

SENATE BILL No. 553

By Committee on Federal and State Affairs

3-14

1 AN ACT concerning insurance; relating to health insurance; permitting a
2 plan sponsor to authorize electronic delivery of plan documents and
3 identification cards for certain insured individuals covered by a health
4 benefit plan; amending K.S.A. 40-5801, 40-5803 and 40-5804 and
5 repealing the existing sections; also repealing K.S.A. 40-5802.

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

8 ***New Section 1. (a) Each utilization review entity, certified pursuant***
9 ***to K.S.A. 40-22a04, and amendments thereto, shall implement and***
10 ***maintain a prior authorization application programming interface,***
11 ***pursuant to 45 C.F.R. 156.223 (b), as in effect on January 1, 2028.***

12 ***(b) Nothing in this section shall be construed to apply to a prior***
13 ***authorization request for coverage of drugs.***

14 ***(c) As used in this section, "drug" means the same as defined in 45***
15 ***C.F.R. 156.221 (b)(1)(v), as in effect on January 1, 2028.***

16 ***(d) This section shall be a part of and supplemental to the***
17 ***utilization review organization act.***

18 ***(e) This section shall be effective on January 1, 2028.***

19 ~~New Section 1. Sec. 2.~~ (a) The plan sponsor of a health benefit plan
20 may, on behalf of health benefit plan covered persons, provide the consent
21 to the delivery of all communications related to the plan by electronic
22 means, otherwise required by K.S.A. 40-5804, and amendments thereto,
23 and to the electronic delivery of any health insurance identification cards.

24 (b) Before providing consent on behalf of a health benefit plan
25 covered person, pursuant to subsection (a), a plan sponsor shall confirm
26 that such health benefit plan covered person routinely, at least once every
27 24 hours during the work week, uses electronic communications during the
28 normal course of employment of such health benefit plan covered person.

29 (c) Before utilizing electronic means to deliver any plan
30 communications or health insurance identification cards, the health benefit
31 plan shall:

32 (1) Provide the health benefit plan covered person with an
33 opportunity to opt out of electronic delivery and select United States mail
34 as the preferred method of delivery for such health benefit plan covered
35 person; and

36 (2) document that all applicable requirements under K.S.A. 40-5804,

1 and amendments thereto, have been satisfied.

2 Sec.~~2~~. 3. K.S.A. 40-5801 is hereby amended to read as follows: 40-
3 5801. The provisions of K.S.A. 40-5801 through 40-5804 *and section 2*,
4 and amendments thereto, shall be known and may be cited as the
5 electronic notice and document act.

6 Sec.~~3~~. 4. K.S.A. 40-5803 is hereby amended to read as follows: 40-
7 5803. For the purposes of this act:

8 (a) "Delivered by electronic means" includes:

9 (1) Delivery to an electronic mail address at which a party has
10 consented to receive notices or documents; or

11 (2) posting on an electronic network or site accessible via the internet,
12 mobile application, computer, mobile device, tablet or any other electronic
13 device, together with separate notice of the posting, which shall be
14 provided by electronic mail to the address at which the party has consented
15 to receive notice or by any other delivery method that has been consented
16 to by the party.

17 (b) "Party" means any recipient of any notice or document required as
18 part of an insurance transaction, including, but not limited to, an applicant,
19 an insured, a policyholder or an annuity contract holder. *"Party" does not*
20 *include a "health benefit plan covered person."*

21 (c) "Health benefit plan" means the same as in K.S.A. 40-4602, and
22 amendments thereto. "Health benefit plan" shall also include any:

23 (1) Individual health insurance policy;

24 (2) individual or group dental insurance policy; or

25 (3) nonprofit dental services corporation.

26 (d) *"Health benefit plan covered person" means a policyholder,*
27 *subscriber, enrollee or other individual participating in a health benefit*
28 *plan.*

29 (e) *"Insured" means an individual who is covered by an insurance*
30 *policy, including a health benefit plan.*

31 (f) "Nonprofit dental services corporation" means a nonprofit
32 corporation organized pursuant to the nonprofit dental service corporation
33 act, K.S.A. 40-19a01 et seq., and amendments thereto.

