



April 4, 2023

Kansas Insurance Department  
1300 SW Arrowhead Rd  
Topeka, KS 66604  
Kid.publiccomment@ks.gov

Re: EHB-Benchmark Plan Selection

The Kansas Chamber of Commerce would like to submit comments regarding the Kansas Insurance Department's (the Department or KID) proposal to mandate additional health care benefits for employer sponsored health coverage. Our utmost concern is the lack of transparency in the process the KID has utilized and whether Kansas employers have received adequate notice to participate in the process.

While we are aware of a federal regulation that allows a "State" to mandate additional essential health benefits, we believe that legislation is needed to address which branch of government has the authority to make these decisions and the process utilized to ensure transparency for all interested parties to participate. Because the Kansas legislature has not addressed this issue, it is unclear if KID has the authority under Kansas law to mandate such additional coverage. We request KID cite in Kansas law indicating that the KID has the authority to take this action.

As you are aware, the Governor of Kansas and the state legislature refused to designate the EHB plan when the Affordable Care Act was passed and the EHB defaulted to the Blue Cross and Blue Shield of Kansas Small Group Comprehensive Major Medical plan. There has been no action by subsequent Governors or the legislature to expand EHBs for Kansans. In fact, the Kansas Chamber of Commerce has been made aware by its members that the most pressing issue is rising health care costs, which are reflected in premiums for employer sponsored plans. We have not heard from employers that additional benefits should be mandated for their health care plans. In fact, the Kansas Legislature has rejected proposed legislation to impose all three of these proposed EMB mandates.

Since 1974, the Kansas Legislature has been responsible for determining what benefit mandates are to be covered for Kansas policyholders and beneficiaries. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health service to submit an impact report that assesses both the social and financial effects of the proposed mandated coverage to the

legislative committees assigned to review the proposal. The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249 and social impact include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact factors include:

- The extent to which the proposal would change the cost of the treatment or service;
- The extent to which the proposed coverage might increase the use of the treatment or service;
- The extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service;
- The extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and
- The impact of proposed coverage on the total cost of health care.

The legislature takes seriously the mandating of health care services that Kansas employers and individuals include in their health care premiums and has enacted an additional law that requires a State Employee Health Plan Study.

KSA 40-2249a provides, **in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature** would only apply to the state health care

benefits program (State Employee Health Plan [SEHP]) for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after this one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the SEHP, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the SEHP or whether additional utilization and cost data are required.

**Allowing a state agency to bypass this important step required by the legislature should not be dismissed lightly.**

At the beginning of every legislative session, the Department participates in a hearing with the House and Senate committees that traditionally consider insurance or health policy legislation. At those hearings, the Department clearly stated that the Department does not have authority to legislate mandates but only to enforce laws the legislature has passed. We believe this effort to expand EHBs contradicts that testimony and may exceed the authority KID has been given under Kansas law.

We are particularly concerned that the process used by the Department lacks effective transparency. While KID posted a notice on the KID website regarding the opportunity for public comment, the Kansas Chamber was not made aware of the public hearing and we do not believe local Chambers were made aware of the hearing. We believe that KID should be proactive and notify licensed agents, agent associations, underwriting associations, Chambers of Commerce and most importantly, the legislative committees that have historically passed legislation that addresses these issues. To our knowledge, none of the aforementioned were contacted regarding the proposed additional health care mandates. Having the public hearing in March, the busiest time for the legislature, also impeded the ability of the legislative committees of jurisdiction to learn about this proposal and participate in the process.

We recommend that instead of only publishing the hearing on the KID website that the Department cross-post the notice on multiple websites, issue press releases prior to the hearing and post notices on KID's social media accounts. In addition to e-mailing health carriers, the Department should e-mail agent associations, chambers and the committee chairs for health and insurance in both the Senate and the House.

The Department should ensure that the public meetings are accessible to as many people as possible and provide multiple ways of participating, including in-person access, a livestream, and a toll-free phone dial-in.

In the document titled "Kansas EHB Benchmark Plan 1<sup>st</sup> Stakeholder Meeting" available on the Department's website, it states that the process includes a requirement to determine if the

“current Benchmark plan meets the needs of Kansas in the individual and small group market”. The consultant retained by the Department, Lewis and Ellis, was assigned to review consumer complaints filed through KID and determine if there is a general consensus the benefit improves population health. However, no information was provided regarding the number of complaints the Department received related to the recommendation at the hearing and there is no written documents available to the public which includes that information or analysis. There was no information regarding that there is a general consensus the proposed benefits improve population health. How many complaints did the Department receive with respect to the health services proposed by Lewis and Ellis? Did the Department meet with small employers or associations that represent small employers to discuss the needs of that market?

In the KID news release dated March 3, 2023, Commissioner Schmidt stated “many insurance carriers already provide these benefits” but the recommendation document prepared by Lewis and Ellis specifically states that no carrier currently covers bariatric surgery and 9 out of 11 carriers do not cover hearing aids. We believe this statement is misleading and does not accurately reflect the current coverage provided in these markets.

We encourage the Department **to delay submitting its application** to CMS to mandate additional benefits and to work with stakeholders so that they can engage in a process that is not rushed and fully vetted.

We suggest that the Department create an Advisory Committee that includes legislators, small and large employers, health insurance companies, agents and consumer advocates and hold public hearings, solicits comments and then recommend changes. Having an actuarial consulting firm make recommendations to the Department and giving the public less than 30 days to review and comment does not allow the appropriate time necessary for interested parties to comment. We believe that starting with an Advisory Committee and then retaining a consultant for advice regarding the cost of specific health care services proposed by the Advisory Committee would strengthen any proposal and provide input to minimize unintended consequences that could occur.

**We also believe that legislation should be introduced in the 2024 legislative session** that clearly gives the authority to KID to convene the Advisory Committee and to use the recommendations, if any, of the Advisory Committee to apply to CMS to expand the EHBs in Kansas.

By adopting an open, transparent, and data-driven public process, the Department will provide the best service to its constituents in identifying their health care needs and costs.

Sincerely,

Alan Cobb  
President and CEO  
Kansas Chamber of Commerce

cc:

Ty Masterson  
Senate President

Dan Hawkins  
Speaker of the House

Chris Croft  
House Majority Leader

Bill Sutton  
Chairman of House Insurance

Brenda Landwehr  
Chairwoman of House Health and Human Services

Jeff Longbine  
Chairman of Senate Financial Institutions and Insurance

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