

In this Issue:

- New Connecticut Insurance Department Bulletin on Data Security Requirements **1**
- Failure to Timely File Written Agreements in Nevada **1**
- TPA Agreement Filing and Compliance Requirements **2**
- New Kansas Insurance Department Bulletin Changes TPA Licensing and TPA Renewals **3**
- New Indiana Insurance Department Bulletin Changes TPA Licensing and TPA Renewals **3**
- Virgin Islands Enacts New TPA Law **4**
- Third Party Administrator Licensing and Compliance Services **5**
- For More Information **6**
- Authors** **6**

New Connecticut Insurance Department Bulletin on Data Security Requirements

The Connecticut Insurance Department issued Bulletin MC-23 on June 13, 2017. The Bulletin addresses certification and notice requirements for data security requirements applicable to TPAs and PBMs (among other entities) per Conn. Gen. Stat. § 38a-999b.

The Bulletin reminds the recipients about the requirement to implement a comprehensive information security program ("ISP") by October 1, 2017, to safeguard the personal information of insureds and enrollees. The Bulletin also reminds TPAs and PBMs that, beginning October 1, 2017, they must begin annually certifying to the Connecticut Insurance Department, under penalty of perjury, that they maintain an ISP in compliance with Conn. Gen. Stat. § 38a-999b.

The Bulletin states that the certification shall be in the form as shown in the attachment to the Bulletin and signed by an officer of the certifying TPA or PBM. Note that pursuant to Conn. Gen. Stat. § 38a-999b(d), the Connecticut Insurance Commissioner or Connecticut Attorney General may request a copy of the ISP to determine compliance. If either one determines the ISP is noncompliant, the TPA must amend it to bring it into compliance to the Commissioner's or Attorney General's satisfaction.

Find this article in the National Law Review here:

<https://www.natlawreview.com/article/connecticut-and-nevada-tpa-requirements>

Failure to Timely File Written Agreements in Nevada

NAC 683A.125(s) requires a TPA to provide the Nevada Insurance Division a copy of each written agreement that the TPA enters into with an insurer or other entity within 90 days after the TPA enters into the agreement.

Recently, the Nevada Insurance Division has entered into a number of Administrative Fine and Consent to Fine settlement agreements involving the failure of certain TPAs to provide the Division with a copy of each agreement that they entered into with an insurer or other entity within 90 days of entering into the agreement in violation of NAC 683A.125(2).

Pursuant to NRS 683A.0892(1)(e), the Nevada Insurance Division may, in addition to or in lieu of the suspension or revocation of the certificate of registration of the TPA, impose a fine of \$2,000 for each act or violation.

TPAs not wishing to enter into a Consent to Fine with the Division for failing to timely submit their written agreements with the Division may submit a written application requesting a hearing to the Division's Legal Department.

TPA Agreement Filing and Compliance Requirements

The NAIC Model Third Party Administrator Act, and nearly every state that has enacted laws regulating administrative service agreements between TPAs and insurers, requires the agreements to comply with the following:

- The TPA shall not act without a written agreement between a TPA and the insurer.
- The written agreement must contain all the provisions required by state TPA laws.
- The written agreement must be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for a prescribed number of years thereafter.

While almost every state that has enacted TPA laws imposes the above requirements pertaining to administrative service agreements, there are a number of states that also have affirmative requirements to file the agreements with state insurance regulators or report the existence of such agreements to the regulators within prescribed time periods. To assist our TPA and insurer clients comply with all the TPA laws under the state insurance codes, we have created a national regulatory addendum, which contains the mandated statutory provisions. The national regulatory addendum is available on a flat-fee basis. For more information regarding our national regulatory addendum, please contact the authors. Additionally, below are some representative examples of the affirmative requirements to

file the written agreements with state insurance regulators or report the existence of such agreements to the regulators:

Nevada

Pursuant to NAC 683A.1215, TPAs must provide the Nevada Insurance Division a copy of each agreement the TPA enters into with an insurer within 90 days after the effective date of the agreement. The Nevada Insurance Division has recently been following up with TPAs to confirm that the Division has received copies of each agreement the TPA has listed in its Annual Report.

