

## **Third Party Administrators Act; SB 22**

**SB 22** enacts and amends law relating to third party administrators (TPAs). The bill creates the Third Party Administrators Act (Act). The bill takes effect upon publication in the *Kansas Register*.

### ***Definitions***

The bill adds and amends TPA definitions used in the Act. The bill amends the definition of “administrator” to clarify the individuals or business entities considered TPAs and under the purview of the Act and further updates those entities and activities not considered TPAs. The bill adds definitions for the following terms: affiliate or affiliated; business entity; collateral; commissioner (Kansas Commissioner of Insurance [Commissioner]); control, controlling, controlled by, and under common control with; United States generally accepted accounting principles consistently applied (GAAP); home state; insurance producer; insurer; National Association of Insurance Commissioners (NAIC); non-resident TPA; payor; person; stop-loss insurance; underwrites or underwriting; and uniform application.

### ***Application for Home State TPA License***

The bill sets forth requirements for home state TPA licensure. “Home state” is defined in the Act as the U.S. jurisdiction that adopted this Act or a substantially similar law governing TPAs and has granted the TPA a home state license.

Prior to performing any function as a TPA in Kansas, the bill requires the person to first apply to be a TPA in the person’s home state and receive a license from the regulatory authority of that home state. A person applying to Kansas as the home state will be required to apply for licensure by submitting an application to the Commissioner, accompanied by the following information and documents:

- 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;
- Bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant;
- NAIC biographical affidavits for individuals responsible for the applicant’s conduct of affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in a corporation or partners or members in a partnership, association, or limited liability company; any shareholders or members holding 10 percent or more of voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control over the applicant’s affairs;

- Audited financial statements or reports (described below under the headings related to audited and unaudited financial statements and reports);
- Unaudited financial statements in lieu of audited financial statements, if the Commissioner grants a hardship exemption;
- A statement describing the business plan, including information on staffing levels and activities, proposed in Kansas and nationwide. The bill requires the plan provide details of the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claim processing, recordkeeping, and underwriting;
- The license application fee, as provided by rules and regulations; and
- Other pertinent information, as required by the Commissioner.

Additionally, the bill requires a TPA licensed or applying for licensure to make copies of all contracts with payors or other persons utilizing the TPA's services available for the Commissioner's inspection; produce accounts, records, and files for examination, and make officers available to give information with respect to the TPA's affairs; and notify the Commissioner of any material change in ownership, control, or other circumstance affecting qualification for a TPA license.

### ***Financial Statements and Reports—Requirements***

The bill requires a person applying to Kansas as its home state to apply for TPA licensure by submitting audited annual financial statements or reports for the two most recent fiscal years demonstrating the applicant has a positive net worth.

If the applicant has not been in existence for two years, the bill requires the applicant to include financial statements or reports for any completed fiscal years and for any month during the current fiscal year with completed statements or reports. The bill requires these financial statements and reports to be certified by at least two officers, owners, or directors of the applicant and prepared in accordance with GAAP.

Additionally, the bill requires a columnar consolidating or combining worksheet to be filed with an audited annual financial report prepared on a consolidated basis, containing the following information:

- Amounts shown on the consolidated audited financial report shown on the worksheet;
- Amounts for each entity stated separately; and
- Explanations of consolidating and eliminating entries included.

The bill also grants the Commissioner the authority to require an applicant to include any other information as the Commissioner deems necessary for a review of the applicant's current financial condition.

### ***Unaudited Financial Statements and Reports***

The bill sets guidelines for unaudited financial statements. Upon written request and good cause shown, the bill authorizes the Commissioner to grant an applicant a hardship exemption from filing audited financial reports. In this instance, the applicant is required to submit unaudited financial statements. These statements, including notes, will be accepted if they are reports compiled or reviewed by a certified public accountant or if the internal financial reports are certified by at least two officers, owners, or directors of the TPA, in accordance with GAAP.

