

Third Party Administrator Update - TPA Licensing and Compliance

Vermont Issues Proposed Regulation Adopting Licensing and Regulatory Requirements for TPAs

In the fall of 2019, we reported that Vermont enacted Senate Bill 41, which granted the Commissioner of the Vermont Department of Financial Regulation (the “Department”) jurisdiction over entities that administer one or more health reimbursement arrangements (“HRAs”), health savings accounts (“HSAs”), and flexible spending accounts (“FSAs”). Senate Bill 41 directed the Department to adopt rules regulating entities that administer HRAs, HSAs, and FSAs.

In response to Senate Bill 41, the Department recently issued proposed Regulation 1-2021-01 (the “Regulation”) entitled “The Third Party Administrator Rule,” which sets forth licensing and regulatory requirements for TPAs operating in Vermont. Many of the provisions in the Regulation are similar to provisions in the NAIC’s Model Third Party Administrator Act (the “Model Act”).

One notable provision in the Regulation is that while Senate Bill 41 granted the Department jurisdiction over entities that administer HRAs, HSAs, and FSAs, the Regulation defines the terms “Third Party Administrator” and “TPA” to include an individual or entity who directly or indirectly underwrites, collects charges, collateral or premiums or adjusts or settles claims on Vermont residents in connection with life, annuity, health or stop-loss coverage, including HRAs, HSAs, and FSAs, or similar tax advantaged accounts for health related expenses.

The Regulation also provides that an individual or entity seeking to operate as a TPA in Vermont must first obtain a resident or non-resident TPA license (as applicable) by filing the NAIC Uniform Application for Third Party Administrators with the Department and providing certain documents and information as attachments. The required attachments for a resident TPA license application are:

1. All basic organizational documents of the applicant.
2. An NAIC Biographical Affidavit for each individual who is responsible for the conduct of the affairs of the applicant.
3. Audited annual financial statements for the two (2) most recent fiscal years proving that the applicant has a positive net worth. Alternative rules apply for applicants that have been in existence for less than two (2) fiscal years.
4. A business plan including information on the applicant’s staffing levels, proposed business activities and capability to provide a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting.

For non-resident TPA license applications, the applicant must submit as an attachment to the application a letter of certification from the insurance

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regulatory agency in the applicant's home state verifying that the applicant is licensed and in good standing as a TPA in its home state. The Regulation also states that, to be eligible for a non-resident TPA license, the applicant must hold a home state TPA license from a state that has adopted the Model Act or enacted TPA laws containing provisions that are substantially similar to those in the Regulation.

The Regulation grants the Department authority to issue a cease and desist order and impose a fine on an individual or entity that acts as a TPA in Vermont without a TPA license. However, the Regulation establishes several exceptions to, or exemptions from, the TPA licensing requirement, which interested parties should review. One noteworthy exemption excuses individuals or entities from the TPA licensing requirement while employed by, or when operating under contract to, a licensed TPA.

The Department held a remote public hearing regarding the proposed Regulation on February 25, 2021, and the Department has invited interested parties to provide comments regarding the Regulation through March 25, 2021. The Regulation's proposed effective date is July 1, 2021.

More Information on Our TPA 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](#) team or your Polsinelli attorney.