Tennessee

Pursuant to Tenn. Code § 56-6-402, TPAs must file each administrative service agreement with the Tennessee Insurance Department for its review and approval prior to the agreement being utilized in Tennessee.

Florida

Pursuant to a signed affidavit submitted as part of the TPA application to the Florida Office of Insurance Regulation, a TPA agrees that they will submit all administrative agreements within 30 days of execution for the first year after licensure as a TPA in Florida.

Louisiana

Pursuant to La. Stat. § 22:1651, entering into a TPA service agreement is a material change requiring a TPA to submit notice to the Louisiana Insurance Department within 60 days.

Minnesota

Minn. R. 2767.0700 requires TPAs to notify the Minnesota Insurance Department within 30 days of signing a new TPA service agreement.

Find this article in the National Law Review here:

<https://www.natlawreview.com/article/third-party-administrator-agreement-filing-and-compliance-requirements>



New Kansas Insurance Department Bulletin Changes TPA Licensing and TPA Renewals

A recent Kansas Insurance Department Bulletin announced a change regarding how the Department will issue TPA licenses and renew existing licenses for nonresident TPAs in Kansas. Bulletin 2017-2 was signed by Kansas Insurance Commissioner Ken Selzer on May 2nd and the Bulletin provides additional licensing information to the industry per the requirements of Kansas Senate Bill 22, which revised Kansas TPA laws. Pursuant to SB 22, an individual or business entity that performs the duties of a TPA in Kansas must hold a resident or nonresident license. A nonresident is not eligible for a nonresident TPA license unless the nonresident TPA is licensed as a resident TPA in a home state that has a TPA law or regulation substantially similar to Kansas.

The Department conducted a review of all TPA laws in the U.S. to determine which states' TPA laws are substantially similar to the Kansas TPA laws. As a result of its review, the Department has concluded that only the following eight states have TPA laws that are substantially similar to those in Kansas:

- Alaska
- Delaware
- Florida
- Idaho
- Indiana
- Missouri
- New Hampshire
- West Virginia

Bulletin 2017-2 indicates that effective June 1, 2017, the Department will not renew nonresident TPA licenses for nonresident TPAs holding resident licenses in states other than these eight states.

Bulletin 2017-2 also provides that resident and nonresident TPAs holding licenses in Kansas will need to renew their

licenses on a biennial basis and must file Annual Reports with the Department on or before July 1 of each year with the first Annual Report due on or before July 1, 2018.

Find this article in the National Law Review here:

<https://www.natlawreview.com/article/new-kansas-insurance-department-bulletin-changes-tpa-licensing-and-tpa-renewals>

New Indiana Insurance Department Bulletin Changes TPA Licensing and TPA Renewals

A recent Indiana Department of Insurance Bulletin announces a change regarding how the Department will issue TPA licenses and renew existing licenses for nonresident TPAs in Indiana. The change came on March 2 when Indiana Insurance Commissioner Stephen Robertson issued Bulletin 236.

Under Indiana Code § 27-1-25-12.2, a nonresident TPA is not eligible for a nonresident TPA license unless the nonresident TPA is licensed as a resident TPA in a home state that has TPA laws or regulations that are substantially similar to Indiana's TPA law.

The Department conducted a review of all TPA laws in the U.S. to determine which states' TPA laws are substantially similar to Indiana's TPA laws pursuant to Indiana Code § 27-1-25. As a result of its review, the Department concluded that only the following eight states have TPA laws that are substantially similar to Indiana's:

- Alaska
- Delaware
- Florida
- Idaho
- Missouri
- New Hampshire
- New Jersey
- West Virginia



Bulletin 236 indicates that a TPA applying for a nonresident TPA license in Indiana must provide a certificate of good standing from one of these eight states verifying that the TPA holds a resident TPA license.

Bulletin 236 goes on to provide that if a TPA is not incorporated or does not maintain its principal place of business in one of these eight states, the TPA may either: (1) Declare Indiana as its "home state" and apply for a resident Indiana TPA license, or (2) Declare one of the eight states as its "home state," obtain a resident TPA license in that state, and apply for an Indiana nonresident TPA license.

Finally, Bulletin 236 indicates that as of July 1, 2017, the Department will not renew TPA licenses for nonresident TPAs holding resident "home state" licenses in states other than the above-listed eight states. The Department will consider exceptions to this requirement for no more than one renewal and upon request from a nonresident TPA with good cause shown to the Department.

