

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Third Party Administrator Rule

/s/ Michael S. Pieciak, on April 5, 2021.
(signature) (date)

Printed Name and Title:

Michael S. Pieciak, Commissioner

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

Final Proposed Coversheet

1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

20P-026

3. ADOPTING AGENCY:

Department of Financial Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: E. Sebastian Arduengo

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -
3101

Telephone: 802 828 - 4846 Fax: 802 828 - 5593

E-Mail: Sebastian.Arduengo@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dfr.vermont.gov/view/regbul>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Jill Rickard

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -
3101

Telephone: 802 828 - 1978 Fax: -

E-Mail: Jill.Rickard@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

8 V.S.A. § 3574 (d) (4)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

The rule allows the Commissioner to have access to books and records maintained by a third party administrator (TPA) for the purposes of examination,

Final Proposed Coversheet

audit and inspection. Vermont law prohibits any person from making public "working papers, recorded information, documents, and copies thereof . . . obtained by or disclosed to the Commissioner or any other person in the course of an examination[.]" 8 V.S.A. § 3574(d)(4). If the Commissioner uses confidential documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties, those documents or materials may be made public as part of the action.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

8 V.S.A. §§ 15, 3301a; 18 V.S.A. §§ 9402, 9417.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Under 8 V.S.A. §§ 15 and 3301a, the Commissioner has authority to regulate entities, including TPAs, that directly or indirectly underwrite, collect charges, collateral or premiums from, or adjust or settle claims on residents of this state.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The rule requires TPAs for insurers, health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), and health savings accounts (HSAs) to

Final Proposed Coversheet

become licensed with the Department, maintain books and records of all transactions, and hold all funds for the payment of claims in a fiduciary capacity.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Act 54 was enacted in response to numerous issues encountered by educators and their families in 2018 when the Vermont Education Health Initiative, which provides Vermont school districts with health care plans for school employees, transitioned to high-deductible health plans compatible with HRAs, FSAs, and HSAs. Due to a lack of administrative capacity, the third-party administrator (TPA) for approximately 80% of school HRA, FSA, and HSA plans at that time was effectively unable to enroll new members, process claims in a timely manner, or provide adequate customer service. Although administration of these plans has since been taken over by another TPA, issues related to reimbursement and account reconciliation continue to affect members.

A regulatory regime for these TPAs is likely to reduce the chance of these and similar problems in the future.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

Act 54 of 2019 requires the Commissioner to, at a minimum, adopt rules to license and regulate entities administering or proposing to administer health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), health savings accounts (HSAs) or similar tax-advantaged health savings plans.

To avoid fragmenting the market for TPA services or incentivizing TPAs to leave the market for administering tax-advantaged health savings plans, the Commissioner proposes exercising his authority under 8 V.S.A. § 15 to adopt version #2 of the National Association of Insurance Commissioners (NAIC) model for registration and regulation of TPAs, which excludes workers' compensation.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Vermont Education Health Initiative (VEHI)

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Vermont-NEA
Northeast Benefits Management, LLC
Healthy Dollars, Inc.
The Richards Group
Office of the Health Care Advocate
other Third Party Administrators

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

Because the rule does not include surplus or reserve requirements for TPAs, the Department does not anticipate that it will unduly burden small businesses that provide plan benefit services.

It is likely that TPAs will pass on compliance costs to clients, incrementally increasing the cost to employers of obtaining TPA services. However, these employers will benefit substantially from the Department's oversight of TPAs administering employee benefit plans.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 2/25/2021
Time: 10:00 AM
Street Address: 89 Main Street, Montpelier, VT
Zip Code: 05620 - 3101

Date:
Time: AM
Street Address:
Zip Code:

Date:
Time: AM
Street Address:
Zip Code:

Date:

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Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

3/25/2021

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

TPA

HRA

HSA

FSA

benefits administration



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

March 26, 2021

Re: Third Party Administrator Rule (I-2021-01); Comment Response and Changes Letter

To whom it may concern:

The Department of Financial Regulation submits its Final Proposed Rule titled Third Party Administrator Rule (I-2021-01) to the Vermont Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

The Department submitted its Proposed Rule on December 24, 2020. It held a remote public hearing on February 25, 2021 via Microsoft Teams, which was attended by Michael Durkin and Sara Teachout of Blue Cross Blue Shield of Vermont (BCBSVT) and the Department's staff and contracted actuaries. The deadline for comment passed on March 25, 2021. The Department received written comment from BCBSVT, Northeast Benefits Management, LLC, Healthy Dollars, Inc., and Lisa B. Shelkrot, Esq. of Langrock Sperry & Wool, LLP.

BCBSVT commented that the Proposed Rule did not conform to the definition of "Third Party Administrator" (TPA) in section 1(N)(3) of the National Association of Insurance Commissioner's Model Rule for Registration and Regulation of Third Party Administrators (Model Rule). In response, the Department added the following exemption to the Proposed Rule's definition of TPA to conform to the Model Rule:

The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 [...].

Northeast Benefits Management, LLC commented that the Proposed Rule would impose an undue burden on small businesses that provide plan administration services because it requires TPAs to produce audited financial statements as part of an annual report to the Department. The Department appreciates that annual production of audited financial statements represents a novel reporting requirement for Vermont-based third party administrators. The Department does not find it unreasonable, however, to require entities that collect charges, collateral or premiums from, or adjust or settle claims by residents of this state to submit audited financial statements as a condition of operating in Vermont as outlined in the Model Rule. Such statements are central to enabling effective oversight and consumer protection. Moreover, many benefit plan administrators are already required by the Employee Retirement Income Security Act of 1974

(ERISA) to file an annual report with the Secretary of Labor on behalf of their clients, including a financial statement listing assets and liabilities for the previous year, receipts, and disbursements of funds. *See* 29 U.S.C. §§ 1021(b), 1023(b)(1), 1023(b)(3)(A)-(B), 1024(a). In light of these federal reporting requirements, it is unlikely that requiring even small third party administrators to provide the Department with audited financial statements would be unduly burdensome, either in terms of finances or personnel.

