

HOUSE BILL No. 2478

By Committee on Insurance

1-23

1 AN ACT concerning insurance; relating to the third party administrators
2 act; updating certain related definitions and requirements; amending
3 K.S.A. 2019 Supp. 40-3801, 40-3810, 40-3812, 40-3813, 40-3815 and
4 40-3821 and repealing the existing sections.

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

7 Section 1. K.S.A. 2019 Supp. 40-3801 is hereby amended to read as
8 follows: 40-3801. As used in this act:

9 (a) "Administrator" or "third party administrator" or "TPA" means
10 any person who directly or indirectly underwrites, collects charges or
11 premiums from, or who adjusts or settles claims on, residents of this state
12 in connection with life, annuity ~~or health~~ or *accident and sickness*
13 insurance coverage offered or provided by a payor, except any of the
14 following:

15 (1) An employer, or a wholly owned direct or indirect subsidiary of
16 an employer, on behalf of its employees or the employees of one or more
17 subsidiaries or affiliated corporations of such employer.

18 (2) A union or association on behalf of its members.

19 (3) An insurance company that is either authorized to transact
20 insurance in this state or acting as an insurer with respect to a policy
21 lawfully issued and delivered by such company in and pursuant to the laws
22 of a state in which the insurer was authorized to transact an insurance
23 business, or a hospital, medical, dental or optometric service corporation
24 or a health care service organization, including their sales representatives,
25 possessing a valid certificate of authority in this state when engaged in the
26 performance of their duties.

27 (4) An insurance producer licensed to sell life, annuities ~~or health~~ or
28 *accident and sickness* coverage in this state whose activities are limited
29 exclusively to the sale, solicitation and negotiation of insurance.

30 (5) A creditor on behalf of its debtors with respect to insurance
31 covering a debt between the creditor and its debtors.

32 (6) A trust, its trustees, agents and employees acting pursuant to such
33 trust established in conformity with 29 U.S.C. § 186.

34 (7) A trust exempt from taxation under section 501(a) of the internal
35 revenue code, its trustees, and employees acting pursuant to such trust or a
36 custodian and the custodian's agents or employees acting pursuant to a

1 custodian account which meets the requirements of section 401(f) of the
2 internal revenue code.

3 (8) A credit union or a financial institution that is subject to
4 supervision or examination by federal or state banking authorities, or a
5 mortgage lender, to the extent they collect and remit premiums to licensed
6 insurance producers or to limited lines producers or authorized insurers in
7 connection with loan payments.

8 (9) A credit card issuing company that advances for and collects
9 premiums or charges from its credit card holders who have authorized
10 such collection.

11 (10) A person who adjusts or settles claims in the normal course of
12 that person's practice or employment as an attorney at law and who does
13 not collect charges or premiums in connection with life, annuity-~~or health~~
14 *or accident and sickness* insurance coverage.

15 (11) A person licensed as a managing general agent in this state
16 whose activities are limited to the scope of activities conveyed under such
17 license.

18 (12) A person who is affiliated with an insurer and who acts solely as
19 an administrator for the direct and assumed insurance business of an
20 affiliated insurer. The insurer is responsible for the acts of the
21 administrator and is responsible for providing all of the administrator's
22 books and records to the commissioner upon a request from the
23 commissioner. For purposes of this paragraph, "insurer" means a licensed
24 insurance company, hospital or professional service corporation or a
25 managed care organization.

26 (b) "Affiliate" or "affiliated" means an entity or person who, directly
27 or indirectly through one or more intermediaries, controls or is controlled
28 by, or is under common control with, a specified entity or person.

29 (c) "Business entity" means a corporation, association, partnership,
30 limited liability company or other legal entity.

31 (d) "Collateral" means funds, letters of credit or any item with
32 economic value owned by the payor but held by an insurer or TPA in case
33 it needs to be used to fulfill premium or loss reimbursement obligations in
34 accordance with a contract between the insurer or TPA and the payor.
35 "Collateral" shall also include anticipated loss prepayments made prior to
36 the payment of losses, pursuant to arrangements where reimbursement is
37 not due until after losses have been paid.

