

## 2018 Kansas Statutes

### **40-3801. Regulation and registration of administrators; definitions.** As used in this act:

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

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

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

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

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

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

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

(7) A trust exempt from taxation under section 501(a) of the internal revenue code, its trustees, and employees acting pursuant to such trust or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the internal revenue code.

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

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

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

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

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

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

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

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

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

(f) "Control," "controlling," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in K.S.A. 40-3305, and amendments thereto, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

(h) "Home state" means the United States jurisdiction that has adopted this act or a substantially similar law governing TPAs and that has granted the TPA a home state TPA license.

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

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

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

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

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

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

(o) "Stop-loss insurance" means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against obligations under the plan, but "stop-loss insurance" does not include reinsurance written for an insurance company.

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

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

**History:** L. 1978, ch. 174, § 1; L. 2017, ch. 2, § 7; Mar. 9.