

2023 Kansas Statutes

40-3812. Same; home state TPA license; fees. (a) A person shall apply to be an administrator in its home state and shall receive a license from the regulatory authority of its home state prior to performing any function of an administrator in this state.

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

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

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

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

(4) audited annual financial statements or reports for the two most recent fiscal years that demonstrate that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the uniform application shall include financial statements or reports, certified by at least two officers, owners or directors of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited annual financial report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

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

(B) amounts for each entity stated separately; and

(C) explanations of consolidating and eliminating entries included.

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

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

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

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

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

(6) a statement describing the business plan, including information on staffing levels and activities, proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of

experienced and qualified personnel in the areas of claims processing, record keeping and underwriting;

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

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

(c) An administrator licensed or applying for licensure under the provisions of this section shall make available for inspection by the commissioner, copies of all contracts with payors or other persons utilizing the services of the administrator.

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

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

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

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

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

(1) \$100,000; or

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

History: L. 2017, ch. 2, § 2; L. 2019, ch. 54, § 5; July 1.