38 (e) "Commissioner" means the commissioner of insurance of the state
39 of Kansas.

40 (f) "Control," "controlling," "controlled by" and "under common
41 control with" means the possession, direct or indirect, of the power to
42 direct or cause the direction of the management and policies of a person,
43 whether through the ownership of voting securities, by contract other than

1 a commercial contract for goods or nonmanagement services, or otherwise,
2 unless the power is the result of an official position with or corporate
3 office held by the person. Control shall be presumed to exist if any person,
4 directly or indirectly, owns, controls, holds with the power to vote, or
5 holds proxies representing 10% or more of the voting securities of any
6 other person. This presumption may be rebutted by a showing made in the
7 manner provided in K.S.A. 40-3305, and amendments thereto, that control
8 does not exist in fact. The commissioner may determine, after furnishing
9 all persons in interest notice and an opportunity to be heard and making
10 specific findings of fact to support the determination, that control exists in
11 fact, notwithstanding the absence of a presumption to that effect.

12 (g) "GAAP" means United States generally accepted accounting
13 principles consistently applied.

14 (h) "Home state" means the United States jurisdiction that has
15 adopted this act or a substantially similar law governing TPAs and that has
16 granted the TPA a home state TPA license. *A person may declare Kansas*
17 *as the person's home state whether they are a resident of Kansas or*
18 *another state.*

19 (i) "Insurance producer" means a person required to be licensed under
20 the laws of this state to sell, solicit or negotiate insurance, and also
21 includes a business entity whose primary activities are the sales,
22 solicitation and negotiation of insurance.

23 (j) "Insurer" means a person undertaking to provide life, annuity ~~or~~
24 ~~health coverage or self-funded, accident and sickness insurance~~ coverage
25 who is subject to regulation under chapter 40 of the Kansas Statutes
26 Annotated, and amendments thereto.

27 (k) "NAIC" means the national association of insurance
28 commissioners.

29 (l) "Nonresident TPA" means a TPA with a home state other than
30 Kansas.

31 (m) "Payor" means an insurer or an employer administering its
32 employee benefit plan or the employee benefit plan of an affiliated
33 employer under common management or control.

34 (n) "Person" means an individual or a business entity.

35 (o) "Stop-loss insurance" means insurance protecting an employer or
36 other person responsible for an otherwise self-insured ~~health or life-~~
37 *accident and sickness* benefit plan against obligations under the plan, but
38 "stop-loss insurance" does not include reinsurance written for an insurance
39 company.

40 (p) "Underwrites" or "underwriting" means, but is not limited to, the
41 acceptance of employer or individual applications for coverage of
42 individuals in accordance with the written rules of the insurer or self-
43 funded plan, or the overall planning and coordinating of a benefits

1 program.

2 ~~(q) "Uniform application" means the current version of the NAIC~~
3 ~~uniform application for third-party administrators.~~

4 Sec. 2. K.S.A. 2019 Supp. 40-3810 is hereby amended to read as
5 follows: 40-3810. A person who is not required to be licensed as an
6 administrator under this act and who directly or indirectly underwrites,
7 collects charges or premiums from or adjusts or settles claims on residents
8 of this state only in connection with life, annuity ~~or health~~ *or accident and*
9 *sickness* coverage provided by a self-funded plan other than a
10 governmental or church plan, shall register with the commissioner
11 annually, verifying its status as herein described. This section shall not
12 apply to an insurer or to an individual performing these actions as an
13 employee of an insurer. This section shall also not apply to a person
14 performing these actions under contract to or as an employee of an
15 administrator.

16 Sec. 3. K.S.A. 2019 Supp. 40-3812 is hereby amended to read as
17 follows: 40-3812. (a) A person shall apply to be an administrator in its
18 home state and shall receive a license from the regulatory authority of its
19 home state prior to performing any function of an administrator in this
20 state.