34 (g) *"Plan sponsor" means the:*

35 (1) *Employer in the case of an employee benefit plan established or*
36 *maintained by a single employer;*

37 (2) *employee organization in the case of a plan established or*
38 *maintained by an employee organization; or*

39 (3) *association, committee, joint board of trustees or similar group of*
40 *representatives of the parties who establish or maintain the plan in the*
41 *case of a plan established or maintained by two or more employers or*
42 *jointly by one or more employers and one or more employee*
43 *organizations.*

1 Sec. ~~4~~ 5. K.S.A. 40-5804 is hereby amended to read as follows: 40-
2 5804. (a) Subject to subsection (c), *or section—† 2, and amendments*
3 *thereto*, any notice to a party or any other document required under
4 applicable law in an insurance transaction or that is to serve as evidence of
5 insurance coverage may be delivered, stored and presented by electronic
6 means so long as it meets the requirements of this act.

7 (b) Delivery of a notice or document in accordance with this section
8 shall be considered equivalent to any delivery method required under
9 applicable law, including delivery by first class mail; first class mail,
10 postage prepaid; certified mail; certificate of mail; or certificate of mailing.

11 (c) A notice or document may be delivered by electronic means by an
12 insurer to a party under this section if:

13 (1) The party has affirmatively consented to that method of delivery
14 and has not withdrawn the consent;

15 (2) the party, before giving consent, is provided with a clear and
16 conspicuous statement informing the party of:

17 (A) Any right or option of the party to have the notice or document
18 provided or made available in paper or another non-electronic form;

19 (B) the right of the party to withdraw consent to have a notice or
20 document delivered by electronic means and any fees, conditions or
21 consequences imposed in the event consent is withdrawn;

22 (C) whether the party's consent applies: (i) Only to the particular
23 transaction as to which the notice or document must be given; or (ii) to
24 identified categories of notices or documents that may be delivered by
25 electronic means during the course of the parties' relationship;

26 (D) (i) the means, after consent is given, by which a party may obtain
27 a paper copy of a notice or document delivered by electronic means; and
28 (ii) the fee, if any, for the paper copy; and

29 (E) the procedure a party must follow to withdraw consent to have a
30 notice or document delivered by electronic means and to update
31 information needed to contact the party electronically;

32 (3) the party, before giving consent, is provided with a statement of
33 the hardware and software requirements for access to and retention of a
34 notice or document delivered by electronic means; and consents
35 electronically, or confirms consent electronically, in a manner that
36 reasonably demonstrates that the party can access information in the
37 electronic form that will be used for notices or documents delivered by
38 electronic means as to which the party has given consent; and

39 (4) after consent of the party is given, the insurer, in the event a
40 change in the hardware or software requirements needed to access or retain
41 a notice or document delivered by electronic means creates a material risk
42 that the party will not be able to access or retain a subsequent notice or
43 document to which the consent applies, provides the party with a statement

1 of: (A) The revised hardware and software requirements for access to and
2 retention of a notice or document delivered by electronic means; and (B)
3 the right of the party to withdraw consent without the imposition of any
4 fee, condition, or consequence that was not disclosed under subsection (c)
5 (2).

6 (d) This act does not affect requirements related to content or timing
7 of any notice or document required under applicable law.

8 (e) If a provision of this act or applicable law requiring a notice or
9 document to be provided to a party *or health benefit plan covered person*
10 expressly requires verification or acknowledgment of receipt of the notice
11 or document, the notice or document may be delivered by electronic
12 means only if the method used provides for verification or
13 acknowledgment of receipt.

14 (f) The legal effectiveness, validity, or enforceability of any contract
15 or policy of insurance executed by a party *or health benefit plan covered*
16 *person* may not be denied solely because of the failure to obtain electronic
17 consent or confirmation of consent of the party in accordance with
18 subsection (c)(3) *or section 2, and amendments thereto*.

