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**Florida Regulatory Action a Reminder that TPAs Must Be Licensed Before Conducting Business**

A recent regulatory action against a Delaware domiciled TPA (“Company”) demonstrates the importance for companies to be properly licensed with state insurance regulators where they are conducting business.

In June 2017, the Florida Office of Insurance Regulation (“OIR”) denied an application submitted by the Company’s parent for licensure as a TPA based on the OIR’s determination that all information required to process the application had not been provided. In June 2017, the denial was appealed with the Florida Division of Administrative Hearings to preserve all rights. On October 4, 2017, the OIR withdrew its prior denial of the TPA license application.

On February 14, 2018, the OIR entered into a Consent Order granting the Company a TPA license. However, in the Consent Order, the OIR determined the Company had previously administered business on behalf of authorized insurers with respect to Florida residents, in violation of Section 626.8805 Florida Statutes. The determination that the Company had been administering business in violation of Section 626.8805 Florida Statutes was based on the OIR’s review of fourteen (14) administrative agreements under which the Company had been conducting business prior to submitting its TPA application to the OIR.

As a result of this finding, the Company was assessed a fine of \$140,000, pursuant to Section 626.8805(1) Florida Statutes.

Find this article in the National Law Review here: [www.natlawreview.com/article/florida-regulatory-action-reminder-tpas-must-be-licensed-conducting-business](http://www.natlawreview.com/article/florida-regulatory-action-reminder-tpas-must-be-licensed-conducting-business).

**Texas Regulatory Action a Reminder that Insurers Cannot Outsource their Regulatory Responsibilities**

The Texas Insurance Department (“TDI”) took regulatory action recently against an insurer which allegedly violated Texas insurance laws related to claims adjudication, claims payment reporting, and prompt payment penalties. The insurer had contracted with several third party administrators (“TPAs”) to administer its medical claims. Per the TDI, the insurer violated Tex. Ins. Code § 4151.1042(b) and 28 Tex. Admin. Code § 7.1611 because it did not ensure competent administration of its programs by its TPAs, including its TPAs’ compliance with the Texas Insurance Code, related

rules, and the provisions of the written administrative services agreements between the insurer and the TPAs, including the performance of claim adjudication and payment. To settle the above alleged violations, the insurer recently entered into a Consent Order with the TDI, in which it was ordered to pay \$527,971 in prompt payment penalties and to pay an administrative penalty of \$250,000 for failure to report claims correctly to the TDI and the Texas Health Insurance Pool.

Find this article in the National Law Review here: [www.natlawreview.com/article/texas-regulatory-action-reminder-insurers-cannot-outsource-their-regulatory](http://www.natlawreview.com/article/texas-regulatory-action-reminder-insurers-cannot-outsource-their-regulatory)

## South Dakota Regulatory Action Against Unlicensed TPA

Recently, the South Dakota Division of Insurance (“Division”) took regulatory action against a company operating in South Dakota based on its failure to be properly licensed as a Third Party Administrator (TPA).

According to the Division, after reviewing the company’s application for a TPA license, the Division discovered the Company had been acting as a TPA in South Dakota for a number of years without a valid license or registration in violation of SDCL § 58-29D-21.

As a result, the company entered into a Consent Order with the Division and agreed to pay a \$15,000 monetary penalty. The Division agreed to issue a license to the company pursuant to the company’s compliance with the Consent Order.

Find this article in the National Law Review here: [www.natlawreview.com/article/texas-regulatory-action-reminder-insurers-cannot-outsource-their-regulatory](http://www.natlawreview.com/article/texas-regulatory-action-reminder-insurers-cannot-outsource-their-regulatory)

## 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:

### 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>



## Kansas Insurance Department TPA Renewal Deadlines

The Kansas Insurance Department (“Department”) sent out an e-mail recently reminding TPAs that due to recent revisions to Kansas TPA statutes, any TPAs who held a Kansas TPA license as of March 2017 must submit either a Kansas Non-Resident TPA application or a Kansas Home State TPA application. These applications must be submitted **no later than October 15, 2018**. To be eligible for a non-resident TPA license in Kansas, TPAs **must hold a home state administrator license** in one of eight states that have been determined by the Department to have substantially similar TPA laws as Kansas (Alaska, Delaware, Florida, Idaho, Indiana, Missouri, New Hampshire and West Virginia).

If the TPA does not hold a home state administrator license

in one of the above eight states, then the TPA must apply for a Home State TPA license in Kansas. TPAs that only administer self-funded ERISA business may qualify for a Certificate of Registration and may convert their present license or Certificate of Registration with the submission of an Application for Certificate of Registration.

The e-mail also reminded TPAs that the renewal date for all licensed TPAs has changed in Kansas to December 31st. Beginning with the December 31, 2018 renewal date, all TPA licenses will be renewed on a biennial basis. The December 31, 2018 renewal will be good through December 31, 2020. Beginning around November 1, 2018, a portal will open on the Department’s website to permit online renewal of a TPA’s Certificate of Authority. If the Certificate of Authority is not renewed online by December 31, 2018, it will be canceled by the Department. TPAs will still be required to file their annual report by July 1 each year.

## 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](http://www.polsinelli.com/industries/third-party-administrators)



## Polsinelli's TPA Team

Polsinelli's Third Party Administrator (TPA) Licensing and Compliance Services 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 Third Party Administrator (TPA) Licensing and Compliance Services 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 Third Party Administrator (TPA) Licensing and Compliance Services 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 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 Third Party Administrator (TPA) Licensing and Compliance Services team, visit our website at

[www.polsinelli.com/industries/third-party-administrators](http://www.polsinelli.com/industries/third-party-administrators)

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](http://www.polsinelli.com/industries/insurance)

## About this Publication

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Polsinelli 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.

Polsinelli PC. Polsinelli LLP in California.

