THIRD PARTY ADMINISTRATOR UPDATE
REGULATORY AND LEGISLATIVE DEVELOPMENTS

2009, Vol. 1

IN THIS ISSUE:

NAIC Considers Revisions to Third Party Administrator Model Law

Pharmacy Benefit Managers Operating in West Virginia Required to Become Licensed or Registered as Third Party Administrators | Page 2

Oklahoma TPA Annual Report | Page 3

New Hampshire Bulletin on PEOs Sponsoring Health Coverage | Page 3

Third Party Administrator Compliance and Regulatory Services | Page 4

For additional information about our Third Party Administrator Compliance and Regulatory Services or the contents of this Update, please contact –

Steve Imber at
(913) 234-7469 or simber@polsinelli.com

polsinelli.com

---

NAIC Considers Revisions to Third Party Administrator Model Law

By Steve Imber and Brandon Kane

The Large Deductible Study Implementation (C) Working Group of the National Association of Insurance Commissioners (“Working Group” and “NAIC,” respectively) continues to consider various revisions to the NAIC’s Third Party Administrator Statute, Model 90 (the “TPA Model Law”). As we noted in a previous newsletter, the majority of the changes proposed to the TPA Model Law are based on the premise that the administration of workers’ compensation coverage should now be included in the definition of a TPA and require licensure as a TPA.

While there are a substantial number of changes that have been proposed to the TPA Model Law, this article provides a summary of some of the more substantive changes that are being considered. According to the Working Group, “[while the original motivation for this effort was merely to include workers’ compensation [coverage] within the scope of the [TPA Model], numerous refinements to the [TPA Model] apply to life and [accident and health coverage] as well.”

Several changes have been proposed to the definition of a TPA, which under the proposed language, would include: a person who “directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims… in connection with life, annuity, health, stop-loss, or workers’ compensation coverage…” with certain exceptions. Notably, the adjusting of workers’ compensation and stop-loss coverage would be added to the types of products that are subject to regulation under the proposed changes.

Because of the addition of workers’ compensation claims adjusting the definition of a TPA, several exclusions have also been added regarding ERISA and workers’ compensation self-insurers.

Other noteworthy changes include the definition of “insurer”, which would also be changed to include those that self-insure their workers’ compensation liability so that the definition is consistent with the above changes to the definition of a TPA.

---

ADVERTISEMENT/ADVERTISING MATERIAL
Additionally, the Working Group has proposed a change that would not require insurer audits for workers’ compensation administration so that TPAs will not be burdened with multiple insurer audits which frequently occurs under existing laws based on the current TPA Model Law. Alternatively, the Working Group may develop a more reasonable requirement after considering the industry “best practices.”

Finally, the Working Group may require TPAs to provide insurance regulators with copies of every workers’ compensation administrative services agreement that the TPAs have with employers, as well as a list of states where the insurer was writing workers’ compensation coverage.

Currently, out of the 41 states which license and regulate TPAs, only 14 states license or register TPAs that administer workers’ compensation coverage. However, once the Working Group and the NAIC adopt the revised TPA Model Law, it is likely that a number of states will amend their TPA laws in conformity with the revised TPA Model Law. Additionally, some states may further examine their existing TPA laws and adopt changes conforming to the TPA Model Law or make other changes to their existing TPA laws unrelated to the TPA Model Law. Some or all of the nine states that have not previously adopted the TPA Model Law or related legislation may also be prompted to do so. As a result, we believe it is important for TPAs to monitor proposed revisions to the TPA Model Law, as well as any proposed TPA legislation or regulations in the various states that regulate TPAs.

Please note regulators and other interested parties had until April 30, 2009, to comment on the currently proposed changes. The final date that these changes will be considered for adoption is still undecided.

Pharmacy Benefit Managers Operating in West Virginia Now Required to Become Licensed or Registered as Third Party Administrators

By Steve Imber and Brandon Kane

On February 1, 2009, the West Virginia Insurance Commissioner issued West Virginia Informational Letter No. 166 (the “Informational Letter”) to all pharmacy benefits managers (“PBMs”) doing business in the state. The purpose of the Informational Letter was to notify all persons providing “pharmacy benefits management services” in West Virginia that such persons must become licensed or registered as third party administrators (“TPAs”) by June 30, 2009, as the West Virginia Insurance Commissioner has determined that they meet the definition of a TPA under West Virginia law.

The Informational Letter begins by explaining the basis of its decision, stating that despite arguments from various PBMs, it recognizes that various courts have indicated that much of a PBM’s business fits within the concept of “adjusts or settles claims,” thereby resulting in a PBM meeting the definition of a TPA.

Citing the U.S. District Court’s decision in Moeckel v. Caremark, Inc, 2007 U.S. Dist. LEXIS 83908 n.1 (M.D. Tenn. Nov. 13, 2007), the Informational Letter then described how PBMs act as transactional intermediaries for prescription drugs, similar to how TPAs administer plans’ medical insurance claims, with plan engaging PBMs to manage their pharmacy insurance claims.

