

1 ENGROSSED HOUSE
2 BILL NO. 3304

By: Bennett and Hefner of the
House

3 and

4 Coleman of the Senate
5

6
7 An Act relating to insurance; amending 36 O.S. 2021,
8 Section 123, which relates to delivery and storage of
9 electronic documents; providing definitions;
10 modifying definition; permitting plan sponsor of a
11 health benefit plan to take certain actions on behalf
12 of certain covered persons; requiring certain actions
by plan sponsor; requiring certain actions by the
insurer for the health benefit plan; requiring
insurer to apprise certain parties of significance of
certain notice or documents; and providing an
effective date.

13
14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 36 O.S. 2021, Section 123, is
17 amended to read as follows:

18 Section 123. A. In this section, the following words shall
19 have the following meanings:

20 1. "Delivered by electronic means" includes:

- 21 a. delivery to an electronic mail address at which a
22 party has consented to receive notices or documents,
23 or
24

1 b. posting on an electronic network or site accessible
2 via the Internet, mobile application, computer, mobile
3 device, tablet or any other electronic device,
4 together with separate notice of the posting which
5 shall be provided by electronic mail to the address at
6 which the party has consented to receive notice, or by
7 any other delivery method that has been consented to
8 by the party.

9 2. "Health benefit plan" means an employer policy, contract,
10 certificate, or agreement entered into, offered by, or issued by an
11 insurer to provide, deliver, arrange for, pay for, or reimburse any
12 of the costs of health care services, including a vision or dental
13 benefit plan and a self-insured plan as permitted under the Employee
14 Retirement Income Security Act of 1974.

15 3. "Party" means any recipient of any notice or document
16 required as part of an insurance transaction, including but not
17 limited to an applicant, an insured, a policyholder, a covered
18 person, or an annuity contract holder.

19 4. "Plan sponsor" means a person, other than a regulated
20 entity, who establishes, adopts, or maintains a health benefit plan
21 that covers residents of this state, including a plan established,
22 adopted, or maintained by an employer or jointly by an employer and
23 one or more employee organizations, an association, a committee, a
24

1 joint board of trustees, or any similar group of representatives who
2 establish, adopt, or maintain a plan.

3 B. Subject to the requirements of this section, any notice to a
4 party or any other document required under applicable law in an
5 insurance transaction, or that is to serve as evidence of insurance
6 coverage, may be delivered, stored and presented by electronic
7 means, so long as it meets the requirements of the Uniform
8 Electronic Transactions Act pursuant to Section 15-101, et seq. of
9 Title 12A of the Oklahoma Statutes.

10 C. Delivery of a notice or document in accordance with this
11 section shall be considered equivalent to any delivery method
12 required under applicable law, including delivery by first class
13 mail; first class mail, postage prepaid; certified mail; certificate
14 of mail; or certificate of mailing.

15 D. A notice or document may be delivered by electronic means by
16 an insurer to a party under this section if:

17 1. The party has affirmatively consented to that method of
18 delivery and has not withdrawn the consent; or

19 2. The party, before giving consent, is provided with a clear
20 and conspicuous statement informing the party of:

21 a. the right of the party to withdraw consent to have a
22 notice or document delivered by electronic means, at
23 any time, and any conditions or consequences imposed
24 in the event consent is withdrawn,

- b. the types of notices and documents to which the party's consent would apply,
- c. the right of a party to have a notice or document delivered in paper form, and
- d. the procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

3. The party:

- a. before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means, and
- b. consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent;

4. The insurer takes measures reasonably calculated to ensure that delivery by electronic means results in receipt of the notice or document by the party; and

5. After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to

1 access or retain a notice or document delivered by electronic means
2 creates a material risk that the party will not be able to access or
3 retain a subsequent notice or document to which the consent applies:

4 a. provides the party with a statement that describes:

5 (1) the revised hardware and software requirements

6 for access to and retention of a notice or

7 document delivered by electronic means, and

8 (2) the right of the party to withdraw consent

9 without the imposition of any condition or

10 consequence that was not disclosed at the time of

11 initial consent, and

12 b. complies with paragraph 2 of this subsection.

13 E. 1. The plan sponsor of a health benefit plan may, on behalf
14 of covered persons enrolled in the plan, provide the consent to the
15 mailing of all communications related to the plan by electronic
16 means otherwise required by paragraphs 1 and 2 of subsection D of
17 this section.

