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April 9, 2024

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3304

By: Bennett and Hefner of the
House

and

Coleman of the Senate

An Act relating to insurance; amending 36 O.S. 2021, Section 123, which relates to delivery and storage of electronic documents; providing definitions; modifying definition; permitting plan sponsor of a health benefit plan to take certain actions on behalf 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; updating statutory references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

1. "Delivered by electronic means" includes:

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

12 2. "Health benefit plan" means a health benefit plan as defined
13 pursuant to Section 6060.4 of this title;

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

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

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

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

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

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

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

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

23 b. the types of notices and documents to which the
24 party's consent would apply,

1 c. the right of a party to have a notice or document
2 delivered in paper form, and

3 d. the procedures a party must follow to withdraw consent
4 to have a notice or document delivered by electronic
5 means and to update the party's electronic mail
6 address;

7 3. The party:

8 a. before giving consent, is provided with a statement of
9 the hardware and software requirements for access to
10 and retention of a notice or document delivered by
11 electronic means, and

12 b. consents electronically, or confirms consent
13 electronically, in a manner that reasonably
14 demonstrates that the party can access information in
15 the electronic form that will be used for notices or
16 documents delivered by electronic means as to which
17 the party has given consent;

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

21 5. After consent of the party is given, the insurer, in the
22 event a change in the hardware or software requirements needed to
23 access or retain a notice or document delivered by electronic means
24

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

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

4 (1) the revised hardware and software requirements

5 for access to and retention of a notice or

6 document delivered by electronic means, and

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

8 without the imposition of any condition or

9 consequence that was not disclosed at the time of

10 initial consent, and

11 b. complies with paragraph 2 of this subsection.

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

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

19 a. confirm that the covered person routinely uses

20 electronic communications during the normal course of

21 employment and is able to access and retain electronic

22 communications that may be delivered by the insurer,

23 and
24

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 ~~I.~~ 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~~ November 1, 2017, to a party who, before that date,
18 has consented to receive notice or document in an electronic form
19 otherwise allowed by law.

20 ~~J.~~ 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~~ November 1, 2017, and pursuant to
23 this section, an insurer intends to deliver additional notices or
24 documents to such party in an electronic form, then prior to

1 delivering such additional notices or documents electronically, the
2 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 ~~M.~~ N. This section may not be construed to modify, limit or
2 supersede the provisions of the federal Electronic Signatures in
3 Global and National Commerce Act, Public Law 106-229, as amended.

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

5 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
6 April 9, 2024 - DO PASS AS AMENDED BY CS
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