



# Kansas Insurance Department

Vicki Schmidt, Commissioner of Insurance

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## Testimony from the Kansas Insurance Department regarding Association Health Plans (AHPs) for the House Insurance Committee

January 28, 2019

Chairman Vickrey and members of the Committee,

Thank you for the opportunity to submit neutral testimony on the variety of legislative changes under consideration by this committee related to **Self-Funded** AHPs. As Commissioner Schmidt stated during her appearance before this committee on January 23, 2019, neither she nor the department, intends to weigh in on policy decisions.

The purpose of today's testimony is to provide a brief history of Association Health Plans from the department's perspective and outline some questions we believe are important to keep in mind while you consider the various proposals before you.

### Background

On June 19, 2018 the U.S. Department of Labor issued their Final Rule on Association Health Plans per the Executive Order dated October 12, 2017 regarding health care. The goal of the Final Rule was to expand access to health coverage by allowing small businesses to band together by industry or geography to get coverage as if they were a single large employer. Kansas statutes must be changed to allow all Kansas associations to take advantage of this new federal rule, hence the many proposals before you.

Please find attached to this testimony a document which outlines the different types of AHPs:

- Fully Insured Association Health Plan
- Self-Funded Association Health Plan in Existence
- New Self-Funded Association Health Plan

Under current Kansas law, the Insurance Commissioner's office does not have regulatory authority over **Self-Funded** AHPs. Because there is no regulatory oversight over self-funded AHPs, Kansas law established certain statutory protections to prevent "fly by night" associations from forming and failing to provide adequate protection to Kansas consumers.

Prior to the adoption of statutory rules, like requiring an association to be established for a minimum of five (5) years, there were "associations" that were established for the sole purpose of selling insurance or insurance like products. Unfortunately, these "fly by night" associations failed to have adequate protections and internal controls in place to ensure solvency and ability to pay claims and unsuspecting Kansans suffered as a result.

Due to self-funded AHPs falling outside the regulatory jurisdiction of the Kansas Insurance Department we cannot attest to how many organizations in Kansas may be offering an AHP. We can verify, based on who pays the 1% premium tax required by statute, there are currently three organizations operating in Kansas with Association Health Plans.

### **Questions to Consider**

While the department does not see concern for the established and reputable associations currently operating, nor concern for some of the established organizations that are considering forming a self-funded AHP, we do have concerns that unforeseen bad actors could enter the market. Without proper safeguards for Kansas consumers, there is the potential for the state to see some of the same issues that existed prior to the adoption of some of the basic statutory protections.

**Should Kansas maintain the five (5) year minimum on established associations before they are able to offer an AHP?** If the five (5) year minimum remains, should there be an exception if multiple associations were to merge into one new association? While the new association would not meet the technical definition of established for five years, does the established history of the associations prior to their merger give the confidence that it will not be a “fly by night” association.

**Should the association be required to file some basic financial information with the Kansas Insurance Department for purposes of determining whether the association is truly solvent and capable of paying claims?** If so, does that apply to existing AHPs, new AHPs or both? What type of financial disclosure should be required? Since AHP’s do not fall under the regulatory umbrella of the Kansas Insurance Department, what process should be followed if an association is deemed not capable of paying claims?

**For any plan that does not meet the definition of insurance and thus is not subject to the regulatory jurisdiction of the Insurance Department, what requirements, if any, are there for the associations to have an appeals process?** How should that appeal process be handled? Will the appeals process be required to be reported to the Insurance Department, so the department can direct consumers to the right place in the event of a consumer complaint?

**Does the expansion of the types of AHPs create more choices that give Kansas consumers product options that fit their coverage and affordability needs?**

It is our hope that by providing these questions the committee has the opportunity to fully vet the proposals before you and their impact on the market and on Kansas consumers. Should you go through these proposals and have questions of the department along the way we are more than willing to offer assistance where we can. Thank you for the opportunity to submit this testimony.

Sincerely,

Lee Modesitt  
Director of Government Relations and Communications  
Kansas Insurance Department