Nevertheless, in light of the burden of providing audited financial statements on a regular basis for small third party administrators, especially those that do not hold money on behalf of or for a payor, or for the payment of claims, the Department will waive the requirement for such entities to submit audited financial statements in sections 13 and 16 of the Proposed Rule. They will instead be required to submit self-certified financial statements.

Northeast Benefits Management, LLC also expressed concerns about additional costs that may be imposed on third party administrators in the event of an examination, for the Department to update any electronic software maintained by the NAIC, or for submitting required reporting. Under 8 V.S.A. § 3563, the direct expenses of examinations are paid to the State by the company or companies examined. Other expenses, however, including the cost of NAIC-required software, are borne by the Department. Third party administrators will not need to purchase any additional software in order to submit reporting materials to the Department.

Healthy Dollars, Inc. posed a number of questions relating to application of the Proposed Rule, including: 1) whether third parties that do not hold client funds would be required to have a trust account and provide reports and reconciliation as required by section 9 of the Proposed Rule; 2) whether client contact information provided in the context of annual reporting would be confidential; and 3) when third party administrators would need to apply for licensure. As to the first question, the Proposed Rule's requirements for entities that hold client funds do not apply to entities that do not hold client funds. Therefore, entities that do not hold client funds will not be required to open or maintain trust account or engage in related reporting to clients. With respect to client lists and other sensitive materials submitted to the Department in the course of annual reporting or examinations, those materials will be kept confidential under 8 V.S.A. § 3574(d)(4). Finally, the Department anticipates that the first application, licensure, and reporting cycle under the Proposed rule will start in July 2022 to give Department staff time to generate required forms and to give industry time to come into compliance.

To allay any lingering concerns about providing sufficient time for third party administrators to come into compliance with Proposed Rule, the Department has changed its effective date in section 20 to *July 1, 2022*.

Attorney Shelkrot commented that entities that merely provide advice to employers regarding their benefits programs could be classified as third party administrators under the Proposed Rule based on the definition of “underwrites” in section 3.17.¹ The term is defined as “[t]he acceptance of employer or individual applications for coverage of individuals *and* the overall

¹ The Proposed Rule's definition of “third party administrator” includes entities that “directly or indirectly *underwrite*[], collect[] charges, collateral or premiums from, or adjust[] or settle[] claims on residents of this state” (emphasis added).

planning and coordination of a benefits program” (emphasis added). A plain-language reading of the definition shows that “underwriting” means both acceptance of applications for coverage and providing planning and coordination services for a benefits program. Thus, an entity which exclusively provides planning and coordination services is not underwriting within the meaning of the Proposed Rule.

The Department thanks members of the public who attended the public hearing and/or submitted written comments for their attention and diligence in the rulemaking process during these challenging times. As noted above the written comments have resulted in positive changes to the Proposed Rule.

Sincerely,

/s/ E. Sebastian Arduengo

E. Sebastian Arduengo
Assistant General Counsel
Department of Financial Regulation

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. ADOPTING AGENCY:

Department of Financial Regulation

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: December 14, 2020, Microsoft Teams Virtual Meeting

Members Present: Chair Kristin Clouser, Dirk Anderson, Jennifer Mojo, John Kessler, Matt Langham, and Clare O'Shaughnessy

Members Absent: Diane Bothfeld and Ashley Berliner

Minutes By: Melissa Mazza-Paquette

- 2:03 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 9, 2020 meeting.
- Addition to agenda: Notice of an Emergency Rule supported by Chair Clouser on 12/8/20 titled 'Vermont Department of Taxes Emergency Rule on Hearing Procedure' provided by the Vermont Department of Taxes
 - Amended agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. Third Party Administrator Rule, Department of Financial Regulation, page 2
 2. Pollution Abatement Facility Operator Rule, Agency of Natural Resources, page 3
 3. Clean Water Service Provider Rule, Agency of Natural Resources, page 4
- Next scheduled meeting is January 11, 2021 at 2:00 p.m.
- 3:35 p.m. meeting adjourned.

**Proposed Rule: Third Party Administrator Rule, Department of Financial Regulation
Presented by Sebastian Arduengo**

Motion made to accept the rule by John Kessler, seconded by Dirk Anderson, and passed unanimously with the following recommendations:

1. Proposed Rule Coversheet, page 2, #7 and Section 1 of the rule: Expand upon the regulatory authority.
2. Economic Impact Analysis: Include some level of degree of costs and benefits to businesses, Vermonters and third-party administrators, including cost categories and overall statewide cost if known.
3. Economic Impact Analysis, page 3, #8: Correct spelling to "enforcement".

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. ADOPTING AGENCY:

Department of Financial Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Parties affected by the rule include:

Vermont Education Health Initiative (VEHI);

Vermont-NEA;

Northeast Benefits Management, LLC (VT-based TPA);

Healthy Dollars, Inc. (VT-based TPA);

The Richards Group (VT-based TPA);

Economic Impact Analysis

Office of the Health Care Advocate;
other Third Party Administrators; and
self-insured employers.

The Department anticipates that the rule will impose compliance costs on TPAs that will be passed on to employers, in addition to a \$600 fee required by 18 V.S.A. § 9417. Although it is difficult to estimate compliance costs with any certainty, they will likely be more burdensome for smaller TPAs than for larger ones.