Additionally, an applicant submitting unaudited financial statements is required to secure and maintain a surety bond for the use and benefit of the Commissioner, in the amount of 10 percent of funds handled for the benefit of Kansas residents or \$20,000, whichever is greater, 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. A TPA licensed or applying for a home state license that administers or will administer governmental or church self-insured plans in Kansas or any other state will be subject to a mandatory surety bond requirement, regardless of whether the TPA files audited or unaudited financial reports. This bond requirement is the greater of \$100,000 or an amount equal to 10 percent of the aggregate total amount of self-funded coverage under church or governmental plans handled in Kansas and all additional states in which the TPA is authorized to do business.

### ***Refusal to Issue a TPA License***

The Commissioner is permitted to refuse to issue a license if the Commissioner determines the applicant or any individual responsible for the applicant's conduct of affairs is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an insurance or TPA certificate denied or revoked for cause by any jurisdiction. Additionally, the Commissioner is authorized to refuse to issue a license to a person operating under certain self-funded plan operations because that person does not require licensure and instead will need to register with the Commissioner annually.

### ***Validity of a License***

A TPA license issued by the Commissioner will be valid as long as the TPA continues in business in Kansas and remains in compliance with the Act and applicable rules and regulations, unless the license is surrendered, suspended, or revoked by the Commissioner.

### ***Non-resident TPA License***

The bill provides the requirements for non-resident TPA licenses. Unless a TPA has obtained a Kansas home state TPA license, any TPA performing duties as a TPA in Kansas is required to obtain a non-resident TPA license. A TPA will not be eligible for a non-resident

license if the TPA does not hold a home state license in a state that has adopted substantially similar TPA law. Additional requirements for non-resident TPA licensure include biennial filings; an application fee; production of accounts, records, and files for examination; and making officers available for information requests.

A non-resident TPA is not required to hold a non-resident license in Kansas if the TPA is licensed in its home state and the TPA's duties in Kansas are limited to the administration of a group policy or plan and no more than a total of 20 percent of covered persons, for all plans the TPA services, reside in Kansas and less than 100 covered persons reside in Kansas.

Further, the Commissioner is permitted to refuse or delay issuance of a non-resident TPA license if the TPA cannot satisfy the Act's requirements or grounds exist for the home state's revocation or suspension of the TPA home state certificate of authority or license.

### ***Annual Reports***

The bill requires any TPA licensed under the Act to file an annual report for the preceding calendar year with the Commissioner by July 1 of every year. The annual report will:

- Include the audited financial statement attested to by an independent certified public accountant, or the same parameters for consolidated audited reports and unaudited financial statements provided for in the application for TPA home state licensure;
- Be verified by at least two officers, owners, or directors of the TPA; and
- Include the complete names and addresses for all payors, or employers and trusts for self-funded plans, the TPA had agreements with during the preceding fiscal year, and the number of Kansas residents covered by each of the plans.

### ***Denied, Suspended, or Revoked Licenses***

The bill requires denial, suspension, or revocation of a TPA license if the Commissioner finds the TPA is in an unsound financial condition, is using methods or practices in the conduct of its business that could cause further business transactions in Kansas to be hazardous or injurious to insured persons or the public, or has failed to pay any judgment rendered against the TPA in Kansas within 60 days after the judgment becomes final.

Further, the bill authorizes the Commissioner to deny, suspend, or revoke a license if the TPA violates lawful rules, regulations, or orders of the Commissioner under the Kansas Insurance Code; the TPA refuses to be examined or produce required documents, refuses to give information about the TPA's affairs, or refuses to perform any other legal obligation; refuses to pay proper claims or perform services under contracts; the TPA fails to meet any qualifications for which issuance of a license could have been refused; or any individual responsible for the conduct of affairs was convicted, entered a plea of guilty or *nolo contendere* to any felony or to certain misdemeanors, or is under suspension or revocation in another state.

