

Third Party Administrator Update - TPA Licensing and Compliance

New Law Regulating Health Care Benefit Managers in Washington State

We have previously reported on the new law that became effective this past summer in Washington requiring TPAs that administer self-funded workers compensation to become licensed with the Washington Department of Labor. However, Washington has enacted another law governing Health Care Benefit Managers (“HCBMs”), effective January 1, 2022, codified at Wash. Rev. Code §§ 48.200.010 *et seq.* The law requires HCBMs to become registered with the Washington Office of Insurance Regulation (“OIC”). The purpose of the new law is to regulate entities not currently subject to regulation that act as intermediaries between health carriers, health care providers, and consumers and that are involved in making health care decisions on behalf of health carriers. The OIC has recently adopted regulations to implement the new law. See Wash. Admin. Code §§ 284-180-110 *et seq.*

The term “HCBM” is defined in the new Washington law in section 48.200.020(4)(a) as:

[A] person or entity providing services to, or acting on behalf of, a health carrier or employee benefits programs, that directly or indirectly impacts the determination or utilization of benefits for, or patients access to, health care services, drugs, and supplies including but not limited to the following services:

- Prior authorization or preauthorization of benefits or care.
- Certification of benefits or care.
- Medical necessity determinations.
- Utilization review.
- Benefit determinations.
- Claims processing and repricing for services and procedures.
- Outcome management.
- Provider credentialing and re-credentialing.
- Payment or authorization of payment to providers and facilities for services or procedures.
- Dispute resolution, grievances or appeals relating to determinations or utilization of benefits.
- Provider network management.
- Disease management.

The new Washington law requires Pharmacy Benefit Managers (“PBMs”), who were previously required to register as PBMs, to now become registered as HCBMs instead. Additionally, the new law applies to TPAs that provide services such as claims processing, repricing, or benefit determinations for health carriers in Washington. The law does not

Third Party Administrator Licensing and Compliance Professionals:



Steven L. Imber

913.234.7469
simber@polsinelli.com
Insurance Group Chair
Member of the Federation of
Regulatory Counsel (FORC)



Jennifer Osborn

913.234.7472
josborn@polsinelli.com
Shareholder
Member of the Federation of
Regulatory Counsel (FORC)



Justin T. Liby

913.234.7427
jliby@polsinelli.com
Shareholder





apply to TPAs that administer life benefits or that only collect and remit premium. Prior to the enactment of this law, Washington was one of only a few states having no requirements to license or regulate TPAs.

Entities providing services to “employee benefit programs” are also subject to the new law. However, the statutory definition of employee benefit programs is limited only to programs under the state’s public employees’ benefits board or the school employees’ benefits board. Pursuant to the regulations, the law does not apply to service providers for self-insured health plans under ERISA. Wash. Admin. Code § 284-180-120.

Under the new law, health carriers and employee benefit programs are strictly “responsible for the compliance of any person or organization acting directly or indirectly on behalf of or at the direction of the carrier or program, or acting pursuant to carrier standards or requirements concerning the coverage of, payment for, or provision of health care benefits, services, drugs and supplies.” Wash. Rev. Code § 48.200.050(5) (b). Health carriers are also responsible for an HCBM’s violations of the new law, and carriers are subject to fines for an HCBM’s acts under their contract with a HCBM. If an HCBM violates any or laws or regulations pertaining to HCBMs, the OIC is permitted to place an HCBM on probation, suspend or revoke the registration, issue a Cease and Desist Order, levy a fine up to \$5,000 per violation, or require corrective action. Carriers must file all contracts and contract amendments entered into with an HCBM with the OIC within 30 days following the effective date of the contract or amendment.

To obtain an HCBM application, a request must be submitted with the OIC for an HCBM. Once the OIC’s staff reviews the information in the request, the OIC will send an email that will include instructions to log onto the OIC’s online system and pay the required \$200 fee.

For more information on the new HCBM registration requirement in Washington,

please feel free to contact one of the authors.

Third Party Administrator Licensing and Compliance Services

Polsinelli’s Third Party Administrator Team has significant experience representing TPAs on a national basis regarding a variety of business and compliance issues. The group includes attorneys who were formerly in-house counsel for TPAs, as well attorneys who were formerly insurance regulators and members of the Federation of Regulatory Counsel.

Polsinelli’s experience in the third party administrator industry is demonstrated by these representative examples:

- National and multi-state TPA licensing projects.
- Advise clients regarding business, regulatory and compliance matters associated with mergers, acquisitions and divestitures involving entities licensed as a TPA.
- Assistance with investigations, market conduct examinations and formal regulatory actions brought by state insurance departments.
- Negotiate and draft Administrative Services Agreements and subcontracts, including assistance with statutorily-mandated provisions and best practice business provisions.
- Assistance in developing a TPA Regulatory Addendum designed to comply with the statutorily-mandated provisions applicable under the TPA laws on a national basis.
- Monitor regulatory and legislative activity affecting our TPA clients and provide periodic reports regarding such activity.

- Maintain licensure as a TPA, PBM, Adjuster, Insurance Producer, or Service Company through periodic renewal and annual report filings.
- Assistance with ancillary state filing and registration requirements such as All-Payer Claims Databases and Vaccination Assessments.
- Polsinelli’s TPA team provides TPA licensing services, TPA regulatory and compliance services, drafting and negotiation of administrative services agreements and a number of other TPA services.
- By leveraging its extensive experience representing TPAs, our TPA team helps clients avoid the learning curve and related cost implications that can be experienced by working with companies or attorneys who are less familiar with the regulatory and compliance needs of TPAs.

For More Information

To learn more about Polsinelli’s Third Party Administrator Licensing and Compliance Services practice, or to contact a member of the Third Party Administrator Licensing and Compliance Services team, visit our [Third Party Administrators](#) page.