The rule will benefit employers, employees, and the general public by reducing the risk that the provision of insurance, HRA, HSA, and FSA benefits to which beneficiaries are entitled will be delayed because of a problem with the employer's TPA.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

Because the rule is intended to safeguard employers and employees from the severe and sustained issues experienced by educators and their families in 2018, it will be a net positive for school districts, educators, and their families.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

In the absence of a licensing and enforcement mechanism for TPAs, the Department lacked an effective way to address TPA-related issues affecting educators and their families in 2018.

The rule will remedy this, giving the Department visibility into the activities of TPAs before they contract with employers, and creating an enforcement mechanism for failing to pay proper claims or perform services arising under TPA contracts.

6. IMPACT ON SMALL BUSINESSES:

Economic Impact Analysis

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

Because the rule does not include surplus or reserve requirements for TPAs, the Department does not anticipate that it will unduly burden small businesses that provide plan benefit services.

TPAs will likely pass on the costs of compliance with the rule to small business customers. These businesses, however, will indirectly benefit from TPA regulation in the form of reduced risks to their employee benefit plans.

7. *SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

18 V.S.A. § 9417(d) requires a nonrefundable fee of \$600.00 for examining, investigating, and processing licensure applications.

Small businesses providing plan benefit services can limit the cost of compliance with the rule by strictly adhering to existing federal laws and regulations applicable to private employee benefit plans, including the Employee Retirement Income Security Act of 1974 (ERISA); the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

8. *COMPARISON:*

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The TPA issues that affected schools in 2018 resulted in approximately \$1.1 million in missed reimbursements to school employees throughout Vermont.

According to written testimony submitted by Vermont-NEA Executive Director Jeff Fannon in the Legislature during the 2019 legislative session, at least seven TPAs are now servicing tax-advantaged health savings plans for Vermont school districts.

Economic Impact Analysis

Without this rule, the state lacks enforcement power over these entities, and would be powerless to intervene if the events of 2018 repeated themselves.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*
This economic impact analysis is sufficient given that the rule is primarily intended to comply with a legislative mandate. The cost of the substantive changes are minimal or a net positive to Vermonters.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. ADOPTING AGENCY:

Department of Financial Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None .

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

None .

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None .

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

None .

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None .

Environmental Impact Analysis

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

The amendments to this rule are not expected to have any environmental impacts. Therefore, the analysis is sufficient.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:



1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

From the Department's past rulemaking experience, in addition to the APA-required notice and hearing requirements, the Department will continue to communicate with stakeholders and the public about the third party administrator rule. The Department will ensure that all materials pertinent to this rule will be available online and in paper form in the event that interested individuals do not have internet access.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The rule will be posted on the Department's website. In addition to ensuring the availability of materials relating to this rule online and in paper form, the Department will work with stakeholders to educate members of the public.

Due to the ongoing COVID-19 pandemic, the rule's public hearing will be conducted via Microsoft Teams. Call-in information for the meeting is included in the APA forms and will be posted on the Department's website.

Public Input

In addition, the Department will individually reach out to stakeholders who participated in the legislative process as well as others who have contacted the Department about the status of rulemaking under Act 54.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

VEHI, the Vermont-NEA, and representatives of Vermont-based TPAs gave testimony in the Legislature on the underlying statute during the 2019 legislative session, and the Department anticipates that those organizations, other small businesses, and the Office of the Health Care Advocate, will have input during the rulemaking process.

Administrative Procedures – Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

Third Party Administrator Rule

2. ADOPTING AGENCY:

Department of Financial Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

This rule incorporates the following laws and regulations of the United States and the State of Vermont:

Title 8, sections 15, 3301a, 3574, 3681 and 4815, and Title 18 sections 9402 and 9417 of the Vermont Statutes Annotated (V.S.A.);

Title 26, sections 401 and 501, and Title 29, section 186 of the United States Code (U.S.C.).

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

8 V.S.A. §§ 15, 3301a, 3574, 3681, & 4815; 18 V.S.A. § 9417; 26 U.S.C. §§ 401, 501; 29 U.S.C. § 186.

5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

All of the cited materials are available online at the following links:

Incorporation By Reference

Vermont Statutes Annotated:

<https://legislature.vermont.gov/statutes/>

United States Code:

<https://uscode.house.gov/>

Although all cited materials are readily available online, members of the public may obtain printed copies by contacting the Department by phone at 802-828-3301.

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

No modifications have been made to the cited material.

Run Spell Check

January 25, 2021

Via email: Sebastian.Arduengo@vermont.gov

Sebastian Arduengo
Assistant General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

Re: Department of Financial Regulation, Proposed Rule I-2021-01

Dear Sebastian:

I am writing on behalf of Blue Cross and Blue Shield of Vermont (BCBSVT) to respectfully comment on the Department of Financial Regulation's (DFR) Proposed Third Party Administrator Rule, I-2021-01.

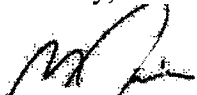
It is our understanding that this rule is intended to largely track the National Association of Insurance Commissioner's Model Rule for Registration and Regulation of Third Party Administrators ("NAIC Model Rule") and BCBSVT supports tracking this model. However, the NAIC Model Rule includes an important exemption within the definition of "Third Party Administrator," in Section 1(N)(3), which reads:

The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 [...].

We recommend including this language in the proposed Rule I-2021-01. Doing so will prevent the imposition duplicative obligations on Vermont based benefit plan administrators and minimize risk of ERISA preemption, which could be argued to invalidate the rule as a whole.

Thank you for the consideration. Please let me know if you have any questions or concerns.

Sincerely,



Michael T. Durkin, Esq.
Assistant General Counsel



Langrock Sperry & Wool, LLP
ATTORNEYS AT LAW

March 11, 2021

VIA EMAIL SEBASTIAN.ARDUENGO@VERMONT.GOV

Mr. E. Sebastian Arduengo
Dept. of Financial Regulation
89 Main Street
Montpelier, VT 05620

Re: Comment Regarding Proposed Third Party Administrator Rule

Dear Mr. Arduengo:

I am writing regarding the Department of Financial Regulation's Proposed Third Party Administrator Rule, Reg. I-2021-01, currently open for public comment.

