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Shughart**

THIRD PARTY ADMINISTRATOR UPDATE

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REGULATORY AND LITIGATION DEVELOPMENTS

INSIDE THIS ISSUE

- 1 New Third Party Administrator Licensing Requirement in Connecticut
- 2 Idaho Requires Licensed Third Party Administrators to Requalify
- 3 Texas Enforcement Actions Against TPAs in 2011
- 4 Michigan Bulletin on Alien Third Party Administrators
- 5 Third Party Administrator Client Spotlight
- 6 Third Party Administrator Compliance and Regulatory Services

For additional information about our Third Party Administrator Compliance & Regulatory Services or the contents of this Update, please contact Steve Imber or Justin Liby.



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New Third Party Administrator Licensing Requirement in Connecticut

Connecticut has a new third party administrator (TPA) licensing requirement that became effective October 1, 2011. The new Connecticut TPA licensing requirement was not enacted as a stand-alone TPA statute or regulation, but rather was contained in a Connecticut omnibus bill that enacts health care reforms under the Affordable Care Act. The new Connecticut law requires third party administrators that administer life, annuity and health business on behalf of Connecticut residents to become licensed with the Connecticut Insurance Department. The Connecticut law does not grandfather in TPAs that were doing business in Connecticut prior to October 1, 2011, and according to the Connecticut Insurance Department, any unlicensed TPA operating in Connecticut after October 1, 2011, will be subject to administrative action for conducting business without a license.

TPAs subject to the new Connecticut licensing requirements are defined as:

“A person who directly or indirectly underwrites, collects premiums or charges, or adjusts or settles claims on Connecticut residents with respect to life, annuity, or health coverage offered or provided by an insurer. ‘Insurer’ is defined as any person or combination of persons doing any kind or form of insurance business (other than a fraternal benefit society), including a captive insurer, a licensed insurance company, medical service corporation, hospital service corporation, health care center and a consumer dental plan that provides employee welfare benefits on a self-funded basis ...”

The new Connecticut TPA law has a number of requirements, including but not limited to the following:

- Requires TPAs which are collecting premium, underwriting or adjusting or settling claims on Connecticut residents in connection with life, annuity or health coverage to be licensed in Connecticut by October 1, 2011.
- Imposes statutory provision requirements with respect to the administrative services agreement between a TPA and insurer.

- Requires TPAs to issue a benefits identification card to each insured that includes a disclosure of the TPA, insurer and the policyholder and the relationship among them.
- Contains books and records requirements.
- Requires insurers to conduct semi-annual reviews of the operations of a TPA and at least one of the semi-annual reviews must be on-site.
- Requires a TPA to obtain a \$500,000 surety bond. The Connecticut DOI is authorized to waive the surety bond requirement if a TPA applicant submits audited annual financial statements for the two most recent fiscal years that prove the applicant has a positive net worth.

Connecticut's new TPA requirements have a few requirements that differ from most other state TPA laws. Specifically, while a number of states do not impose surety bond requirements, in those states that do, the required surety bond amount is typically \$50,000, rather than the \$500,000 required by Connecticut.

The other unique Connecticut requirement is the requirement that TPAs issue a "benefit identification card" to each insured that includes a disclosure of the TPA insurer and the policyholder and the relationship among them. This new benefit identification card requirement is inconsistent with the NAIC's Third Party Administrator Model Law (TPA Model Law), as well as the laws of the other 43 states that regulate TPAs. Specifically, while the TPA Model Law requires a written notice to be sent to insureds advising them of the relationship of the TPA, insurer and policyholder, the TPA Model Law does not require a separate benefit identification card to be sent to consumers. Some TPAs are struggling with this requirement since benefit identification cards are typically associated with health insurance, rather than life and annuity business, but TPAs administering the latter business must still comply.

For additional information regarding Connecticut's new TPA licensing requirements, please contact Steve Imber at (913) 234-7469 or simber@polsinelli.com; or Justin Liby at (913) 234-7427 or jliby@polsinelli.com. ■

Idaho Requires Licensed Third Party Administrators to Requalify

As noted in our Vol. 1 2010 *Third Party Administrator Update*, the Idaho legislature replaced its existing TPA statutes with the NAIC Model Third Party Administrators Statute in 2010. More recently, the Idaho Insurance Department issued a letter that requires all TPAs who were licensed in Idaho prior to February 1, 2010, to submit a Home State Declaration Application as part of their Annual Report filing due July 1, 2012. The Home State Declaration Application essentially requires the TPAs to submit either a Non-Resident TPA Application with their Annual Reports if the TPA holds a "Home State" license in Delaware, Indiana or West Virginia or, if not so licensed, an Idaho Home State Application.

