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**Kansas Insurance Department**

**Bulletin No. 1995 - 21**

TO: All interested parties  
FROM: Kathleen Sebelius, Commissioner of Insurance  
SUBJECT: What is the "business of insurance?"  
DATE: November 21, 1995

This bulletin sets out the Insurance Commissioner's interpretation of the phrases "business of insurance" and "insurance," in response to increasing questions regarding the jurisdiction of the Commissioner over enterprises resembling insurance.

The Kansas Insurance Code does not define the "business of insurance" or "insurance" in the context of the Commissioner's regulatory jurisdiction. While there have been Kansas court decisions which interpreted elements of a definition of insurance, there is no comprehensive definition of the phrase "business of insurance." The Commissioner has concluded the following definition is appropriate.

The business of insurance is agreeing, for compensation, to assume some particular risk of another party, promising to pay that party, or third parties on his or her behalf, an ascertainable sum of money upon a specified contingency. Generally, this agreement must include a scheme to distribute those risks among a large group of persons bearing similar risks.

Outside of traditional elements of contract, i.e. consideration and a legal subject matter upon which a contract can be made, the essential elements of the "business of insurance" depend on whether there is an agreement to assume the risk of loss and whether there is some scheme to distribute risks. Additional factors which may be considered in deciding whether an arrangement constitutes the "business of insurance" are: whether the "risk" is a major part of the business of the person or simply an incidental element of the arrangement and whether the arrangement is described in terms traditionally used by insurers, e.g. the use of the terms "premiums," "perils" and "insurance" or "indemnify." It is difficult to precisely define what is the business of insurance and each business scheme must be looked at on a case by case basis.

Examples that illustrate the difference between "insurance" and assumption of normal business risks are:

- ◇ a health care provider who enters into an agreement with individuals or employers, in which the provider assumes all or part of the risk for health care expenses or delivery of services is engaged in the “business of insurance.” Assuming “all of the risk” could consist of contracts with employers to provide services to employees, with payment provided by a pre-paid, capitated basis for all services. Assumption of “part of the risk” might consist of contracting with an employer to provided services to employees, where a budget is established and payment is based, in part, on splitting any “savings” on that budget between the employer and the “insurer.”
- ◇ A health care provider who agrees to assume all or part of the risk for health care expenses or service delivery under a contract with a licensed health insurer, or an HMO, or who agrees by contract to provide services to an insurer, HMO, or self insured employer at a discount from their regularly charged prices, is not engaged in the “business of insurance.”
- ◇ An entity who contracts directly with an employer and is paid on a fee-for-service basis for all services is not in the business of insurance [although they may be required to register as a third party administrator under Kansas law].
- ◇ An entity who contracts with a licensed insurer or other licensed entity to provide medical coverage for the insurance company, where the licensed insurer contracts directly with insureds, is not engaging in the business of insurance.

Although examples from the business of health care providers have been given, the definition provided in this Bulletin is not confined to that business.

The Department of Insurance encourages entities who anticipate forming arrangements that may be “insurance” to seek Department review of their arrangement to determine whether it is the “business of insurance.” The Department will make every effort to work with you to bring such arrangements in compliance with our Insurance Code or to recommend changes that will avoid violation of Kansas law.



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