21 (b) A person applying to Kansas as its home state shall apply for
22 licensure by submitting to the commissioner an application in the form
23 prescribed by the commissioner that shall include or be accompanied by
24 the following information and documents:

25 (1) All basic organizational documents of the applicant, including any
26 articles of incorporation, articles of association, partnership agreement,
27 trade name certificate, trust agreement, shareholder agreement, certificate
28 ~~of existence~~ *good standing* from the Kansas secretary of state and other
29 applicable documents and all amendments to such documents;

30 (2) the bylaws, rules, regulations or similar documents regulating the
31 internal affairs of the applicant;

32 (3) NAIC biographical affidavits for the individuals who are directly
33 or indirectly responsible for the conduct of affairs of the applicant,
34 including all members of the board of directors, board of trustees,
35 executive committee or other governing board or committee, the principal
36 officers in the case of a corporation or the partners or members in the case
37 of a partnership, association or limited liability company, any shareholders
38 or members holding directly or indirectly 10% or more of the voting stock,
39 voting securities or voting interest of the applicant and any other person
40 who directly or indirectly exercises control or influence over the affairs of
41 the applicant;

42 (4) audited annual financial statements or reports for the two most
43 recent fiscal years that demonstrate that the applicant has a positive net

1 worth. *To demonstrate positive net worth* if the applicant has been in
2 existence for less than two fiscal years, the ~~uniform~~ application shall
3 include financial statements or reports, certified by at least two officers,
4 owners or directors of the applicant and prepared in accordance with
5 GAAP, for any completed fiscal years and for any month during the
6 current fiscal year for which such financial statements or reports have been
7 completed. An audited annual financial report prepared on a consolidated
8 basis shall include a columnar consolidating or combining worksheet that
9 shall be filed with the report and include the following:

10 (A) Amounts shown on the consolidated audited financial report
11 shown on the worksheet;

12 (B) amounts for each entity stated separately; and

13 (C) explanations of consolidating and eliminating entries included.

14 The applicant shall also include such other information as the
15 commissioner may require in order to review the current financial
16 condition of the applicant;

17 (5) in lieu of submitting audited financial statements, and upon
18 written application by an applicant and good cause shown, the
19 commissioner may grant a hardship exemption from filing audited
20 financial statements and allow the submission of unaudited financial
21 statements. Acceptable formats for unaudited financial statements, that
22 shall include notes, are:

23 (A) Reports compiled or reviewed by a certified public accountant; or

24 (B) internal financial reports prepared in accordance with GAAP,
25 certified by at least two officers, owners or directors of the administrator.

26 If unaudited financial statements are submitted, the applicant must also
27 secure and maintain a surety bond in a form prescribed by the
28 commissioner for the use and benefit of the commissioner to be held in
29 trust for the benefit and protection of covered persons and any payor or
30 self-funded plan against loss by reason of acts of fraud or dishonesty, for
31 the greater of 10% of funds handled for the benefit of Kansas residents or
32 \$20,000. Administrators of self-funded plans in Kansas are subject to the
33 mandatory surety bond requirement found in subsection (h), regardless of
34 whether they file audited or unaudited financial reports;

35 (6) a statement describing the business plan, including information on
36 staffing levels and activities, proposed in this state and nationwide. The
37 plan shall provide details setting forth the applicant's capability for
38 providing a sufficient number of experienced and qualified personnel in
39 the areas of claims processing, record keeping and underwriting;

40 (7) a license application fee in the amount of \$400; and

41 (8) such other pertinent information as may be required by the
42 commissioner.

43 (c) An administrator licensed or applying for licensure under the

1 provisions of this section shall make available for inspection by the
2 commissioner, copies of all contracts with payors or other persons utilizing
3 the services of the administrator.

4 (d) An administrator licensed or applying for licensure under the
5 provisions of this section shall produce its accounts, records and files for
6 examination, and makes its officers available to give information with
7 respect to its affairs, as often as reasonably required by the commissioner.

8 (e) The commissioner may refuse to issue a license if the
9 commissioner determines that the applicant or any individual responsible
10 for the conduct of affairs of the applicant is not competent, trustworthy,
11 financially responsible or of good personal and business reputation, or has
12 had an insurance or an administrator certificate of authority or license
13 denied or revoked for cause by any jurisdiction, or if the commissioner
14 determines that any of the grounds set forth in K.S.A. 40-3810, and
15 amendments thereto, exist with respect to the applicant.

