

HOUSE BILL No. 2044

By Committee on Insurance

Requested by Eric Turek, Kansas Insurance Department

1-21

1 AN ACT concerning insurance; requiring that third party administrators
2 maintain separate fiduciary accounts for individual payors and not
3 contain funds collected or held on behalf of multiple payors and
4 disclose to the commissioner of insurance any bankruptcy petition filed
5 by or on behalf of such administrator pursuant to chapter 9 or chapter
6 11 of the United States bankruptcy code; amending K.S.A. 40-3807 and
7 40-3809 and repealing the existing sections.

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9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 40-3807 is hereby amended to read as follows: 40-
11 3807. (a) All insurance charges, premiums, collateral and loss
12 reimbursements collected by an administrator on behalf of or for a payor,
13 and the return of premiums or collateral received from that payor, shall be
14 held by the administrator in a fiduciary capacity. Such funds shall be
15 immediately remitted to the person or persons entitled thereto, or shall be
16 deposited promptly in a fiduciary account established and maintained by
17 the administrator in a federally or state-insured financial institution. *A*
18 *separate fiduciary account shall be maintained by the administrator for*
19 *each payor and shall not contain funds collected or held by the*
20 *administrator on behalf of multiple payors.* The written agreement
21 between the administrator and the payor shall provide for the administrator
22 to periodically render an accounting to the payor detailing all transactions
23 performed by the administrator pertaining to the business of the payor, and
24 the written agreement between the payor and the administrator shall
25 include specifications of this reporting.

26 (b) The administrator shall keep copies of all records of any fiduciary
27 account maintained or controlled by the administrator, and, upon request
28 of a payor, shall furnish the payor with copies of such records pertaining to
29 deposits and withdrawals on behalf of the payor. If charges or premiums so
30 deposited have been collected on behalf of or for more than one payor, or
31 for the payment of claims associated with more than one policy, the
32 administrator shall keep records clearly recording the deposits in and
33 withdrawals from the account on behalf of each payor and relating to each
34 policyholder.

35 (c) The administrator shall not pay any claim by withdrawals from a

1 fiduciary account in which premiums or charges are deposited.
2 Withdrawals from a fiduciary account shall be made as provided in the
3 written agreement between the administrator and the payor, and only for
4 the following purposes: (1) Remittance to an insurer entitled thereto; (2)
5 deposit in an account maintained in the name of the payor; (3) transfer to
6 and deposit in a claims paying account, with claims to be paid as provided
7 in subsection (d); (4) payment to a group policyholder for remittance to the
8 payor entitled thereto; (5) payment to the administrator of its earned
9 commissions, fees or charges; (6) remittance of return premiums to the
10 person or persons entitled thereto; or (7) payment to other service
11 providers as authorized by the payor.

12 (d) All claims paid by the administrator from funds collected on
13 behalf of or for a payor shall be paid only as authorized by the payor.
14 Payments from an account maintained or controlled by the administrator
15 may be made for the following purposes including the payment of claims:
16 (1) Payment of valid claims; (2) payment of expenses associated with the
17 handling of claims to the administrator or to other service providers
18 approved by the payor; (3) remittance to the payor, or transfer to a
19 successor administrator as directed by the payor, for the purpose of paying
20 claims and associated expenses; and (4) return of funds held as collateral
21 or prepayment, to the person entitled to those funds, upon a determination
22 by the payor that those funds are no longer necessary to secure or facilitate
23 the payment of claims and associated expenses.

24 Sec. 2. K.S.A. 40-3809 is hereby amended to read as follows: 40-
25 3809. (a) Where the services of an administrator are utilized, the
26 administrator shall provide a written notice, approved by the payor, to
27 covered individuals advising them of the identity of and relationship
28 among the administrator, the policyholder and the payor.

29 (b) When an administrator collects funds, the reason for collection of
30 each item shall be identified to the insured party and each item shall be
31 shown separately from any premium. Additional charges may not be made
32 for services to the extent the services have already been paid for by the
33 payor.

34 (c) The administrator shall disclose to the payor all charges, fees and
35 commissions that the administrator receives arising from services it
36 provides for the payor, including any fees or commissions paid by payors
37 providing reinsurance or stop-loss insurance.

38 (d) *An administrator shall ~~immediately~~ disclose to the commissioner*
39 *any bankruptcy petition filed by or on behalf of such administrator*
40 *pursuant to chapter 9 or chapter 11 of the United States bankruptcy code*
41 *at the time such filing is made.*

42 Sec. 3. K.S.A. 40-3807 and 40-3809 are hereby repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the ~~statute book~~ ***Kansas register***.