19 (g) A withdrawal of consent by a party ~~does~~ *or health benefit plan*
20 *covered person shall* not affect the legal effectiveness, validity, or
21 enforceability of a notice or document delivered by electronic means to the
22 party *or health benefit plan covered person* before the withdrawal of
23 consent is effective. A withdrawal of consent by a party *or health benefit*
24 *plan covered person* is effective within a reasonable period of time after
25 receipt of the withdrawal by the insurer. Failure by an insurer to comply
26 with subsection (c)(4) may be treated, at the election of the party *or health*
27 *benefit plan covered person*, as a withdrawal of consent for purposes of
28 this section.

29 (h) This section does not apply to a notice or document delivered by
30 an insurer in an electronic form before the effective date of this act to a
31 party *or health benefit plan covered person* who, before that date, has
32 consented to receive a notice or document in an electronic form otherwise
33 allowed by law.

34 (i) If the consent of a party to receive certain notices or documents in
35 an electronic form is on file with an insurer before the effective date of this
36 act, and pursuant to this section, an insurer intends to deliver additional
37 notices or documents to such party in an electronic form, then prior to
38 delivering such additional notices or documents electronically, the insurer
39 shall notify the party of the notices or documents that may be delivered by
40 electronic means under this section that were not previously delivered
41 electronically and the party's right to withdraw consent to have notices or
42 documents delivered by electronic means.

43 (j) Notwithstanding any other provisions of this section, insurance

1 policies and endorsements that do not contain personally identifiable
2 information may be mailed, delivered or posted on the insurer's website. If
3 the insurer elects to post insurance policies and endorsements on its
4 website in lieu of mailing or delivering such policies and endorsements to
5 the insured, such insurer shall comply with all of the following conditions:

6 (1) The policy and endorsements shall be easily accessible and
7 remain that way for as long as the policy is in force;

8 (2) after the expiration of the policy, the insurer shall archive its
9 expired policies and endorsements for five years and make them available
10 upon request;

11 (3) the policies and endorsements shall be posted in a manner that
12 enables the insured to print and save the policy and endorsements using
13 programs or applications that are widely available on the internet and free
14 to use;

15 (4) the insurer shall provide notice, at the time of issuance of the
16 initial policy forms and any renewal forms, of a method by which insureds
17 may obtain, upon request and without charge, a paper or electronic copy of
18 their policy or endorsements;

19 (5) on each declarations page issued to an insured, the insurer shall
20 clearly identify the exact policy and endorsement forms purchased by the
21 insured; and

22 (6) the insurer shall provide notice of any changes to the forms or
23 endorsements, and of the insured's right to obtain, upon request and
24 without charge, a paper or electronic copy of such forms or endorsements.

25 (k) Except as otherwise provided by law, if an oral communication or
26 a recording of an oral communication from a party can be reliably stored
27 and reproduced by an insurer, the oral communication or recording may
28 qualify as a notice or document delivered by electronic means for purposes
29 of this section. If a provision of this title or applicable law requires a
30 signature or notice or document to be notarized, acknowledged, verified or
31 made under oath, the requirement is satisfied if the electronic signature of
32 the person authorized to perform those acts, together with all other
33 information required to be included by the provision, is attached to or
34 logically associated with the signature, notice or document.

35 (l) This section shall not affect any obligation of the insurer to
36 provide notice to any person other than the insured of any notice provided
37 to the insured.

38 (m) This section shall not be construed to modify, limit or supersede
39 the provisions of the federal electronic signatures in global and national
40 commerce act, public law 106-229, or the provisions of the uniform
41 electronic transactions act, K.S.A. 16-1601 et seq., and amendments
42 thereto.

43 (n) The provisions of the electronic notice and document act shall not

1 apply to any mutual insurance company organized pursuant to article 12a
2 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

3 (o) The provisions of this section shall not apply to the electronic
4 delivery of explanation of benefits and policies, including federally
5 required summary of benefit and coverage documents, to a party by a
6 health benefit plan.

7 ~~Sec.-5:~~ **6.** K.S.A. 40-5801, 40-5802, 40-5803 and 40-5804 are hereby
8 repealed.

9 ~~Sec.-6:~~ **7.** This act shall take effect and be in force from and after its
10 publication in the statute book.