My understanding of the proposed rule is that it would require, among other things, that a "Third Party Administrator" maintain books and records to a particular standard (Section 6A); make them available to the Commissioner upon request for audit and examination (Section 6B); and obtain a state license, the application for which must include audited financial statements (Section 13D4).

My concern arises regarding the requirements and restrictions that may be imposed upon a person or business that does no more than advise regarding a benefits program. A "Third Party Administrator" includes by definition any person who "directly or indirectly underwrites ... claims on residents of this state, in connection with ... tax-advantaged accounts for health-related purposes...." (Section 3.16) The term "underwrites" is defined as "The acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program." (Section 3.17) The rule then would appear to cover as an "underwriter" a person who provides "overall planning and coordination of a benefits program," even if that person does not accept or make any payments, adjust or settle any claims, or hold any funds in a fiduciary capacity. It would similarly appear to cover a person whose role is limited to drafting plan documents. In that event, the "books and records" subject to audit would be the person's (or entity's) own operational books and records. The expense, burden and intrusion of such a requirement is quite onerous, and serves no public purpose.

To the extent that the rule as written, by including as Third Party Administrators persons who merely "plan and coordinate" a benefits program, would appear to sweep more broadly than is

REPLY TO: Burlington Office • WEBSITE: www.langrock.com • EMAIL: attorneys@langrock.com

MIDDLEBURY: 111 S. Pleasant Street, P.O. Drawer 351, Middlebury, VT 05753-0351 • (802) 388-6356 • Fax: (802) 388-6149
BURLINGTON: 210 College Street, P.O. Box 721, Burlington, VT 05402-0721 • (802) 864-0217 • Fax: (802) 864-0137

A Limited Liability Partnership Including a Professional Corporation

Mr. E. Sebastian Arduengo

March 11, 2021

Page 2

warranted by the public interest or the statute, I ask that the definition of Third Party Administrator be narrowed. This could be accomplished either by clarifying that "underwriting" does not include planning and coordination of a benefits program absent accepting applications for coverage and adjusting claims; or by excluding from the definition of Third Party Administrators those who provide only planning and advisory services, or drafting of benefit plans.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'LBS', with a stylized flourish at the end.

Lisa B. Shelkrot
lshelkrot@langrock.com
LBS:els
1196897.1

Northeast Benefits Management, LLC

TO: Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation

FROM: Sherry O'Leary, CEBS, CLU, ChFC
Principal, Northeast Benefits Management, LLC

SUBJECT: Written Comments on Rule I-2010-01 – Third Party Administrator Rule

DATE: February 19, 2021

Good morning, my name is Sherry O'Leary and I am a principal of Northeast Benefits Management, LLC located in S. Burlington, VT. Thank you for the opportunity to provide written comments. We are one of the many small businesses in VT and provide a variety of benefit plan services including, but not limited to, administration of Health Reimbursement Arrangements (HRA), Flexible Spending Accounts (both health and dependent care), and Qualified Small Employer Health Reimbursement Arrangements (QSEHRA). While NBM has been in existence since 2002, I personally have been in the industry in various capacities since 1985.

Concerns Regarding Proposed Rule I-2021-01 (Third Party Administration)

It is my understanding that the premise behind this rule is to implement Act 54 and address the failure to pay claims in a timely manner caused by poor business decisions and performance. There are existing DOL claims regulations that dictate the timing of processing claims for FSA and HRA administration.

In reviewing draft Rule I-2021-01 and the accompanying filing documentation it is indicated that undue burden is not anticipated on the small businesses that provide plan benefit services. This assertion is based on the \$600 licensing fee included in the rule. We are in agreement with respect to that fee. However, we believe that there **are** additional requirements that would cause undue burden in terms of cost, as well as unintended consequences, not only to the small businesses providing services but also to those that are receiving them.

Our concerns, in priority order, are as follows:

- Sections 13 D.4 and 16 require the TPA to produce audited financial statements. Many small businesses, including my business, do not currently have audited financial statements and the cost of obtaining them would be financially (estimated \$10,000-\$20,000 per year) and administratively (due to devotion of staff resources to be available for the audit) devastating.

In addition, requiring 2 years of audited financial statements with the initial application from businesses that don't currently have these, would be difficult to schedule for completion before 7/1, if the TPA even had the capacity to pay for the cost.

The devotion of staff to assist with the audit would also take away from time available to process claims.

Passing on the \$600 to small businesses is feasible. Passing on the cost of audited financial statements to our clients is significant and would likely cause the client to drop the benefit. This would cause their employees to incur additional out of pocket medical expenses.

- Section 6 B – The Commissioner and the Commissioner's designees shall have access to books and records maintained by a TPA for purposes of examination, audit, and inspection. Is there a charge to the TPA for these examinations and audits?
- Section 16 C.2 requires the Commissioner to update any electronic database maintained by the NAIC. Will this require the TPA's to register with the NAIC? If yes, are there associated costs with doing so?
- For purposes of filing the annual report is there software that we would need to purchase to submit?

Conclusion

It appears that there are a number of financial and staff resource burdens that would be incurred by the TPA to continue to offer services in the HRA, FSA, HSA arena over and above the \$600 application and renewal fee.

If the issues/questions identified above are not resolved, the final rule will cause undue burden to both the TPA's and the employers that they provide services to. In addition, we anticipate that it would have a trickle down impact on employees by increasing the portion of their medical costs they will be required to cover. We don't believe that this was the intent of this act.

Thank you for your consideration.