16 (f) A license issued under this section shall remain valid, unless
17 surrendered, suspended or revoked by the commissioner, for so long as the
18 administrator continues in business in this state and remains in compliance
19 with the provisions of this act and any applicable rules and regulations.

20 (g) An administrator licensed or applying for licensure under the
21 provisions of this section shall immediately notify the commissioner of
22 any material change in its ownership, control or other fact or circumstance
23 affecting its qualification for a license in this state.

24 (h) An administrator licensed or applying for a home state license that
25 administers or will administer governmental or church self-insured plans
26 in this state or any other state shall maintain a surety bond for the use and
27 benefit of the commissioner to be held in trust for the benefit and
28 protection of covered persons and any payor or self-funded plan against
29 loss by reason of acts of fraud or dishonesty. The bond shall be in the
30 greater of the following amounts:

31 (1) \$100,000; or

32 (2) an amount equal to 10% of the aggregate total amount of self-
33 funded coverage under church plans or governmental plans handled in this
34 state and all additional states in which the administrator is authorized to do
35 business.

36 Sec. 4. K.S.A. 2019 Supp. 40-3813 is hereby amended to read as
37 follows: 40-3813. (a) Unless an administrator has obtained a home state
38 license in this state, any administrator who performs duties as an
39 administrator in this state shall obtain a nonresident administrator license
40 in accordance with the provisions of this section by filing with the
41 commissioner the ~~uniform~~ application, accompanied by a letter of
42 certification. In lieu of requiring an administrator to file a letter of
43 certification with the ~~uniform~~ application, the commissioner may verify

1 the nonresident administrator's home state certificate of authority or
2 license status through an electronic database maintained by the NAIC, its
3 affiliates or subsidiaries.

4 (b) An administrator shall not be eligible for a nonresident
5 administrator license under the provisions of this section if it does not hold
6 a license in a home state that has adopted a substantially similar law
7 governing administrators.

8 (c) Except as provided in subsections (b) and (h) the commissioner
9 shall issue to the administrator a nonresident administrator license
10 promptly upon receipt of a complete application.

11 (d) Each nonresident administrator shall file biennially, as a part of its
12 application for renewal of its license, a statement that its home state
13 administrator license remains in force and has not been revoked or
14 suspended by its home state during the preceding years. Each nonresident
15 administrator renewal application shall be accompanied by a renewal
16 application fee in the amount of \$200.

17 (e) At the time of filing the application for licensing required under
18 the provisions of this section, the nonresident administrator shall pay a
19 license application fee in the amount of \$400.

20 (f) An administrator licensed or applying for licensure under the
21 provisions of this section shall produce its accounts, records and files for
22 examination, and make its officers available to give information with
23 respect to its affairs, as often as reasonably required by the commissioner.

24 (g) A nonresident administrator is not required to hold a nonresident
25 administrator license in this state if the administrator is licensed in its
26 home state and the administrator's duties in this state are limited to:

27 (1) The administration of a group policy or plan and no more than a
28 total of 20% of covered persons, for all plans the administrator services,
29 reside in this state; and

30 (2) the total number of covered persons residing in this state is less
31 than 100.

32 (h) The commissioner may refuse to issue a nonresident administrator
33 license, or delay the issuance of a nonresident administrator license, if the
34 commissioner determines that, due to events or information obtained
35 subsequent to the home state's licensure of the administrator, the
36 nonresident administrator cannot satisfy the requirements of this act or that
37 grounds exist for the home state's revocation or suspension of the
38 administrator's home state certificate of authority or license.

39 Sec. 5. K.S.A. 2019 Supp. 40-3815 is hereby amended to read as
40 follows: 40-3815. (a) The license of an administrator shall be denied,
41 suspended or revoked if the commissioner finds that the administrator:

42 (1) Is in an unsound financial condition;

43 (2) is using such methods or practices in the conduct of its business

1 so as to render its further transaction of business in this state hazardous or
2 injurious to insured persons or the public; or

3 (3) has failed to pay any judgment rendered against it in this state
4 within 60 days after the judgment has become final.

