

SENATE BILL No. 14

By Committee on Financial Institutions and Insurance

1-14

1 AN ACT concerning **health care; relating to** the Kansas uninsurable health
2 insurance plan act; pertaining to lifetime limits; pertaining to participation in
3 plan by certain children; **enacting the health care freedom act** amending
4 K.S.A. 2010 Supp. 40-2122 and 40-2124 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 40-2122 is hereby amended to read as
8 follows: 40-2122. (a) The following individuals shall be eligible for plan
9 coverage provided they meet the criteria set forth in subsection (b):

10 (1) Any person who has been a resident of this state for at least six
11 months;

12 (2) any person who is a legal domiciliary of this state who previously
13 was covered under the high risk pool of another state, provided they apply
14 for coverage under the plan within 63 days of losing such other coverage
15 for reasons other than fraud or nonpayment of premiums;

16 (3) any federally defined eligible individual who is a legal
17 domiciliary of this state; or

18 (4) any federally defined eligible individual for FTAA.

19 (b) Those individuals who are eligible for plan coverage under
20 subsection (a) must provide evidence satisfactory to the administering
21 carrier that such person meets one of the following criteria:

22 (1) Such person has had health insurance coverage involuntarily
23 terminated for any reason other than nonpayment of premium;

24 (2) such person has applied for health insurance and been rejected by
25 two carriers because of health conditions;

26 (3) *Such person is a child under the age of 19 years and has been*
27 *unable to purchase or obtain coverage under an individual health*
28 *insurance policy providing health insurance coverage, because such*
29 *coverage is not available for sale in the county in which the child resides;*

30 ~~(3)~~ (4) such person has applied for health insurance and has been
31 quoted a premium rate which is in excess of the plan rate;

32 ~~(4)~~ (5) such person has been accepted for health insurance subject to a
33 permanent exclusion of a preexisting disease or medical condition;

34 ~~(5)~~ (6) such person is a federally defined eligible individual; or

1 (6) (7) such person is a federally defined eligible individual for
2 FTAA.

3 (c) Each resident dependent of a person who is eligible for plan
4 coverage shall also be eligible for plan coverage.

5 (d) The following persons shall not be eligible for coverage under the
6 plan:

7 (1) Any person who is eligible for medicare or is eligible for
8 medicaid benefits;

9 (2) any person who has had coverage under the plan terminated less
10 than 12 months prior to the date of the current application, except that this
11 provision shall not apply with respect to an applicant who is a federally
12 defined eligible individual;

13 (3) any person who has received accumulated benefits from the plan
14 equal to or in excess of the lifetime maximum benefits under the plan
15 prescribed by K.S.A. 40-2124, and amendments thereto;

16 (4) any person having access to accident and health insurance through
17 an employer-sponsored group or self-insured plan, including coverage
18 under the consolidated omnibus budget reconciliation act (COBRA),
19 except that the requirement for exhaustion of any available COBRA or
20 state continuation is waived whenever such person:

21 (A) Is eligible for the credit for health care costs under section 35 of
22 the internal revenue code of 1986; and

23 (B) has three months of prior creditable coverage as described in
24 subsection (c) of K.S.A. 40-2124, and amendments thereto; or

25 (5) any person who is eligible for any other public or private program
26 that provides or indemnifies for health services.

27 (e) Any person who ceases to meet the eligibility requirements of this
28 section may be terminated at the end of a policy period.

29 (f) All plan members, insurers and insurance arrangements shall
30 notify in writing persons denied health insurance coverage, for any reason,
31 of the availability of coverage through the Kansas health insurance
32 association.

33 Sec. 2. K.S.A. 2010 Supp. 40-2124 is hereby amended to read as
34 follows: 40-2124. (a) Coverage under the plan shall be subject to both
35 deductible and coinsurance provisions set by the board. The plan shall
36 offer to current participants and new enrollees no fewer than four choices
37 of deductible and copayment options. Coverage shall contain a
38 coinsurance provision for each service covered by the plan, and such
39 copayment requirement shall not be subject to a stop-loss provision. Such
40 coverage may provide for a percentage or dollar amount of coinsurance
41 reduction at specific thresholds of copayment expenditures by the insured.

