

Third Party Administrator Update

TPA LICENSING AND COMPLIANCE DEVELOPMENTS

In This Issue

Hawaii Legislature Passes New TPA Law.....1

National Association of Insurance Commissioners Considering Adoption of Pharmacy Benefit Manager Model Law.....2

Kansas Regulatory Action: A Reminder That Insurers Must Maintain Oversight of Third Party Administrators.....3

Oregon Regulatory Action a Reminder That Insurers Cannot Outsource Their Regulatory Responsibilities.....3

Third Party Administrator Licensing and Compliance Services.....4

Polsinelli's TPA Team.....5

Hawaii Legislature Passes New TPA Law

Hawaii is expected to adopt legislation in the coming weeks that will impose licensing and other regulatory requirements on third party administrators (TPAs). Currently, Hawaii is one of only a handful of states that do not license or regulate TPAs. Hawaii legislators passed Senate Bill 1212 out of a conference committee on April 30, 2019, and it was sent to Hawaii Governor David Ige for his signature on May 6, 2019. It is anticipated that Senate Bill 1212 will become law before the end of June.

Once it becomes law, Senate Bill 1212 will require TPAs doing business in Hawaii to be licensed and regulated. The bill is based on the Registration and Regulation of Third Party Administrators Guideline adopted by the National Association of Insurance Commissioners (NAIC).

CONTINUED ON PAGE 2



Steven L. Imber
Practice Group Chair
913.234.7469
simber@polsinelli.com
Member of the Federation of Regulatory Counsel (FORC)



Justin T. Liby
Shareholder
913.234.7427
jliby@polsinelli.com



Jennifer Osborn Nix
Of Counsel
913.234.7472
josborn@polsinelli.com
Member of the Federation of Regulatory Counsel (FORC)

CONTINUED FROM PAGE 1 | HAWAII LEGISLATURE PASSES NEW TPA LAW

Items of interest regarding Senate Bill 1212 include, without limitation, the following:

- The terms “Administrator” and “Third Party Administrator” are defined as “a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with self-insurance, stop-loss or life insurance coverage, accident and health or sickness insurance coverage.”
- Applicants for TPA licenses will be required to provide annual financial statements for the two most recent years that prove the applicant has positive net worth. The bill is silent regarding whether the financial statements must be audited by an independent Certified Public Accountant.
- If an administrator employs or has contracted individuals to sell, solicit or negotiate insurance business, the employees or contracted individuals must first be licensed as producers. Similarly, an administrator who intends to directly solicit insurance contracts or otherwise act as a producer must first be licensed as an insurance producer.
- In order to obtain a TPA license, TPA applicants must file a surety bond in the amount of at least \$100,000 with the Insurance Division. A surety bond must remain in force to maintain licensure as a TPA.
- Senate Bill 1212 is expected to take effect January 1, 2020.

Find this article in the National Law Review:

www.natlawreview.com/article/hawaii-legislature-passes-new-tpa-law

National Association of Insurance Commissioners Considering Adoption of Pharmacy Benefit Manager Model Law

The Chair of the National Association of Insurance Commissioners (NAIC) Regulatory Framework (B) Task Force recently announced that the Pharmacy Benefit Manager Regulatory Issues (B) Subgroup’s (PBM Subgroup) will consider developing a new NAIC PBM Model Law during 2019. The proposed model will establish a licensing or registration process for pharmacy benefit managers (PBMs). Oregon has agreed to chair the PBM Subgroup for 2019, and Maryland has agreed to be vice chair.

The PBM Model Law is intended to address issues and concerns states have encountered in their markets with PBMs and the lack of clear regulatory authority for some state regulators to address them. Currently, PBMs are not licensed or registered in some states, while other state insurance departments either license PBMs as PBMs or as TPAs. However, in certain states, PBMs are registered with state pharmacy boards.

The PBM Subgroup also may consider including within the PBM Model Law provisions on PBM prescription drug pricing and cost transparency. In addition to the PBM Subgroup’s interest in developing a PBM Model Act, in December 2018, the National Conference of Insurance Legislators (NCOIL) approved the Pharmacy Benefits Manager Licensure and Regulation Model Act (NCOIL PBM Model Act), which is intended to give state insurance regulators increase jurisdiction over the activities of PBMs.

