

HOUSE BILL No. 2142

By Committee on Insurance

1-27

1 AN ACT concerning insurance; relating to certain definitions; amending
2 K.S.A. 2014 Supp. 40-2,118 and 40-22a13 and repealing the existing
3 sections.
4

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

6 Section 1. K.S.A. 2014 Supp. 40-2,118 is hereby amended to read as
7 follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act"
8 means an act committed by any person who, knowingly and with intent to
9 defraud, presents, causes to be presented or prepares with knowledge or
10 belief that it will be presented to or by an insurer, purported insurer, broker
11 or any agent thereof, any written, *electronic, electronic impulse, facsimile,*
12 *magnetic, oral, or telephonic communication or statement* as part of, or in
13 support of, an application for the issuance of, or the rating of an insurance
14 policy for personal or commercial insurance, or a claim for payment or
15 other benefit pursuant to an insurance policy for commercial or personal
16 insurance which such person knows to contain materially false information
17 concerning any fact material thereto; or conceals, for the purpose of
18 misleading, information concerning any fact material thereto.

19 (b) An insurer that has knowledge or a good faith belief that a
20 fraudulent insurance act is being or has been committed shall provide to
21 the commissioner, on a form prescribed by the commissioner, any and all
22 information and such additional information relating to such fraudulent
23 insurance act as the commissioner may require.

24 (c) Any other person that has knowledge or a good faith belief that a
25 fraudulent insurance act is being or has been committed may provide to
26 the commissioner, on a form prescribed by the commissioner, any and all
27 information and such additional information relating to such fraudulent
28 insurance act as the commissioner may request.

29 (d) (1) Each insurer shall have antifraud initiatives reasonably
30 calculated to detect fraudulent insurance acts. Antifraud initiatives may
31 include: fraud investigators, who may be insurer employees or
32 independent contractors; ~~or~~ *and* an antifraud plan submitted to the
33 commissioner no later than July 1, 2007. Each insurer that submits an
34 antifraud plan shall notify the commissioner of any material change in the
35 information contained in the antifraud plan within 30 days after such
36 change occurs. Such insurer shall submit to the commissioner in writing

1 the amended antifraud plan.

2 The requirement for submitting any antifraud plan, or any amendment
3 thereof, to the commissioner shall expire on the date specified in
4 ~~paragraph (2) of this subsection~~ (d)(2) unless the legislature reviews and
5 reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229, and
6 amendments thereto.

7 (2) Any antifraud plan, or any amendment thereof, submitted to the
8 commissioner for informational purposes only shall be confidential and
9 not be a public record and shall not be subject to discovery or subpoena in
10 a civil action unless following an in camera review, the court determines
11 that the antifraud plan is relevant and otherwise admissible under the rules
12 of evidence set forth in article 4 of chapter 60 of the Kansas Statutes
13 Annotated, and amendments thereto. The provisions of this paragraph shall
14 expire on July 1, 2016, unless the legislature reviews and reenacts this
15 provision pursuant to K.S.A. 45-229, and amendments thereto, prior to
16 July 1, 2016.

17 (e) Except as otherwise specifically provided in ~~subsection (a) of~~
18 K.S.A. 2014 Supp. 21-5812(a), and amendments thereto, and K.S.A. 44-
19 5,125, and amendments thereto, a fraudulent insurance act shall constitute
20 a severity level 6, nonperson felony if the amount involved is \$25,000 or
21 more; a severity level 7, nonperson felony if the amount is at least \$5,000
22 but less than \$25,000; a severity level 8, nonperson felony if the amount is
23 at least \$1,000 but less than \$5,000; and a class C nonperson misdemeanor
24 if the amount is less than \$1,000. Any combination of fraudulent acts as
25 defined in subsection (a) which occur in a period of six consecutive
26 months which involves \$25,000 or more shall have a presumptive sentence
27 of imprisonment regardless of its location on the sentencing grid block.

28 (f) In addition to any other penalty, a person who violates this statute
29 shall be ordered to make restitution to the insurer or any other person or
30 entity for any financial loss sustained as a result of such violation. An
31 insurer shall not be required to provide coverage or pay any claim
32 involving a fraudulent insurance act.

33 (g) This act shall apply to all insurance applications, ratings, claims
34 and other benefits made pursuant to any insurance policy.

35 Sec. 2. K.S.A. 2014 Supp. 40-22a13 is hereby amended to read as
36 follows: 40-22a13. On and after July 1, 2011, for the purposes of K.S.A.
37 40-22a13 through 40-22a16, and amendments thereto:

38 (a) "Adverse decision" means a utilization review determination by a
39 third-party administrator, a health insurance plan, an insurer or a health
40 care provider acting on behalf of an insured that a proposed or delivered
41 health care service which would otherwise be covered under an insured's
42 contract is not or was not medically necessary or the health care treatment
43 has been determined to be experimental or investigational and:

1 (1) If the requested service is provided in a manner that leaves the
2 insured with a financial obligation to the provider or providers of such
3 services; or

4 (2) the adverse decision is the reason for the insured not receiving the
5 requested services.

6 (b) "Emergency medical condition" means:

7 (1) The sudden, and at the time, unexpected onset of a health
8 condition that requires immediate medical attention, where failure to
9 provide medical attention would result in a serious impairment to bodily
10 functions, serious dysfunction of a bodily organ or part or would place a
11 person's health in serious jeopardy;

12 (2) a medical condition where the time frame for completion of a
13 standard external review would seriously jeopardize the life or health of
14 the insured or would jeopardize the insured's ability to regain maximum
15 function; or

16 (3) a medical condition for which coverage has been denied based on
17 a determination that the recommended or requested health care service or
18 treatment is experimental or investigational, if the insured's treating
19 physician certifies, in writing, that the recommended or requested health
20 care service or treatment for the medical condition would be significantly
21 less effective if not promptly initiated.

22 (c) "External review organization" means an entity that conducts
23 independent external reviews of adverse decisions pursuant to a contract
24 with the commissioner. Such entity shall ~~have experience serving as the~~
25 ~~external quality review organization in health programs administered by~~
26 ~~the state of Kansas,~~ or be a nationally accredited external review
27 organization which utilizes health care providers actively engaged in the
28 practice of their profession in the state of Kansas who are qualified and
29 credentialed with respect to the health care service review. In the event *the*
30 *entity has* no Kansas providers *available who* are qualified and
31 credentialed with respect to the review of any case, the external review
32 organization shall have the discretion to employ health care providers who
33 actively engage in such health care provider's practice outside the state of
34 Kansas.

35 (d) "Health insurance plan" means any hospital or medical expense
36 policy, health, hospital or medical service corporation contract, and a plan
37 provided by a municipal group-funded pool, or a health maintenance
38 organization contract offered by an employer or any certificate issued
39 under any such policies, contracts or plans.

40 (e) "Insured" means the beneficiary of any health insurance company,
41 fraternal benefit society, health maintenance organization, nonprofit
42 hospital and medical service corporation, municipal group-funded pool,
43 and the self-funded coverage established by the state of Kansas, or any

1 hospital or medical expense, health, hospital or medical service
2 corporation contract or a plan provided by a municipal group-funded pool.

3 (f) "Insurer" means any health insurance company, fraternal benefit
4 society, health maintenance organization, nonprofit hospital and medical
5 service corporation, provider sponsored organizations, municipal group-
6 funded pool and the self-funded coverage established by the state of
7 Kansas for its employees.

8 Sec. 3. K.S.A. 2014 Supp. 40-2,118 and 40-22a13 are hereby
9 repealed.

10 Sec. 4. This act shall take effect and be in force from and after its
11 publication in the statute book.