Based on this analysis, the West Virginia Insurance Commissioner prohibited all entities meeting the definition of a “pharmacy benefit manager” from operating in West Virginia after June 30, 2009 unless they are licensed or registered as a TPA. The Informational Letter defined the term “pharmacy benefit manager” as:

“an entity that performs pharmacy benefit management and includes a person or entity acting for a pharmacy benefit manager in a contractual or employment relationship in the performance of pharmacy benefit management services, including mail service pharmacy.”

The Informational Letter also defined the phrase “pharmacy benefit management,” as:

“the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals, the ad-
ministration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals or any of the following services provided with regard to the administration of pharmacy benefits: mail service pharmacy; claims processing, retail network management and payment of claims to pharmacies for prescription drugs to covered individuals; clinical formulary development and management services; rebate contracting and administration; certain patient compliance, therapeutic intervention and generic substitution programs; and disease management programs.”

Thus, the Informational Letter makes it clear that all PBMs operating in West Virginia (and as noted above, the term “operating in” is read very broadly) must become licensed or registered as a TPA in West Virginia by June 30, 2009.

Oklahoma TPA Annual Report

By Steve Imber and Justin Liby

The Oklahoma Insurance Department issued a memorandum on March 18, 2009 reminding all licensed third-party administrators that the TPA Annual Report filed with the Oklahoma Insurance Department must be prepared by a certified public accountant that is independent of the third-party administrator.

The Oklahoma TPA Annual Report must include the name and address of each fund and a statement of fund equity, paid claims by the covered unit, the accumulated year-to-date paid claims, and the year-to-date reserve status.

Per Title 36 O.S. § 1452, the failure of any third-party administrator to execute and file their TPA Annual Report with the Oklahoma Insurance Department on or before June 1 of each year, shall constitute cause, after notice and opportunity for hearing, for censure, suspension, or revocation of a third-party administrator’s license or a civil penalty of $100 to $1,000 per occurrence, or both censure, suspension, or revocation and civil penalty.

New Hampshire Bulletin on PEOs Sponsoring Health Care Coverage

By Justin Liby

The New Hampshire Insurance Department Bulletin addresses two questions: (1) May an insurance carrier issue a large policy to a professional employer organization (PEO)? (2) May a third-party administrator provide administrative services for a PEO that elects to provide self-insured benefits?

According to the bulletin, in determining the type of health insurance policy a PEO may procure on behalf of a client company, the central issue is whether a PEO constitutes a single employer that is subject to regulation under the Employee Retirement Income Security Act of 1974 (ERISA), or whether it is a multiple-employer welfare arrangement (“MEWA”) subject to state regulation. The Bulletin states that in order for a PEO to obtain a large group insurance policy or to provide employee benefits through a self-insured arrangement, the PEO must qualify as a single employer under ERISA.

The Bulletin also provides that policies covering small employer groups may not be held in the name of the PEO as the employer unless and until the PEO obtains a license as a purchasing alliance in accordance with the New Hampshire Insurance Department’s rules. The Bulletin also indicates that some PEO’s may be attempting to obtain self-insurance without complying with RSA 415-E, which regulates MEWAS in New Hampshire. RSA 415-E prohibits the operation of a MEWA and the provision of employee benefits through a self-insured arrangement or through insurance without first obtaining approval from the New Hampshire Insurance Department to operate as a MEWA. Finally, the Bulletin reminds insurance carriers and third-party administrators currently providing health insurance or administering a self-funded health insurance plan arrangement for a PEO in New Hampshire, to report the details for the coverage in the department’s annual Line of Business Survey.
THIRD PARTY ADMINISTRATOR UPDATE
REGULATORY AND LEGISLATIVE DEVELOPMENTS

THIRD PARTY ADMINISTRATOR COMPLIANCE AND REGULATORY SERVICES

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

- TPA licensing and registration with state insurance departments on a multi-state or national basis in the 41 states that license or register TPAs.
- Assist TPAs responding to regulatory investigations or regulatory actions.
- Assist TPAs with annual license/registration renewals and reports.
- Review of Administrative Service Agreements for compliance with state laws.
- Negotiation of Administrative Service Agreements with insurers.
- 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 on a variety of compliance and regulatory issues on both a state and national basis. Attorneys in our group include three members who were formerly in-house counsel for third party administrators, as well as two members who were formerly General Counsel at state insurance departments.

For additional information about our Third Party Administrator Compliance and Regulatory Services or the contents of this Third Party Administrator Update, please contact –

Steve Imber at (913) 234-7469 or simber@polsinelli.com

The Third Party Administrator Update is a source of general information concerning third party administrators. Polsinelli Shughart PC provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

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.

Copyright © 2009, Polsinelli Shughart PC.

polsinelli.com