents *via* U.S. mail to a party if the party notifies the plan of a desire to receive the documents in such a manner instead of by electronic delivery.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would state “health benefit plan” has the same meaning as in KSA 40-4602 (any hospital or medical expense policy; health, hospital, or medical service corporation contract; a plan provided by a municipal group-funded pool; a policy or agreement entered into by a health insurer or health maintenance organization contract offered by an employer; or any certificate issued under any such policies, contracts, or plans. The definition excludes certain types of policies or certificates). The bill would further specify a “health benefit plan” also includes any individual health insurance policy, individual or group dental insurance policy, or nonprofit dental services corporation.

The bill would define a “nonprofit dental services corporation” as a nonprofit corporation organized pursuant to the Nonprofit Dental Service Corporation Act (KSA 40-19a01 *et seq.*).

The bill would amend law related to the procedure for electronic delivery of notice in KSA 2017 Supp. 40-5804 under the Electronic Notice and Document Act to clarify such provisions are not applicable to the electronic delivery of explanation of benefits and policies, including federally required summary of benefit and coverage documents, to a party by a plan.

***Coverage for Amino Acid-based Elemental Formula;
Report to the Legislature***

The bill would require the Health Care Commission (which administers the State health care benefits program for state employees and other qualified entities) to provide coverage for amino acid-based elemental formula, regardless of delivery method, for the diagnosis or treatment of food protein-induced enterocolitis syndrome, eosinophilic disorders, or short bowel syndrome if this formula is prescribed by a prescriber as defined in and authorized by the state Pharmacy Act who is also licensed by the applicable medical professional licensure entity in Kansas. This

coverage would begin at the start of the next plan year (January 1, 2019).

The bill would require the Health Care Commission, pursuant to the requirements of the Insurance Code regarding mandated health insurance benefits, to submit on or before March 1, 2020, a report to the Senate President and the Speaker of the House of Representatives. The report is to include the following information pertaining to the mandated coverage for amino acid-based elemental formula provided during the 2019 Plan Year:

- The impact this mandated coverage had on the State health care benefits program (also referred to as the State Employee Health Plan [SEHP]);
- Data on the utilization of coverage for amino acid-based elemental formula by covered individuals and the cost of providing such coverage; and
- A recommendation whether such mandated coverage should continue for the SEHP or whether additional utilization and cost data are required.

Under the bill, the Legislature would be permitted to consider in the next session following the report, the 2020 Legislative Session, whether to mandate coverage for amino acid-based elemental formula in individual or group health insurance policies, medical service plans, health maintenance organizations, or other contracts that provide for accident and health services delivered, issued for delivery, amended, or renewed on or after July 1, 2021.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 348, as amended by the House Committee on Insurance; agreed to a technical amendment to SB 348; agreed to insert the contents of Sub. for HB 2103, as recommended by the House Committee on Insurance; and agreed to make all provisions of the bill effective upon publication in the *Kansas Register*.

Background

The bill contains provisions of SB 348 and Sub. for HB 2103.

SB 348 (Electronic Delivery as the Standard Method of Delivery)

SB 348 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of Blue Cross and Blue Shield of Kansas City (Blue KC). In the Senate Committee hearing, representatives of Blue Cross and Blue Shield of Kansas, Inc. (BCBSKS), Blue KC, and Delta Dental of Kansas (Delta Dental) testified in support of the bill. The proponents generally stated the bill would help reduce operating costs. The representative of BCBSKS noted that, in 2017, the company mailed out more than 5.4 million explanation of benefits to its members at a cost of approximately \$2.7 million. The representative of Delta Dental requested an amendment to specify the bill would apply to services corporations. Written-only proponent testimony was provided by representatives of America's Health Insurance Plans (AHIP) and the Kansas Insurance Department (Department).

No neutral or opponent testimony was provided.

The Senate Committee amended the bill to specify the bill would apply to nonprofit dental services corporations. [Note: The House Committee on Insurance further amended this language and the Conference Committee retained the House Committee amendment.]

In the House Committee on Insurance, a representative of Blue KC appeared in support of the bill and requested an amendment to change the definition of “health benefit plan.” The representative explained the original definition applied only to small group plans and the intent was for the bill’s provisions to apply to individual, small, and large group plans. Representatives of BCBSKS and the Department also appeared as proponents. Written-only proponent testimony was submitted by a representative of Delta Dental.

No neutral or opponent testimony was submitted.