42 (b) Coverage under the plan shall be subject to a maximum lifetime
43 benefit of ~~\$2,000,000~~ \$3,000,000 per covered individual. ~~In succeeding~~

~~1 years of operation of the plan and subject to the approval of the
2 commissioner, coverage under the plan shall be subject to a maximum
3 lifetime benefit per covered individual as determined by the board. Such
4 recommendation regarding the maximum lifetime benefit per covered
5 individual shall be submitted to the commissioner and shall become
6 effective upon approval in writing by the commissioner.~~

7 (c) Coverage under the plan shall exclude charges or expenses
8 incurred during the first 90 days following the effective date of coverage
9 as to any condition: (1) Which manifested itself during the six-month
10 period immediately prior to the application for coverage in such manner as
11 would cause an ordinarily prudent person to seek diagnosis, care or
12 treatment; or (2) for which medical advice, care or treatment was
13 recommended or received in the six-month period immediately prior to the
14 application for coverage. In succeeding years of operation of the plan,
15 coverage of preexisting conditions may be excluded as determined by the
16 board, except that no such exclusion shall exceed 180 calendar days, and
17 no exclusion shall be applied to *either* a federally defined eligible
18 individual provided that application for coverage is made not later than 63
19 days following the applicant's most recent prior creditable coverage *or an*
20 *individual under the age of 19 years who is eligible for enrollment in the*
21 *plan under paragraph (3) of subsection (b) of K.S.A. 40-2122, and*
22 *amendments thereto.* For any individual who is eligible for the credit for
23 health insurance costs under section 35 of the internal revenue code of
24 1986, the preexisting conditions limitation will not apply whenever such
25 individual has maintained creditable health insurance coverage for an
26 aggregate period of three months, not counting any period prior to a 63-
27 day break in coverage, as of the date on which such individual seeks to
28 enroll in coverage provided by this act.

29 (d) (1) Benefits otherwise payable under plan coverage shall be
30 reduced by all amounts paid or payable through any other health
31 insurance, or insurance arrangement, and by all hospital and medical
32 expense benefits paid or payable under any workers compensation
33 coverage, automobile medical payment or liability insurance whether
34 provided on the basis of fault or nonfault, and by any hospital or medical
35 benefits paid or payable under or provided pursuant to any state or federal
36 law or program.

37 (2) The association shall have a cause of action against an eligible
38 person for the recovery of the amount of benefits paid which are not
39 covered expenses. Benefits due from the plan may be reduced or refused
40 as a set-off against any amount recoverable under this section.

41 **[New Section 3. (a) A resident of this state has the right to purchase**
42 **health insurance or refuse to purchase health insurance. The**
43 **government shall not interfere with a resident's right to purchase**

1 health insurance or with a resident's right to refuse to purchase health
2 insurance.]

3 [(b) A resident of this state has the right to enter into a private
4 contract with health care providers for lawful health care services.
5 The government shall not interfere with a resident's right to purchase
6 lawful health care services.]

7 [(c) A person or employer may pay directly for lawful health care
8 services and shall not be required to pay penalties or fines for paying
9 directly for lawful health care services. A health care provider may
10 accept direct payment for lawful health care services and shall not not
11 be required to pay penalties or fines for accepting direct payment
12 from a person or employer for lawful health care services.]

13 [(d) No state agency, board, commission or any other
14 governmental entity shall require an agreement to participate in
15 medicare, medicaid or any other insurance plan, health care system or
16 health information technology or benefit exchange as a condition for
17 original application or renewal of license, registration or certification
18 for a health care provider.]

19 [(e) No state agency, board, commission or any other
20 governmental entity shall prohibit participation in a health
21 information organization for any health information technology or
22 benefit exchange purposes by a health care provider based on whether
23 such health care provider participates in medicare, medicaid or any
24 other insurance plans or health care systems.]

25 [(f) The government shall not enact a law that would restrict
26 these rights or that would impose a form of punishment for exercising
27 these rights. No provision of this section shall render a resident of this
28 state liable for any punishment, penalty, assessment, fee or fine as a
29 result of such resident's failure to procure or obtain health insurance
30 coverage or participate in any health care system or plan.]

31 [(g) As used in this section:]

32 [(1) "Direct payment or pay directly" means payment for lawful
33 health care services without a public or private third party, not
34 including an employer, paying for any portion of the service.]

35 [(2) "Health care provider" shall have the meaning provided in
36 K.S.A. 40-3401, and amendments thereto.]

37 [(3) "Health care system" means any public or private entity
38 whose function or purpose is the management of, processing of,
39 enrollment of individuals for or payment for, in full or in part, health
40 care services or health care data or health care information for its
41 participants.]

42 [(4) "Lawful health care services" means any health-related
43 service or treatment to the extent that the service or treatment is

1 **permitted or not prohibited by law or regulation that may be provided**
2 **by persons or businesses otherwise permitted to offer such services.]**

3 **[(5) “Penalties or fines” means any civil or criminal penalty or**
4 **fine, tax, salary or wage withholding or surcharge or any named fee**
5 **with a similar effect established by law or rule by a government**
6 **established, created or controlled agency that is used to punish or**
7 **discourage the exercise of rights protected under this section.]**

8 **[(h) This section shall be known and may be cited as the health**
9 **care freedom act.]**

10 ~~Sec. 3.~~ **[4.]** K.S.A. 2010 Supp. 40-2122 and 40-2124 are hereby
11 repealed.

12 ~~Sec. 4.~~ **[5.]** This act shall take effect and be in force from and after its
13 publication in the Kansas register.