Additionally, the Commissioner is permitted to immediately suspend a TPA license, without advance notice or hearing, if one or more of the following circumstances exist: the TPA is insolvent or impaired; a proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced; the financial condition or business practices of the TPA pose an imminent threat to the public health, safety, or welfare of Kansas residents; or a final order suspending or revoking the TPA's license in its home state has been entered. In lieu of or in addition to suspension or revocation, the Commissioner is permitted to impose an administrative penalty upon the TPA in accordance with the Kansas Administrative Procedure Act.

### ***Delivery of Written Materials***

The bill requires the TPA to promptly deliver any policies, certificates, booklets, termination notices, or other written communications to insured parties or covered individuals upon receipt of instructions from the payor to deliver them.

### ***Written Statements Between TPA and Insurer***

The bill amends the requirements for a written agreement between a TPA and an insurer. The written agreement must include a statement of duties the TPA is expected to perform on behalf of the insurer and the lines, classes, or types of insurance the TPA is authorized to administer. Further, the bill requires the agreement to include an underwriting provision.

Additionally, the bill permits termination of the written agreement and suspension of underwriting authority. However, an insurer is required to fulfill any lawful obligations for policies affected by the written agreement.

### ***Payment to a TPA***

The bill updates language concerning an insurer's utilization of TPA services and clarifies the process for payment of return premiums or claims.

### ***Recordkeeping Requirements***

The bill updates the requirements for maintenance of books and records in these ways: removes a location requirement and requires those books and records be maintained for at least five years; specifies when confidential and privileged documents are not subject to the Kansas Open Records Act, subpoena, or discovery, or admissible in evidence in private civil action, and specifies the provision sunsets on July 1, 2022; prohibits the Commissioner from testifying in private civil actions concerning confidential documents; and provides guidelines for when and how the Commissioner can share and receive confidential and privileged documents with and from other state, federal, and international regulatory agencies, the NAIC, and federal and international law enforcement agencies. The bill further specifies the Commissioner is not prohibited from releasing final adjudicated actions; the payor owns records generated by the TPA pertaining to the payor, but the TPA retains rights; and the procedure for a TPA to transfer records instead of maintaining them for five years in the event the payor and TPA cancel their written agreement.

## ***Advertising***

The bill specifies a TPA must obtain a client's prior written consent before the TPA can mention any current or former client in advertising.

## ***Collection and Payment of Claims***

The bill amends law to update those items collected by a TPA on behalf of a payor and held by the TPA in a fiduciary capacity; specifies a written agreement between a TPA and payor must include the TPA periodically rendering an accounting to a payor detailing the transactions performed by the TPA; outlines the procedure for the TPA to record deposits and withdrawals collected and deposited for more than one payor; further updates fiduciary account language; specifies all claims paid by the TPA from funds collected on behalf of or for a payor shall be paid only as authorized by the payor; and dictates how the payments from an account maintained or controlled by a TPA may be made.

## ***Compensation to the TPA***

The bill prohibits a TPA from entering into an agreement or understanding with a payor that has the effect of making the amount of the TPA's commissions, fees, or charges contingent upon savings affected by the adjustment, settlement, and payment of losses covered by the payor's obligations. The bill does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services; providing managed care or related services; or being compensated for subrogation expenses. Further, the bill does not prevent a TPA's compensation from being based on premiums or charges collected or on the number of claims paid or processed.

## ***Disclosure of Fees and Charges***

The bill amends law by updating the written notice required to be provided from a TPA to covered individuals; specifies the reason for collection of funds and requires information to be identified to the insured party and separate from any premium; and requires the TPA to disclose to the payor all charges, fees, and commissions the TPA receives from services it provides to the payor.

## ***Registration Required***

The bill requires annual registration with the Commissioner from a person not required to be licensed as a TPA under the Act but who underwrites, collects charges or premiums from, or adjusts or settles claims on residents of Kansas only in connection with life, annuity, or health coverage provided by a self-funded plan other than a governmental or church plan. The bill further specifies the provision does not apply to an insurer or employees of an insurer or TPA.

### ***Repealed Statute***

The bill amends nine statutes and creates new statutes relating to TPAs. One statute requiring the agreement between an insurer and a TPA to make provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer is repealed with enactment of the bill.