Subject: RE: TPA Rule Hearing - Reg. I-2021-01 Comments
Date: Thursday, March 25, 2021 at 11:42:49 AM Eastern Daylight Time
From: Sherry O'Leary
To: Arduengo, Sebastian
CC: Brown, Emily, Gaffney, Kevin

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi Sebastian –

Thank you for reaching out.

If you waived the audited statement requirement (in favor of self-certified financials) for entities that don't hold such funds or that held less than \$1 million, that would alleviate our concerns about how the proposed rule would impact small TPAs as long as this was the case both on an annual basis as well as the license application process. As you didn't specifically indicate the license application process, we wanted to confirm that it would be carried through to all sections that required an audit. I believe that the section on the application process is at Section 13.D.4 on page 8.

We also had some questions/concerns on costs regarding whether we had to register with the NAIC and whether there was a charge exams/audits by the Commissioner and the Commissioner's designees.

Thank you again for your time.

Regards,

Please be advised that over the next several weeks, we will be working with reduced staff and are limiting our in-person office hours. This may impact our response time but will not impact our commitment to servicing our client's needs.

Thank you in advance for your patience and stay well!

Sherry

Sherry G. O'Leary, CEBS, CLU, ChFC
Principal
Northeast Benefits Management, LLC
620 Hinesburg Road, Suite 120
PO Box 2363
So. Burlington, VT 05407-2363
Phone : (802) 865-0239
Fax: (802) 419-3094 soleary@nbmus.com

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From: Arduengo, Sebastian [mailto:Sebastian.Arduengo@vermont.gov]

Sent: Wednesday, March 24, 2021 10:53 AM
To: Sherry O'Leary
Cc: Brown, Emily; Gaffney, Kevin
Subject: Re: TPA Rule Hearing - Reg. I-2021-01 Comments

Hi Sherry,

I wanted to thank you again for your comment, and reach out about the burden of sending audited financial statements as part of the annual reporting required by the Rule.

I think we're most concerned about the financials of entities that actually hold funds as a fiduciary under section 9, which is why there are so many protections in section 9 about holding funds in a fiduciary capacity and operating a trust account. If we waived the audited statement requirement (in favor of self-certified financials) for entities that don't hold such funds or that held less than \$1 million, would that alleviate your concerns about how the proposed rule would affect small TPAs?

Thanks,

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.
Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

From: "Arduengo, Sebastian" <Sebastian.Arduengo@vermont.gov>
Date: Friday, February 19, 2021 at 4:01 PM
To: Sherry O'Leary <soleary@nbmus.com>
Subject: Re: TPA Rule Hearing - Reg. I-2021-01 Comments

Received Sherry, thank you.

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.
Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

From: Sherry O'Leary <soleary@nbmus.com>
Date: Friday, February 19, 2021 at 3:04 PM
To: "Arduengo, Sebastian" <Sebastian.Arduengo@vermont.gov>
Subject: RE: TPA Rule Hearing - Reg. I-2021-01 Comments

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Good afternoon,

Thank you for sending the information on the proposed rule for TPAs.

After reviewing the proposed rule, we are submitting comments for consideration.

Would it be possible for you to let me know that you received this?

Thank you,

Please be advised that over the next several weeks, we will be working with reduced staff and are limiting our in-person office hours. This may impact our response time but will not impact our commitment to servicing our client's needs.

Thank you in advance for your patience and stay well!

Sherry

Sherry G. O'Leary, CEBS, CLU, ChFC
Principal
Northeast Benefits Management, LLC
620 Hinesburg Road, Suite 120
PO Box 2363
So. Burlington, VT 05407-2363
Phone : (802) 865-0239
Fax: (802) 419-3094 soleary@nbmus.com

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From: Arduengo, Sebastian [<mailto:Sebastian.Arduego@vermont.gov>]
Sent: Tuesday, February 16, 2021 10:12 AM
To: Info
Cc: Brown, Emily
Subject: TPA Rule Hearing

Good morning,

This message is for Sherry O'Leary.

As you might know, the Department of Financial Regulation is proposing to adopt the NAIC model rule for third-party administrators as required by [Act 54 of 2019](#).

I just wanted to let you know that the APA hearing is scheduled for February 25 at 10:00 AM. Information about the proposed rule, as well as the call in information for the hearing can be found on the Department's website: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

Thanks,

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.
Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

Subject: RE: TPA Rule Hearing

Date: Friday, February 19, 2021 at 9:53:06 AM Eastern Standard Time

From: Emily Allaire

To: Arduengo, Sebastian

CC: Brown, Emily

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hi Sebastian,

This is all great information, I really appreciate your responses.

Thank you,

Emily

Emily Allaire, SHRM-CP
Healthy Dollars, Inc
5 Carmichael St (P.O. Box 8592)
Essex, VT 05452
Phone: 877-900-6979
emily@healthydollarsinc.com
www.healthydollarsinc.com

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From: Arduengo, Sebastian <Sebastian.Arduengo@vermont.gov>

Sent: Friday, February 19, 2021 9:45 AM

To: Emily Allaire <emily@healthydollarsinc.com>

Cc: Brown, Emily <Emily.Brown@vermont.gov>

Subject: Re: TPA Rule Hearing

Good morning Emily,

I'll try and answer your questions over email, but if anything is unclear or if you have any follow up questions I'm happy to chat on the phone.

1. That's correct. If you're not holding any funds for your clients then section 9 does not apply to you.
2. We want you to provide a client list, but the list is not public and is exempt from disclosure under 1 V.S.A. § 317(c).
3. This is a big regulatory change. Right now our thinking is that the rule will be effective on 7/1/21 with the first cycle starting 7/1/22 and application forms and other administrative materials ready by early 2022.
4. I'm reaching out to everyone I can to get the word out. We've already reached out to BCBSVT, Cigna, and MVP and I'm contacting the smaller TPAs one by one since we don't have readily available contact information for them. Please feel free to pass the word along to your colleagues in industry—the more participation we have in the rulemaking process, the better the outcome will be.