Find this article in JD Supra:

www.jdsupra.com/legalnews/national-association-of-insurance-69563

Kansas Regulatory Action: A Reminder That Insurers Must Maintain Oversight of Third Party Administrators

The Kansas Insurance Department (“Department”) recently took regulatory action against an insurer which allegedly violated Kansas insurance laws. Specifically, the Department initiated a Market Conduct inquiry of accident and health policies sold by the insurer to Kansas residents in 2016. The Department’s Market Conduct inquiry focused on the insurer’s business practices for oversight of third party administrators, as well as health insurance that was sold by the insurer via an association.

As a result of its Market Conduct investigation, the Department determined the insurer utilized an unlicensed TPA to provide enrollment, billing and policy fulfillment services. The upshot is that insurers should exercise due diligence when selecting their business partners to ensure those partners hold the proper licenses to perform services for the insurer. Note that a number of states have TPA laws that expressly prohibit an insurer from doing business with an unlicensed TPA.

Find this article in JD Supra:

www.jdsupra.com/legalnews/kansas-regulatory-action-a-reminder-26518

The Department’s investigation also found that Kansas residents had to join an association to purchase insurance because there was no method to join the association without first purchasing insurance. Therefore, the Department concluded the association was maintained only for insurance purposes in violation of K.S.A. 40-2209(f)(5). Additionally, the investigation found that Kansas insureds were not informed of the costs of association membership or actual premium amounts during verification calls.

The Department cited numerous violations of Kansas laws, including association group laws, the unfair deceptive acts or practices prohibition on misrepresentations in insurance applications, requirements to provide an outline of coverage listing premiums and advertising requirements relating to group membership. To settle the alleged violations of law as a result of the Department’s Market Conduct investigation, the insurer recently entered a Consent Agreement and Final Order with the Department, which ordered the insurer to pay a \$30,000 monetary penalty.

Oregon Regulatory Action a Reminder That Insurers Cannot Outsource Their Regulatory Responsibilities

The Oregon Department of Consumer and Business Services (Oregon Department) recently announced it had entered into an Order to Cease and Desist, Final Order Assessing Civil Penalty and Consent to Entry of Order (“Order”) with an insurer in which the insurer will pay a \$60,000 civil penalty for alleged violations of the Oregon Insurance Code.

The regulatory action against the insurer was the result of the Oregon Department’s investigation that found that beginning in June 2017, the insurer made a procedural change whereby it increased the premium rates of its customers’ Medicare supplement insurance policies on each policyholder’s next premium due date, rather than on the policy’s annual anniversary. Prior to implementing this procedural change, the insurer relied on its third party administrator to research and identify any states in which the procedural change would violate state insurance law. However, the list of such states that was provided by the third party administrator to the insurer mistakenly excluded Oregon. As a result of the procedural change, the insurer increased the premium rates of 804 Medicare supplement policies in Oregon more than once in a 12-month period, in violation of Oregon Administrative Rules 836-052-0151(3)(b).

This regulatory action by the Oregon Department is a reminder that insurers cannot outsource their regulatory and compliance responsibilities and may be held strictly liable for alleged violations of insurance laws committed by their TPA business partners.

Find this article in JD Supra:

www.jdsupra.com/legalnews/oregon-regulatory-action-a-reminder-32142

Third Party Administrator Licensing and Compliance Services

Polsinelli's Third Party Administrator Team has significant experience representing third party administrators (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 as attorneys who were formerly insurance regulators and members of the Federation of Regulatory Counsel.

Our 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 provided periodic reports regarding such activity.
- Maintaining 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.

To learn more about our **Third Party Administrator (TPA) Licensing and Compliance Services** practice, or to contact a member of our Third Party Administrator (TPA) Licensing and Compliance Services team, visit our website at www.polsinelli.com/industries/third-party-administrators.



Polsinelli's Third Party Administrator Team

Polsinelli's TPA team provides TPA licensing services, TPA regulatory and compliance services, drafting and negotiating of administrative services agreements, and a number of other TPA services. Our TPA team includes attorneys who were former in-house counsel for TPAs, as well as attorneys who were formerly insurance regulators.

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 less familiar with the regulatory and compliance needs of TPAs.

For questions regarding this information, please contact one of the authors, a member of Polsinelli's Third Party Administrators practice, or your Polsinelli attorney.

For More Information

For questions regarding this alert or to learn more about how it may impact your business, please contact one of the authors, a member of our Third Party Administrator (TPA) Licensing and Compliance Services practice, or your Polsinelli attorney.

To learn more about our **Insurance Business and Regulatory Law** practice, or to contact a member of our Insurance Business and Regulatory Law team, visit our website at www.polsinelli.com/industries/insurance.

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