18 2. Before consenting on behalf of a covered person, a plan
19 sponsor must:

20 a. confirm that the covered person routinely uses

21 electronic communications during the normal course of

22 employment and is able to access and retain electronic

23 communications that may be delivered by the insurer,

24 and

1 b. inform the party in any manner the plan sponsor deems
2 appropriate that such consent will be provided, and
3 that notices and documents related to the plan may be
4 delivered to the party's work electronic mail address
5 unless the party affirmatively opts out of delivery by
6 electronic means or provides an alternative electronic
7 mail address.

8 3. Before providing delivery of a notice or document by
9 electronic means pursuant to this subsection, the insurer for the
10 health benefit plan must:

11 a. provide the party with a clear and conspicuous
12 statement informing the person of all of the
13 following:

14 (1) the types of notices and documents that may
15 be delivered to the covered person by
16 electronic means,

17 (2) the right of the party to withdraw consent
18 to have a notice or document delivered by
19 electronic means at any time without charge,

20 (3) the procedures the party must follow to
21 withdraw consent to have a notice or
22 document delivered by electronic means and
23 to update the person's electronic mail
24 address, and

1 (4) the right of the party to have any notice or
2 document delivered, upon request, in paper
3 form free of charge,

4 b. provide the party opportunity to opt out of delivery
5 by electronic means, and

6 c. document that the applicable provisions of the
7 conditions under the Uniform Electronic Transactions
8 Act, found at Section 15-101 et seq. of Title 12A of
9 the Oklahoma Statutes are satisfied.

10 4. When a notice or document is provided electronically to a
11 party pursuant to this subsection, an insurer shall apprise the
12 party of the significance of the notice or document when it is not
13 otherwise reasonably evident and of the right to request and obtain
14 a paper version of such notice or document.

15 F. This section does not affect requirements related to content
16 or timing of any notice or document required under applicable law.

17 ~~F.~~ G. If a provision of this title or applicable law requiring
18 a notice or document to be provided to a party expressly requires
19 verification or acknowledgment of receipt of the notice or document,
20 the notice or document may be delivered by electronic means only if
21 the method used provides for verification or acknowledgment of
22 receipt.

23 ~~G.~~ H. The legal effectiveness, validity or enforceability of
24 any contract or policy of insurance executed by a party may not be

1 denied solely because of the failure to obtain electronic consent or
2 confirmation of consent of the party in accordance with subparagraph
3 b of paragraph 3 of subsection D of this section.

4 ~~H.~~ I. 1. A withdrawal of consent by a party does not affect
5 the legal effectiveness, validity or enforceability of a notice or
6 document delivered by electronic means to the party before the
7 withdrawal of consent is effective.

8 2. A withdrawal of consent by a party is effective within a
9 reasonable period of time after receipt of the withdrawal by the
10 insurer.

11 3. Failure by an insurer to comply with paragraph 5 of
12 subsection D and subsection J of this section may be treated, at the
13 election of the party, as a withdrawal of consent for purposes of
14 this section.

15 ~~H.~~ J. This section does not apply to a notice or document
16 delivered by an insurer in an electronic form before the effective
17 date of this act to a party who, before that date, has consented to
18 receive notice or document in an electronic form otherwise allowed
19 by law.

20 ~~H.~~ K. If the consent of a party to receive certain notices or
21 documents in an electronic form is on file with an insurer before
22 the effective date of this act, and pursuant to this section, an
23 insurer intends to deliver additional notices or documents to such
24

1 party in an electronic form, then prior to delivering such
2 additional notices or documents electronically, the insurer shall:

- 3 1. Provide the party with a statement that describes:
 - 4 a. the notices or documents that shall be delivered by
 - 5 electronic means under this section that were not
 - 6 previously delivered electronically, and
 - 7 b. the party's right to withdraw consent to have notices
 - 8 or documents delivered by electronic means, without
 - 9 the imposition of any condition or consequence that
 - 10 was not disclosed at the time of initial consent; and

11 2. Comply with paragraph 2 of subsection D of this section.

12 ~~K.~~ L. An insurer shall deliver a notice or document by any
13 other delivery method permitted by law other than electronic means
14 if:

15 1. The insurer attempts to deliver the notice or document by
16 electronic means and has a reasonable basis for believing that the
17 notice or document has not been received by the party; or

18 2. The insurer becomes aware that the electronic mail address
19 provided by the party is no longer valid.

20 ~~H.~~ M. A producer shall not be subject to civil liability for
21 any harm or injury that occurs as a result of a party's election to
22 receive any notice or document by electronic means or by an
23 insurer's failure to deliver a notice or document by electronic
24 means.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

~~M.~~ N. This section may not be construed to modify, limit or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

SECTION 2. This act shall become effective November 1, 2024.

Passed the House of Representatives the 13th day of March, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2024.

Presiding Officer of the Senate