Thanks,

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.
Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

From: Emily Allaire <emily@healthydollarsinc.com>
Date: Friday, February 19, 2021 at 8:07 AM
To: "Arduengo, Sebastian" <Sebastian.Arduengo@vermont.gov>
Cc: Emily Brown <Emily.Brown@vermont.gov>
Subject: RE: TPA Rule Hearing

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Sebastian,

Thank you for the response! I read through all the documents and only have a few questions that came up.

1. In Section 9 it details how a TPA that is holding money for a client needs to have it in Trusts, provide reports and reconciliation. We do not hold any funds for our clients, so I assume that this is not applicable to us. Just want to be sure I read all that correctly.
2. In Section 16 the Annual Report states we need to provide all payor (clients) contact information. Am I correct in reading that the State wants us to provide a client list? If so, is this a public list? I ask for two reasons:
 - a. Client privacy needs to be considered and I want to make sure I provide them information letting them know I am required to do this
 - b. If it public, a competitor could easily sweep in and see who our clients are and go after them. This world is small and this could be detrimental to our business.
3. Section 13 – Uniform Application is due on 7/1 each year. Do you know when that will be available? We just want to make sure we have the time to get this put together.
4. I'd really like to hear how the State is monitoring the large TPA's that have business in VT, Health Equity, Wage Works, Cigna, MVP, Further, Connect Your Care, OCA. I see that there is a non-resident TPA section, but is the State of Vermont sending anything out notifying them?

This is all I have come up with! Let me know if you would prefer me to wait until next week, or wait until after the hearing to see if my questions are answered. Honestly, the public list of clients is my main concern, everything else is just more knowledge based.

Thank you so much for sending this to us and including us as a Entity effected by this.

Happy Friday!

Emily

Emily Allaire, SHRM-CP

Healthy Dollars, Inc
5 Carmichael St (P.O. Box 8592)
Essex, VT 05452
Phone: 877-900-6979
emily@healthydollarsinc.com
www.healthydollarsinc.com

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From: Arduengo, Sebastian <Sebastian.Arduengo@vermont.gov>
Sent: Thursday, February 18, 2021 8:23 AM
To: Emily Allaire <emily@healthydollarsinc.com>
Cc: Brown, Emily <Emily.Brown@vermont.gov>
Subject: Re: TPA Rule Hearing

Hi Emily,

Whatever works for you. We could even chat individually if that would be helpful.

Thanks,

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.
Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

From: Emily Allaire <emily@healthydollarsinc.com>
Date: Wednesday, February 17, 2021 at 7:09 PM
To: "Arduengo, Sebastian" <Sebastian.Arduengo@vermont.gov>
Cc: Emily Brown <Emily.Brown@vermont.gov>
Subject: RE: TPA Rule Hearing

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Hi Sebastian and Emily,

If I have questions, do I need to submit them ahead of time, or can I just ask during the hearing?

Emily

Emily Allaire, SHRM-CP
Healthy Dollars, Inc
5 Carmichael St (P.O. Box 8592)
Essex, VT 05452
Phone: 877-900-6979
emily@healthydollarsinc.com

www.healthydollarsinc.com

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From: Emily Allaire <emily@healthydollarsinc.com>
Sent: Tuesday, February 16, 2021 1:58 PM
To: Arduengo, Sebastian <Sebastian.Arduengo@vermont.gov>; Emily Allaire <emily@healthydollarsinc.com>
Cc: Brown, Emily <Emily.Brown@vermont.gov>
Subject: RE: TPA Rule Hearing

Thank you!!!

Can you please update my email address to emily@healthydollarsinc.com. I appreciate the notice.

Emily

Emily Allaire, SHRM-CP
Healthy Dollars, Inc
5 Carmichael St (P.O. Box 8592)
Essex, VT 05452
Phone: 877-900-6979
emily@healthydollarsinc.com
www.healthydollarsinc.com

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From: Arduengo, Sebastian <Sebastian.Arduengo@vermont.gov>
Sent: Tuesday, February 16, 2021 10:43 AM
To: eallaire@healthydollarsinc.com; Healthy Dollars Service <service@healthydollarsinc.com>
Cc: Brown, Emily <Emily.Brown@vermont.gov>
Subject: TPA Rule Hearing

Good morning Ms. Allaire,

As you might know, the Department of Financial Regulation is proposing to adopt the NAIC model rule for third-party administrators as required by [Act 54 of 2019](#).

I just wanted to let you know that the APA hearing is scheduled for February 25 at 10:00 AM. Information about the proposed rule, as well as the call in information for the hearing can be found on the Department's website: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

Thanks,

E. Sebastian Arduengo
Assistant General Counsel
Director of External Appeals
Department of Financial Regulation
89 Main St.

Montpelier, VT 05620
(802) 828-4846
Sebastian.Arduengo@vermont.gov

Annotated
Text

Third Party Administrator Rule

Reg. I-2021-01

Section 1. Purpose

The purpose of this rule is to set forth standards and requirements, pursuant to the authority contained in 8 V.S.A. § 15 and 18 V.S.A. §§ 9402(8) and 9417, for entities engaged in the business of insurance, as defined in 8 V.S.A. § 3301a, that directly or indirectly underwrite, collect charges, collateral or premiums from, or adjust or settle claims on residents of this state.

Section 2. Authority.

This rule is adopted under the authority granted to the Commissioner by 8 V.S.A. §§ 15 and 3301a, and as required under 18 V.S.A. § 9417.

Deleted:

Section 3. Definitions.

