
Sneed Law Firm, LLC

Memorandum

To: The Honorable Jeff Longbine, Chair
Senate Financial Institutions and Insurance Committee

From: William W. Sneed, Retained Counsel
Delta Dental of Kansas

Date: February 8, 2017

RE: S.B. 348

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent Delta Dental of Kansas. Delta Dental of Kansas is the largest dental benefits carrier in the state of Kansas. The company sells benefits plans to companies with headquarters in Kansas and currently serves about 950,000 enrollees represented by more than 3,000 employers. In 2012 the company introduced Delta Dental Individual and Family plans, which currently provides coverage to 13,000 Kansans. Please accept this memorandum as support for S.B. 348 and our request for a clarifying amendment.

The sponsor of the bill will provide you with excellent testimony regarding the value of S.B. 348, and I will not reiterate those facts.

Additionally, my client is concerned that because of our unique statutory status, the definition of "health plan" may not include Delta Dental of Kansas. Thus, we would like to add the attached amendment to eliminate this potential uncertainty.

Therefore, my client respectfully requests that when the Committee works S.B. 348, the bill be amended as attached, and the bill be passed out favorably as amended.

I am happy to answer any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "William W. Sneed". The signature is fluid and cursive, with the first name "William" and last name "Sneed" clearly distinguishable.

William W. Sneed

WWS:kjb

Attachments: 1

SENATE BILL NO. _____

By Committee on Financial Institutions and Insurance

AN ACT concerning insurance; authorizing electronic delivery as the standard method of delivery for certain health benefit plan documents; amending K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2017 Supp. 40-5802 is hereby amended to read as follows: 40-5802.

(a) This act allows the use of electronic notices and documents in lieu of any other provision of law for the sending of insurance notices and documents. Except as provided in subsection (b), in order to send electronic notices and documents to another party the insurer must obtain the consent of the other party as provided in this act.

(b) (1) Notwithstanding any other provision of law, a health benefit *or non-profit dental services corporation* plan may utilize electronic delivery as its standard method to send the explanation of benefits and policies to a party, so long as printed documents are readily available.

(2) If a party notifies a health benefit plan *or non-profit dental services corporation* that the party wishes to receive paper documents via U.S. mail, the health benefit plan *or non-profit dental services corporation* shall comply.

Sec. 2. K.S.A. 2017 Supp. 40-5803 is hereby amended to read as follows: 40-5803. For the purposes of this act:

(a) "Delivered by electronic means" includes:

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

(2) posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet or any other electronic device, together with separate notice of the posting, which shall be provided by electronic mail to the address at which

the party has consented to receive notice or by any other delivery method that has been consented to by the party.

(b) "Party" means any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder or an annuity contract holder.

(c) "Health benefit plan" means the same as in K.S.A. 40-2209d, and amendments thereto.

(d) Non-profit dental services corporation means a non-profit corporation as organized under 40-19a01.

Sec. 3. K.S.A. 2017 Supp. 40-5804 is hereby amended to read as follows: 40-5804. (a) Subject to subsection (c), any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored and presented by electronic means so long as it meets the requirements of this act.

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

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

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

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

(A) Any right or option of the party to have the notice or document provided or made

available in paper or another non-electronic form;

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

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

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

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

(3) the party, 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 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; and

(4) after consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of: (A) The revised hardware and software requirements for access to and retention of a notice or document

delivered by electronic means; and (B) the right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under subsection (c)(2).

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

(e) If a provision of this act or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(f) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection (c)(3).

(g) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subsection (c)(4) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(h) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this act to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(i) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this act, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form,

then prior to delivering such additional notices or documents electronically, the insurer shall notify the party of the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically and the party's right to withdraw consent to have notices or documents delivered by electronic means.

(j) Notwithstanding any other provisions of this section, insurance policies and endorsements that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's website. If the insurer elects to post insurance policies and endorsements on its website in lieu of mailing or delivering such policies and endorsements to the insured, such insurer shall comply with all of the following conditions:

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

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

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

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

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

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

forms or endorsements.

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

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

(m) This section shall 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, or the provisions of the uniform electronic transactions act, K.S.A. 16-1601 et seq., and amendments thereto.

(n) The provisions of ~~this act~~ the electronic notice and document act shall not apply to any mutual insurance company organized pursuant to article 12a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(o) The provisions of this section shall not apply to the electronic delivery of explanation of benefits and policies to a party by a health benefit plan or non-profit dental services corporation.

Sec. 4. K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.