5 (b) The commissioner may deny, suspend or revoke the license of an
6 administrator if the ~~director~~ *commissioner* finds that the administrator:

7 (1) Has violated any lawful rule or regulation or order of the
8 commissioner or any provision of chapter 40 of the Kansas Statutes
9 Annotated, and amendments thereto;

10 (2) has refused to be examined or to produce its accounts, records and
11 files for examination, or if any individual responsible for the conduct of
12 affairs of the administrator, including members of the board of directors,
13 board of trustees, executive committee or other governing board or
14 committee, the principal officers in the case of a corporation or the
15 partners or members in the case of a partnership, association or limited
16 liability company, any shareholder or member holding directly or
17 indirectly 10% or more of the voting stock, voting securities or voting
18 interest of the administrator and any other person who exercises control or
19 influence over the affairs of the administrator, has refused to give
20 information with respect to its affairs or has refused to perform any other
21 legal obligation as to an examination, when required by the commissioner;

22 (3) has, without just cause, refused to pay proper claims or perform
23 services arising under its contracts or has, without just cause, caused
24 covered individuals to accept less than the amount due them or caused
25 covered individuals to employ attorneys or bring suit against the
26 administrator to secure full payment or settlement of such claims;

27 (4) fails, at any time, to meet any qualification for which issuance of
28 the license could have been refused had the failure then existed and been
29 known to the commissioner;

30 (5) any of the individuals responsible for the conduct of its affairs,
31 including members of the board of directors, board of trustees, executive
32 committee or other governing board or committee, the principal officers in
33 the case of a corporation or the partners or members in the case of a
34 partnership, association or limited liability company, any shareholder or
35 member holding directly or indirectly 10% or more of its voting stock,
36 voting securities or voting interest and any other person who exercises
37 control or influence over its affairs, has been convicted of, or has entered a
38 plea of guilty or nolo contendere to any felony, or to a misdemeanor that
39 evidences bad moral character, dishonesty, a lack of integrity and financial
40 responsibility or an unfitness and inability to provide acceptable service to
41 the consuming public without regard to whether adjudication was
42 withheld; or

43 (6) is under suspension or revocation in another state.

1 (c) The commissioner may, in the commissioner's discretion and
 2 without advance notice or hearing, immediately suspend the license of an
 3 administrator, if the commissioner finds that one or more of the following
 4 circumstances exist:

- 5 (1) The administrator is insolvent or impaired;
- 6 (2) a proceeding for receivership, conservatorship, rehabilitation or
 7 other delinquency proceeding regarding the administrator has been
 8 commenced in any state;
- 9 (3) the financial condition or business practices of the administrator
 10 otherwise pose an imminent threat to the public health, safety or welfare of
 11 the residents of this state; or
- 12 (4) a final order suspending or revoking the administrator's license in
 13 its home state has been entered.

14 (d) If the commissioner finds that one or more grounds exist for the
 15 suspension or revocation of a license issued under the provisions of this
 16 act, the commissioner may, in lieu of or in addition to suspension or
 17 revocation, impose an administrative penalty upon the administrator
 18 pursuant to the Kansas administrative procedure act.

19 Sec. 6. K.S.A. 2019 Supp. 40-3821 is hereby amended to read as
 20 follows: 40-3821. (a) K.S.A. 2019 Supp. 40-3821 through 40-3828, and
 21 amendments thereto, shall be known and may be cited as the pharmacy
 22 benefits manager registration act.

23 (b) This act shall apply to any pharmacy benefits manager that
 24 provides claims processing services, other prescription drug or device
 25 services, or both, to covered persons who are residents of this state.

26 (c) This act shall not apply to any pharmacy benefits manager that
 27 holds a certificate of ~~registration~~ *licensure* as an administrator pursuant to
 28 K.S.A. ~~40-3810~~ *40-3812 or 40-3813*, and amendments thereto.

29 Sec. 7. K.S.A. 2019 Supp. 40-3801, 40-3810, 40-3812, 40-3813, 40-
 30 3815 and 40-3821 are hereby repealed.

31 Sec. 8. This act shall take effect and be in force from and after its
 32 publication in the statute book.