For purposes of this rule:

1. "Affiliate" or "affiliated" means a person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person.
2. "Business entity" means a corporation, association, partnership, limited liability company, or other legal entity.
3. "Collateral" means funds, letters of credit or any item with economic value owned by the payor but held by an insurer or TPA in case it needs to be used to fulfill premium or loss reimbursement obligations in accordance with a contract between the insurer or TPA and the payor. "Collateral" shall include anticipated loss prepayments made prior to the payment of losses, pursuant to arrangements where reimbursement is not due until after losses have been paid.
4. "Commissioner" means the Commissioner of the Department of Financial Regulation.
5. "Control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by [insert appropriate reference to state law regulating holding companies] that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.
6. "Flexible spending account" or "FSA" has the same meaning as in 18 V.S.A. § 9417(a)(1).

7. "GAAP" means United States generally accepted accounting principles consistently applied.
8. "Health reimbursement arrangement" or "HRA" has the same meaning as in 18 V.S.A. § 9417(a)(2).
9. "Health savings account" or "HSA" has the same meaning as in 18 V.S.A. § 9417(a)(3).
10. "Home state" means a United States jurisdiction that has adopted the National Association of Insurance Commissioners (NAIC) model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs and that has granted the TPA a home state TPA license.
11. "Insurer" means an entity licensed in a United States jurisdiction to provide life, annuity, health, or stop-loss coverage as an insurance company, health maintenance organization, fraternal benefit society, multiple employer welfare arrangement (MEWA), professional employer organization (PEO), or prepaid hospital or medical care plan.
12. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, and also includes a business entity whose primary activities are the sales, solicitation and negotiation of insurance.
13. "Nonresident TPA" means a TPA whose home state is any jurisdiction other than this state.
14. "Payor" means an insurer or an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control.
15. "Person" means an individual or a business entity.
16. "Third party administrator" or "TPA" means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity, health or stop-loss coverage, including HRA, FSA, HSA, or similar tax-advantaged accounts for health-related expenses, except that a person shall not be considered a TPA if that person's only actions that would otherwise cause it to be considered a TPA are among the following:
 - a. A person working for a TPA to the extent that the person's activities are subject to the supervision and control of the TPA;
 - b. An employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control;
 - c. The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 (ERISA);
 - d. A union administering a benefit plan on behalf of its members;
 - e. An insurer administering insurance coverage for its policyholders, subscribers, or certificate holders, or for those of an affiliated insurer under common management and control;

- f. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums from, or adjusting or settling claims on behalf of a client that is not a policyholder, subscriber or certificate holder, and that has its United States headquarters or principal location of business in a jurisdiction in which the insurer is licensed to write life, annuity, or health coverage;
 - g. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums, or adjusting or settling claims, provided that the insurer is licensed in this state to write life, annuity, or health coverage;
 - h. An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;
 - i. A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
 - j. A trust and its trustees and agents acting pursuant to such trust established in conformity with 29 U.S.C. § 186;
 - k. A trust exempt from taxation under 26 U.S.C. § 501(a) of the Internal Revenue Code and its trustees acting pursuant to such trust, or a custodian and the custodian's agents acting pursuant to a custodian account which meets the requirements of 26 U.S.C. § 401(f);
 - l. A credit union or other financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, when collecting or remitting premiums to licensed insurance producers or to limited lines producers or authorized payors in connection with loan payments;
 - m. A credit card issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;
 - n. An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
 - o. A person licensed as a managing general agent in Vermont under 8 V.S.A. § 4815 when acting within the scope of that license; or
 - p. A business entity that is affiliated with a licensed insurer while acting as a TPA for the direct and assumed insurance business of an affiliated insurer;
17. "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program.
18. "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators.

Section 4. Licensing Required.

No person shall act as a TPA in this state unless that person is licensed as a TPA pursuant to this rule or unless exempted under this rule. This prohibition shall not apply to a person while employed by, or when operating under contract to, a TPA that is licensed pursuant to this rule, or exempted from this rule's licensing requirements.

Section 5. Payment to a TPA.

If an insurer, HRA, FSA, or HSA utilizes the services of a TPA, any payments made to the TPA by or on behalf of the insured party, or any collateral furnished to the TPA by or on behalf of the insured party, shall be held in trust by the TPA and shall be deemed to have been received by the insurer, HRA, FSA, or HSA, and the return of any collateral or payment forwarded by the insurer, HRA, FSA, or HSA to the TPA shall not be deemed to have been paid to the insured party until payment is received by the insured party. Nothing in this section limits any right of the insurer, HRA, FSA, or HSA against the TPA resulting from the TPA's failure to make payments to the insurer, HRA, FSA, or HSA, insured parties, or claimants.

Section 6. Books and Records.

- A. A TPA shall maintain and make available to the payor complete books and records of all transactions performed on behalf of the payor. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for five (5) years from the date of their creation, unless another provision of law or regulation requires a longer period.
- B. The Commissioner and the Commissioner's designees shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, payor, insurance producer or an employee or agent thereof acting on behalf of the TPA, payor or insurance producer, or obtained by the commissioner in an investigation shall be kept confidential under 8 V.S.A. § 3574(d)(4). However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.
- C. Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection B of this section.
- D. In order to assist in the performance of his or her duties, the Commissioner may:
 - 1. Share documents, materials or other information, including the confidential documents, materials or information subject to subsection B of this section, with other state, federal and international regulatory agencies, with the NAIC, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality status of the document, material or other information;
 - 2. Receive documents, materials or information, including otherwise confidential documents, materials or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain

as confidential any document, material or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material or information;

- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection D of this section.
- F. Notwithstanding any contractual agreements between the payor and the TPA that operate to the contrary, the TPA shall retain the right to sufficient continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the payor.
- G. In the event the payor or the TPA cancels their agreement, notwithstanding the provisions of subsection A of this section, the TPA may, by written agreement with the payor, transfer all records to a new TPA rather than retain them for five (5) years. In such cases, the new TPA shall affirm to the Commissioner, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection A of this section.