The House Committee amended the bill to create two requirements on plans electing to use electronic delivery as its standard notification method. The amendment was requested by Representative Hodge. The House Committee also amended the bill to expand the definition of “health benefit plan” by assigning the definition from the Patient Protection Act (KSA 40-4602) and further specifying the term includes any individual health insurance policy, individual or group dental insurance policy, or nonprofit dental services corporation. [Note: The Conference Committee retained these amendments and made a technical amendment; the technical amendment updates the language to correctly reflect the House Committee’s amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 348, as introduced, the Department indicates enactment of the bill would have no fiscal effect.

***Sub. for HB 2103 (Coverage for Amino Acid-based
Elemental Formula; Report to the Legislature)***

Sub. for HB 2103 was introduced by the House Committee on Insurance. As introduced, HB 2103 would have mandated health insurance plans and contracts subject to Kansas law, on and after July 1, 2017, to provide coverage for amino acid-based elemental formula regardless of the delivery method. The House Committee recommended a substitute bill that would limit this coverage to the SEHP for a one-year (“test track”) period and require a report to the 2020 Legislature. [Note: The Conference Committee retained the substitute bill.]

In the House Committee hearing in 2017, proponents of the bill included Representative Trimmer; children, and parents of children, affected with disorders that include eosinophilic esophagitis (EoE), eosinophilic gastritis, eosinophilic colitis, and eosinophilic gastrointestinal disease; and a pediatric gastroenterologist who serves as the Co-Director for the Eosinophilic Esophagitis Center. Written-only proponents included the President of the Campaign Urging Research for Eosinophilic Disease (CURED) Board, Co-Director of the Food Protein-Induced Enterocolitis Syndrome (FPIES) Foundation, and family members of affected children.

Parents and children spoke to the challenges in diagnosing and treating the symptoms of eosinophilic diseases, including illness and frequent absences from school; problems with swallowing, vomiting, stomach pain, and weight loss; and the use of elimination diets to determine the cause(s). One child with EoE detailed the first signs and symptoms, the elimination of favorite foods, the start of medications and elemental formula, doctors’ visits, the inability to attend school or be an active teenager, and worrying about how his family will afford his formula and care. His parent stated out-of-pocket formula will cost \$1,500 or more per month. The pediatric gastroenterologist spoke about treatments for EoE and other eosinophilic gastrointestinal

disorders, FPIES, and short bowel syndrome, noting amino acid-based formulas are a medical food prescribed as a treatment and 97 percent of patients with EoE improve on an amino acid-based diet. She further stated a child who is able to drink this formula should not be required to obtain a nasogastric tube (NG-tube) or a surgically placed gastrostomy tube (G-tube) to have insurance financially cover the formula.

Opponents of the bill were representatives of AHIP and BCBSKS. Written-only opponent testimony was submitted by a representative of the Kansas Chamber. The AHIP representative outlined AHIP's opposition to any state health insurance mandate: mandates can hinder health plans' ability to respond in today's current environment requiring coverage of specified treatments, services, or conditions; health plans routinely exclude non-prescription material, regardless of cost; Kansas has been very hesitant to require mandates and equipment related to health care because such mandates often misallocate resources by requiring consumers or their employers to spend available funds or receive benefits they would otherwise not purchase; and the Legislature must carefully analyze whether the mandate in the bill is above and beyond the Essential Health Benefits, which could lead to additional costs to the State. The Kansas Chamber representative cited its Business Leader poll where business leaders voiced concerns about managing health care costs and obtaining affordable basic health care coverage for employees.

No neutral testimony was provided.

Following hearings on HB 2103 in 2017, the House Committee on Insurance Chairperson submitted a Committee request to the SEHP for assistance in its consideration of this bill. The Committee's request cited the bill's fiscal note, which stated the SEHP provides coverage, but it is limited to only certain treatments (not food formulas or other food replacements) in Plan C. The House Committee requested data analysis and study review using the social and financial

impact factors required to be reported by proponents of proposed mandate legislation found in KSA 40-2249. In January 2018, the Director of the SEHP, with the assistance of a consultant, provided its response, including other states' studies of the mandate proposed in the bill. The report concluded that the average prevalence rate of the conditions (specified in the original bill) was 0.01 percent (85 SEHP members). The usage rate of affected people seeking treatment would be 22 percent (19 members). The estimated annual formula cost per user would be \$16,000. The total annual cost for treatment in the SEHP would be \$304,000 (19 members at \$16,000 annually). This data estimate is similar to the cost estimate provided with the fiscal note on HB 2103, as introduced (\$339,200 in the first full year of coverage).

insurance, electronic delivery as standard method, State Employees Health Care Commission, amino acid-based elemental formula, Legislature

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