The 2010 change in Idaho's TPA laws has significantly changed the way TPAs are licensed in the state. Specifically, TPAs that are licensed or wish to become licensed in Idaho must declare and be licensed in a "home state."

§ 41-911 IC provides that "A person shall apply to be an administrator in its home state and shall receive a license (TPA) from the regulatory authority of its home state prior to performing any function of an administrator in this state."

§ 41-901 (6) IC defines "Home State" as "the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the provisions of this chapter, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its home state."

The Idaho Insurance Department's position is that these statutes require each TPA to either have a home state license from a state with a TPA law that is substantially similar to Idaho's TPA law or obtain a home state license in Idaho. In the Department's view, only Delaware, Indiana and West Virginia have substantially similar TPA laws.

For additional information regarding Idaho's new requirements for TPAs, please contact Steve Imber at (913) 234-7469 or simber@polsinelli.com; or Justin Liby at (913) 234-7427 or jliby@polsinelli.com. ■

Texas Enforcement Actions Against TPAs in 2011

The Texas Insurance Department (Department) took a substantial number of enforcement actions against TPAs in 2011. According to information from the Department's website, the Department took a total of 25 enforcement actions against TPAs and collectively assessed monetary penalties totaling \$349,000 against these TPAs.

Of the 25 enforcement actions, 24 involved the failure of a TPA to timely file its annual report and/or failure to pay its annual report filing fees. The Department also took action against a TPA for operating in Texas without a TPA Certificate of Authority.

The following is a detailed summary of the Department's enforcement actions against TPAs in 2011:

Enforcement Actions	Violation	Action Taken
No. 1	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 2	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 3	Failed to timely file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 4	Failed to timely file annual report and to pay annual report filing fees.	Fined \$1,000; revoked TPA Certificate of Authority.
No. 5	Failed to timely file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 6	Failed to timely file annual report.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 7	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 8	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 9	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 10	Failed to timely file annual report.	Fined \$17,000; revoked TPA Certificate of Authority.
No. 11	Failed to file annual report and to pay annual report filing fees.	Fined \$11,000; revoked TPA Certificate of Authority.
No. 12	Failed to file annual report; Failed to pay annual report filing fees; Failed to maintain necessary qualifications for Third Party Administrator.	Fined \$15,000; revoked TPA Certificate of Authority.
No. 13	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 14	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 15	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 16	Failed to file annual report and to pay annual report filing fees.	Fined \$9,000; revoked TPA Certificate of Authority.
No. 17	Failed to timely file annual report and to pay annual report filing fees.	Fined \$16,000; revoked TPA Certificate of Authority.
No. 18	Failed to file annual report and to pay annual report filing fees.	Fined \$10,000; revoked TPA Certificate of Authority.
No. 19	Acted as Third Party Administrator without Certificate of Authority.	Fined \$30,000.
No. 20	Failed to file annual report and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 21	Failed to file annual reports and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 22	Failed to file annual reports and to pay annual report filing fees.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 23	Failed to timely file annual report.	Fined \$12,000; revoked TPA Certificate of Authority.
No. 24	Failed to file annual report and to pay annual report filing fees.	Fined \$20,000; revoked TPA Certificate of Authority.
No. 25	Failed to file annual report and to pay annual report filing fees.	Fined \$40,000; revoked TPA Certificate of Authority.

Michigan Bulletin on Alien Third Party Administrators

Due to an increasing number of alien third party administrator applications submitted to the Michigan Office of Financial and Insurance Regulation (OFIR), the OFIR issued Bulletin 2010-09-INS which clarifies how alien TPA applications are processed by the OFIR. An “alien TPA” is defined in the Bulletin as a TPA formed under the laws of any country other than the United States of America, its states, districts, commonwealths and possessions.