Find this article in the National Law Review here:

<https://www.natlawreview.com/article/new-indiana-insurance-department-bulletin-changes-tpa-licensing-and-tpa-renewals>

Virgin Islands Enacts New TPA Law

TPAs and their business partners doing business in the Virgin Islands should ensure they are compliant with a new TPA law.

Specifically, Virgin Islands House Bill No. 31-0446, which became effective on February 20, 2017, requires TPAs doing business in the Virgin Islands to be licensed and regulated. Any entity that was doing business as a TPA in the Virgin Islands on February 20, 2017, was given a 30-day grace period after February 20th to submit an application for licensure as a TPA. The new law also prohibits any entity that was doing business as a TPA in the Virgin Islands on February 20, 2017, from acting as, or holding itself out to be, a TPA 90 days after February 20th, unless the entity is duly licensed as a TPA in the Virgin Islands. Absent an extension of the grace period

from the Virgin Islands Division of Banking and Insurance, any entity currently doing business as a TPA in the Virgin Islands should now either be licensed as a TPA or cease doing business as a TPA in the Virgin Islands until licensed as a TPA.

The new law incorporates much of its language from the new National Association of Insurance Commissioners' Third Party Administrator Model Act (Model 1090).

Other items of interest regarding the new law include, but are not limited to, the following:

- Under the new law, the terms "Third Party Administrator" or "TPA" are defined as "...a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of the Virgin Islands, in connection with life, annuity, health, or stop-loss coverage."
- A TPA who is a non-resident of the Virgin Islands is not eligible for a TPA license if it does not hold a home state TPA license in a state that has adopted the NAIC Third Party Administrator Model Law or a state that applies substantially similar provisions as are contained in that Model Law to that TPA.
- The TPA shall file with the Commissioner the names and addresses of the payors with whom the TPA has service agreements. If a payor does not assume or bear the risks, the TPA shall disclose the name and address of the ultimate risk bearer. This filing requirement applies to the initial application for a TPA's license and each renewal application.
- The Commissioner may impose a fine upon a TPA not to exceed \$5,000 for each violation for knowingly and willfully violating an order of the Commissioner. In no event, may the fine exceed an aggregate amount of \$25,000 for any violations arising out of the same action.

Find this article in the National Law Review here:

<https://www.natlawreview.com/article/virgin-islands-enacts-new-third-party-administrator-law>



Third Party Administrator Licensing and Compliance Services

Polsinelli's Insurance Business and Regulatory group 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. Additionally, several of our attorneys are also 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, including off-shore entities located in India and the Philippines seeking licensure as a TPA in the United States.
- Negotiate and draft Administrative Services Agreements and subcontracts, including assistance with statutorily-mandated provisions and 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.
- Advise clients regarding business, regulatory and compliance matters associated with mergers, acquisitions, and divestures involving entities licensed as a TPA.
- Multi-state research regarding the statutory exemptions to the TPA licensing and regulatory requirements.
- National research regarding the reviews and on-site audits insurers are required to perform with respect to their TPA business partners.
- Assistance with questions and issues that arise under The Employee Retirement Income Security Act (ERISA), The Health Insurance Portability and Accountability Act (HIPAA), and The Patient Protection and Affordable Care Act (ACA).
- Assistance with inquiries and formal regulatory actions brought by state insurance departments and attorney general offices.
- Attend industry meetings, including meetings held by the National Association of Insurance Commissioners (NAIC), National Conference of Insurance Legislators (NCOIL), Insurance Regulatory Examiners Society (IRES), and Association of Insurance Compliance Professionals (AICP).

Polsinelli's Insurance Business and Regulatory group stays apprised of TPA industry trends and emerging TPA regulatory and compliance issues, publishes a newsletter and distributes e-Alerts that are solely dedicated to the TPA industry. To subscribe to future TPA updates and E-Alerts by email, please contact us at TPA@polsinelli.com.



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

Authors:



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



Justin T. Liby
913.234.7427
jliby@polsinelli.com



Jennifer Osborn Nix
913.234.7472
josborn@polsinelli.com

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Polsinelli PC. Polsinelli LLP in California.

