AN ACT concerning insurance; relating to the third party administrators act; updating certain related definitions and requirements; amending K.S.A. 2019 Supp. 40-3801, 40-3810, 40-3812, 40-3813, 40-3815 and 40-3821 and repealing the existing sections.

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

Section 1. K.S.A. 2019 Supp. 40-3801 is hereby amended to read as follows: 40-3801. 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 or accident and sickness 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—health or accident and sickness 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
or accident and sickness 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. A person may declare Kansas as the person's home state whether they are a resident of Kansas or another state.

(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, accident and sickness insurance 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 accident and sickness 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.

Sec. 2. K.S.A. 2019 Supp. 40-3810 is hereby amended to read as follows: 40-3810. A person who is not required to be licensed as an administrator under this act and who directly or indirectly underwrites, collects charges or premiums from or adjusts or settles claims on residents of this state only in connection with life, annuity or health or accident and sickness coverage provided by a self-funded plan other than a governmental or church plan, shall register with the commissioner annually, verifying its status as herein described. This section shall not apply to an insurer or to an individual performing these actions as an employee of an insurer. This section shall also not apply to a person performing these actions under contract to or as an employee of an administrator.

Sec. 3. K.S.A. 2019 Supp. 40-3812 is hereby amended to read as follows: 40-3812. (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 good standing 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. To demonstrate 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.

Sec. 4. K.S.A. 2019 Supp. 40-3813 is hereby amended to read as
follows: 40-3813. (a) Unless an administrator has obtained a home state
license in this state, any administrator who performs duties as an
administrator in this state shall obtain a nonresident administrator license
in accordance with the provisions of this section by filing with the
commissioner the uniform application, accompanied by a letter of
certification. In lieu of requiring an administrator to file a letter of
certification with the uniform application, the commissioner may verify
the nonresident administrator's home state certificate of authority or
license status through an electronic database maintained by the NAIC, its
affiliates or subsidiaries.
(b) An administrator shall not be eligible for a nonresident
administrator license under the provisions of this section if it does not hold
a license in a home state that has adopted a substantially similar law
governing administrators.
(c) Except as provided in subsections (b) and (h) the commissioner
shall issue to the administrator a nonresident administrator license
promptly upon receipt of a complete application.
(d) Each nonresident administrator shall file biennially, as a part of its
application for renewal of its license, a statement that its home state
administrator license remains in force and has not been revoked or
suspended by its home state during the preceding years. Each nonresident
administrator renewal application shall be accompanied by a renewal
application fee in the amount of $200.
(e) At the time of filing the application for licensing required under
the provisions of this section, the nonresident administrator shall pay a
license application fee in the amount of $400.
(f) An administrator licensed or applying for licensure under the
provisions of this section shall produce its accounts, records and files for
examination, and make its officers available to give information with
respect to its affairs, as often as reasonably required by the commissioner.
(g) A nonresident administrator is not required to hold a nonresident
administrator license in this state if the administrator is licensed in its
home state and the administrator's duties in this state are limited to:
(1) The administration of a group policy or plan and no more than a
total of 20% of covered persons, for all plans the administrator services,
reside in this state; and
(2) the total number of covered persons residing in this state is less
than 100.
(h) The commissioner may refuse to issue a nonresident administrator
license, or delay the issuance of a nonresident administrator license, if the
commissioner determines that, due to events or information obtained
subsequent to the home state's licensure of the administrator, the
nonresident administrator cannot satisfy the requirements of this act or that
grounds exist for the home state's revocation or suspension of the
administrator's home state certificate of authority or license.
Sec. 5. K.S.A. 2019 Supp. 40-3815 is hereby amended to read as
follows: 40-3815. (a) The license of an administrator shall be denied,
suspended or revoked if the commissioner finds that the administrator:
(1) Is in an unsound financial condition;
(2) is using such methods or practices in the conduct of its business
so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

(3) has failed to pay any judgment rendered against it in this state within 60 days after the judgment has become final.

(b) The commissioner may deny, suspend or revoke the license of an administrator if the commissioner finds that the administrator:

(1) Has violated any lawful rule or regulation or order of the commissioner or any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto;

(2) has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the administrator, including 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 shareholder or member holding directly or indirectly 10% or more of the voting stock, voting securities or voting interest of the administrator and any other person who exercises control or influence over the affairs of the administrator, has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner;

(3) has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(4) fails, at any time, to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner;

(5) any of the individuals responsible for the conduct of its affairs, including 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 shareholder or member holding directly or indirectly 10% or more of its voting stock, voting securities or voting interest and any other person who exercises control or influence over its affairs, has been convicted of, or has entered a plea of guilty or nolo contendere to any felony, or to a misdemeanor that evidences bad moral character, dishonesty, a lack of integrity and financial responsibility or an unfitness and inability to provide acceptable service to the consuming public without regard to whether adjudication was withheld; or

(6) is under suspension or revocation in another state.
(c) The commissioner may, in the commissioner's discretion and without advance notice or hearing, immediately suspend the license of an administrator, if the commissioner finds that one or more of the following circumstances exist:

1. The administrator is insolvent or impaired;
2. a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state;
3. the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state; or
4. a final order suspending or revoking the administrator's license in its home state has been entered.

(d) If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under the provisions of this act, the commissioner may, in lieu of or in addition to suspension or revocation, impose an administrative penalty upon the administrator pursuant to the Kansas administrative procedure act.

Sec. 6. K.S.A. 2019 Supp. 40-3821 is hereby amended to read as follows: 40-3821. (a) K.S.A. 2019 Supp. 40-3821 through 40-3828, and amendments thereto, shall be known and may be cited as the pharmacy benefits manager registration act.

(b) This act shall apply to any pharmacy benefits manager that provides claims processing services, other prescription drug or device services, or both, to covered persons who are residents of this state.

(c) This act shall not apply to any pharmacy benefits manager that holds a certificate of registration licensure as an administrator pursuant to K.S.A. 40-3810, 40-3812 or 40-3813, and amendments thereto.

Sec. 7. K.S.A. 2019 Supp. 40-3801, 40-3810, 40-3812, 40-3813, 40-3815 and 40-3821 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.