

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 22

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 22 would enact and amend law relating to third party administrators (TPA). The provisions of the bill would be known and cited as the Third Party Administrators Act (Act). The bill would be in effect upon publication in the *Kansas Register*. Descriptions of specific bill provisions follow.

Definitions (Section 7)

The bill would add and amend TPA definitions to be used in the Act. The bill would amend the definition of “administrator” to clarify the individuals or business entities considered TPAs and under the purview of the Act and further update those entities and activities not considered TPAs. Additionally, the bill would add definitions for affiliate or affiliated; business entity; collateral; Kansas Insurance Commissioner (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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Application for Home State TPA License (New Section 2)

The bill would set 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 would require 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 would 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 ten 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 in further detail 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 would require 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, record keeping, and underwriting;
- The license application fee, as provided by rules and regulations; and
- Other pertinent information, as required by the Commissioner.

Additionally, the bill would require 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 (New Section 2)

The bill would require a person applying to Kansas as its home state to apply for 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 would require 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 would require 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 would require 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 would grant 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
(New Section 2)***

The bill would set guidelines for unaudited financial statements. Upon written request and good cause shown, the bill would authorize the Commissioner to grant an applicant a hardship exemption from filing audited financial reports. In this instance, the applicant would be required to submit

unaudited financial statements. These statements, including notes, would 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 would be required to secure and maintain a surety bond for the use and benefit of the Commissioner, in the amount of ten percent of funds handled for the benefit of Kansas residents or \$20,000, 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 would be subject to a mandatory surety bond requirement, regardless of whether the TPA files audited or unaudited financial reports. This bond requirement would be the greater of \$100,000 or an amount equal to ten 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 (New Section 2)

The Commissioner would be 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 would be authorized to refuse to issue a license to a person operating under certain self-funded plan operations because that person would not require licensure and instead would need to register with the Commissioner annually.

Validity of a License (New Section 2)

A TPA license issued by the Commissioner would 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 (New Section 3)

The bill would provide 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 would be required to obtain a non-resident TPA license. A TPA would 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 would 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 would not be 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 would be 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 (New Section 4)

The bill would require 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 would:

- 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 [described in New Section 2];
- 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 (New Section 5)

The bill would require denial, suspension, or revocation of a TPA license if the Commissioner finds the TPA is in an unsound financial condition, using methods or practices in the conduct of its business that could cause further business transactions in Kansas as 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 would authorize the Commissioner to deny, suspend, or revoke a license if the TPA has violated lawful rules, regulations, or orders of the Commissioner under the Kansas Insurance Code; refused to be examined or

produce required documents, refused to give information about the TPA's affairs, or refused to perform any other legal obligation; refused to pay proper claims or perform services under contracts; failed to meet any qualifications for which issuance of a license could have been refused; individuals responsible for the conduct of affairs were 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 would be 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 would be permitted to impose an administrative penalty upon the TPA in accordance with the Kansas Administrative Procedure Act.

Delivery of Written Materials (New Section 6)

The bill would require 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 (Section 8)

The bill would amend the requirements for a written agreement between a TPA and an insurer. The written agreement would be required to 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, bill would require the agreement include an underwriting provision.

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

Payment to a TPA (Section 9)

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

Recordkeeping Requirements (Section 10)

The bill would update the requirements for maintenance of books and records in these ways: removing a location requirement and requiring those books and records be maintained for at least five years; specifying 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 specifying the provision sunsets on July 1, 2022; prohibiting the Commissioner from testifying in private civil actions concerning confidential documents; and providing guidelines for when and how the Commissioner could 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 would further specify the Commissioner would not be prohibited from releasing final adjudicated actions; the payor would own records generated by the TPA pertaining to the payor, but the TPA would retain 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 (Section 11)

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

Collection and Payment of Claims (Section 12)

The bill would amend law to update those items collected by a TPA on behalf of a payor and held by the TPA in a fiduciary capacity; specify 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; outline the procedure for the TPA recording deposits and withdrawals collected and deposited for more than one payor; further update fiduciary account language; specify that 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 dictate how the payments from an account maintained or controlled by a TPA may be made.

Compensation to the TPA (Section 13)

The bill would prohibit a TPA from entering into an agreement or understanding with a payor which 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 would not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services; from providing managed care or related services; or from being compensated for subrogation expenses. Further, the bill would 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 (Section 14)

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

Registration Required (Section 15)

The bill would require 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 would further specify the provision would not apply to an insurer or employees of an insurer or TPA.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Insurance Department (Department). In the Senate Committee hearing, a representative of the Department testified in favor of the bill, stating consistent financial oversight is necessary because many TPAs are conducting business in multiple states. The representative stated enactment of the bill would assure other states that a TPA domiciled in Kansas would be properly regulated. There was no opponent or neutral testimony.

The Senate Committee amended the bill to make technical changes.

According to the fiscal note prepared by the Division of the Budget, the Department indicates any fiscal effect resulting from enactment of the bill would be negligible.