In addition to all of the typical organizational corporate and financial documents that typically are submitted with TPA applications to the OFIR, pursuant to the Bulletin, the OFIR has determined that alien TPA applicants must submit the following additional information with their TPA applications:

- Fiduciary and claims processing account guidelines which require that all premiums collected and all premium collecting and claim processing accounts will be deposited into and held within a federally insured financial institution within the United States.
- Guidelines for the maintenance and storage of files which require that insured’s files be maintained and stored in the United States with the alien TPA having “view only” access from a computer database without the authority to print. An insured’s social security number and other personal information must be safeguarded and access shall be limited to the staff necessary to fulfill the alien TPA’s obligations. Additionally, regulators are to have access to all accounts, records and files in the United States, as well as access to officers in order to obtain information regarding the affairs of the alien TPA and to ensure compliance.
- Privacy standards which require the establishment and documentation of procedures and mechanisms to protect and safeguard an insured’s medical and confidential information.
- An explanation of how effective compliance monitoring will be accomplished including how the oversight of the alien TPA by compliance offices located in the United States will be performed.
- A listing of all job functions and work related activities to be conducted by the alien TPA. Alien TPAs shall not perform underwriting, collect any type of charges or fees for claim processing and cannot bind contracts.
- Employment qualification standards which include a list of qualifications that alien TPA employees must meet before they are hired and documentation of the initial and ongoing training that alien TPA employees will receive during their employment.

For additional information regarding Michigan alien TPA applications, please contact Steve Imber at (913) 234-7469 or simber@polsinelli.com. ■

Special thanks to
Polsinelli Shughart attorney
JENNIFER L. OSBORN
for her contributions
to this newsletter.



Jennifer L. Osborn

Third Party Administrator Client Spotlight

This section of our *Third Party Administrator Update* highlights our TPA clients, and we will continue to feature third party administrator clients in future newsletters. In this issue, we focus on Patriot Risk Services, Inc.

Patriot Risk Services is a leader in the workers' compensation industry and is recognized for developing and refining innovative solutions in claims administration and cost containment services.

Patriot Risk Services is a subsidiary of Patriot Services, Inc. The company was incorporated in 2005 and its administrative office is located in Ft. Lauderdale, Florida. Patriot Risk Services provides claims management services with a strong focus on cost containment. They also provide nurse case management services through their strategic partnerships. Through an affiliated entity, Contego Services Group, LLC, they provide subrogation recovery and fraud investigation services.

The principals of Patriot Risk Services have more than 60 years of combined in-depth experience. Together, they have built the infrastructure of the company by incorporating enhanced management reporting capabilities with sophisticated business processes.

Patriot Risk Services' Claims Department includes a team of experienced management, and its claims staff is comprised of individuals who are knowledgeable and experienced in adjudicating workers' compensation claims. Patriot Risk Services implements a Costs of Risk model, rather than the Standard Claims Management model. The difference is the approach by which the Patriot team triages and

reviews workers' compensation claims. Each case is immediately reviewed by its experts in the areas of investigation, subrogation, nurse case management and claims management.

Patriot Risk Services is currently working with technology experts to unveil new, fully customized, automated systems which will greatly enhance their abilities, including even greater reporting options. This new system is scheduled to go live this summer and will provide Patriot Risk Services with cutting edge capabilities.

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"Patriot Risk Services is a leader in the workers' compensation industry and is recognized for developing and refining innovative solutions in claims administration and cost containment services."
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Polsinelli Shughart is extremely proud of its association with Patriot Risk Services. If you are interested in receiving more information on Patriot Risk Services, please contact Steve Imber at (913) 234-7469 or simber@polsinelli.com. ■

Third Party Administrator Compliance and Regulatory Services

Polsinelli Shughart is pleased to offer its Third Party Administrator Compliance and Regulatory Services to TPAs and insurers. Services provided to TPAs and insurers include, but are not limited to:

- TPA licensing and registration with state insurance departments on a multi-state or national basis in the 43 states that license or register TPAs.
- Assist TPAs and insurers with on-site audits and operational reviews.
- Assist TPAs responding to regulatory investigations or regulatory actions.
- Assist TPAs with annual license/registration renewals and reports.
- Assist TPAs with negotiating administrative service agreements with insurers.

- Review of Administrative Service Agreements for compliance with state TPA laws.
- Assistance with Market Conduct Examinations.
- Assist TPAs with foreign qualifications with Secretaries of State.

Polsinelli Shughart's Insurance Business and Regulatory Law group has experience representing third party administrators and other insurance businesses on a variety of compliance and regulatory issues on both a state and national basis. Attorneys in our group include two members who were formerly general counsel at state insurance departments, as well as three members who were formerly in-house counsel for third party administrators. ■

For additional information about our
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Polsinelli Shughart is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.

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