Section 7. Approval of Advertising.

A TPA that advertises on behalf of its client may only use advertising that has been approved in writing by the client in advance of its use. A TPA that mentions any current or former client in its advertising must obtain the client's prior written consent. Such approvals and consents shall be maintained pursuant to Section six with other books and records.

Section 8. Responsibilities of the Payor and TPA.

- A. No TPA shall act as such without a written agreement between the TPA and the payor. A copy of the agreement shall be retained by the TPA for the duration of the agreement and for five (5) years thereafter, subject to Section six. The agreement shall contain all provisions required by this section, except insofar as the TPA does not perform all of the functions referenced in this section.
- B. A payor that utilizes the services of a TPA shall retain responsibility for the benefits, collateral and reimbursement procedures, and claims payment procedures applicable to the account. The rules pertaining to these matters, to the extent that they are relevant to the duties of the TPA, shall be agreed to in writing by the payor and the TPA.
- C. The written agreement between the TPA and the payor shall provide that communications between the TPA and claimants shall avoid deceptive statements with regard to the TPA or payor's responsibilities.
- D. In the event of a dispute between the payor and the TPA regarding which of them is to fulfill a lawful obligation with respect to a policy, certificate, or claim subject to the written agreement, the payor shall fulfill such obligation.
- E. The payor has the duty to provide for competent administration of its programs administered by a TPA and within the scope of this rule.

Section 9. Deposits and Claims.

- A. All monies collected by a TPA on behalf of or for a payor, and any funds held by the TPA for the payment of claims, shall be held by the TPA in a fiduciary capacity. Funds shall be immediately remitted to the person entitled to them upon demand, or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally insured financial institution. The TPA shall render a periodic accounting to the payor detailing all transactions performed by the TPA pertaining to the business of the payor, and the written agreement between the payor and the TPA shall include the specifications of this reporting.
- B. The TPA shall keep copies of all records of any fiduciary account maintained or controlled by the TPA, and, upon request of a payor, shall furnish the payor with copies of the records pertaining to the deposits and withdrawals made on behalf of the payor. If funds deposited in a fiduciary account have been collected on behalf of or for more than one payor, or for the payment of claims associated with more than one policy, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each payor and relating to each policyholder.
- C. The TPA shall not pay any claim by withdrawals from a fiduciary account in which payments or charges are deposited. Withdrawals from a fiduciary account shall be made as provided in the written agreement between the TPA and the payor, and only for the following purposes:
1. Remittance to a payor entitled to remittance;
 2. Deposit in an account maintained in the name of the payor;
 3. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection D of this section;
 4. Payment to a group policyholder for remittance to the payor entitled to such remittance;
 5. Payment to the TPA of its earned commissions, fees, or charges;
 6. Remittance of return premium to the person or persons entitled to such return premium; and
 7. Payment to other service providers as authorized by the payor.
- D. All claims paid by the TPA from funds collected on behalf of or for a payor shall be paid only as authorized by the payor. Payments from an account maintained or controlled by the TPA for purposes including the payment of claims may be made only for the following purposes:
1. **Payment of valid claims;**
 2. **Payment of expenses associated with claims** handling to the TPA or to other service providers approved by the payor;
 3. Remittance to the payor, or transfer to a successor TPA as directed by the payor, for the purpose of paying claims and associated expenses; and

4. Return of funds held as collateral or prepayment, to the person entitled to those funds, upon a determination by the payor that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

Section 10. Compensation to the TPA.

- A. A TPA shall not enter into an agreement or understanding with a payor in which the effect is to make the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the payment of losses covered by the payor's obligations. This provision shall not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services, from providing managed care or related services, or from being compensated for subrogation expenses.
- B. A payor shall not enter into an agreement with a TPA in violation of this section.
- C. This section shall not prevent the compensation of a TPA from being based on deposits or charges collected or the number of claims paid or processed.

Section 11. Disclosure of Charges and Fees.

- A. When a TPA collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any deposits received. Additional charges may not be made for services to the extent the services have been already paid for by the payor.
- B. The TPA shall disclose to the payor all charges, fees and commissions that the TPA receives arising from services it provides for the payor, including any fees or commissions paid by payors providing reinsurance or stop-loss insurance.

Section 12. Delivery of Materials to Covered Individuals.

Any notices or other written communications delivered by the payor to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the payor to deliver them.

Section 13. Resident TPA License.

- A. If a TPA is incorporated in this state or this state is its principal place of business within the United States, then the TPA may designate this state as its home state and apply to this state for licensure as a TPA. If neither the state in which a TPA is incorporated nor the state that is its principal place of business have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, and if the TPA has not designated any other state that has adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs as its home state, then the TPA may apply for licensure in Vermont as its home state.
- B. A TPA applying to Vermont as its home state shall apply for licensure using the Uniform Application and designate an individual as the TPA's contact person for department communications.

- C. If a TPA designates this state as its home state because neither its state of incorporation nor the state that is its principal place of business within the United States have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, but if one or both of these other jurisdictions have licensed the TPA, then the Commissioner may consult with that state or states and may give due consideration to any relevant findings made by that state or states in order to avoid an unnecessarily duplicative review of the application.
- D. The Uniform Application shall include or be accompanied by the following information and documents:
1. All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;
 2. The bylaws, rules, regulations, and similar documents regulating the internal affairs of the applicant;
 3. An NAIC Biographical Affidavit for each individual who is responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;
 4. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.
 5. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, financial statements certified by at least two (2) officers of the TPA to be true and correct that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which

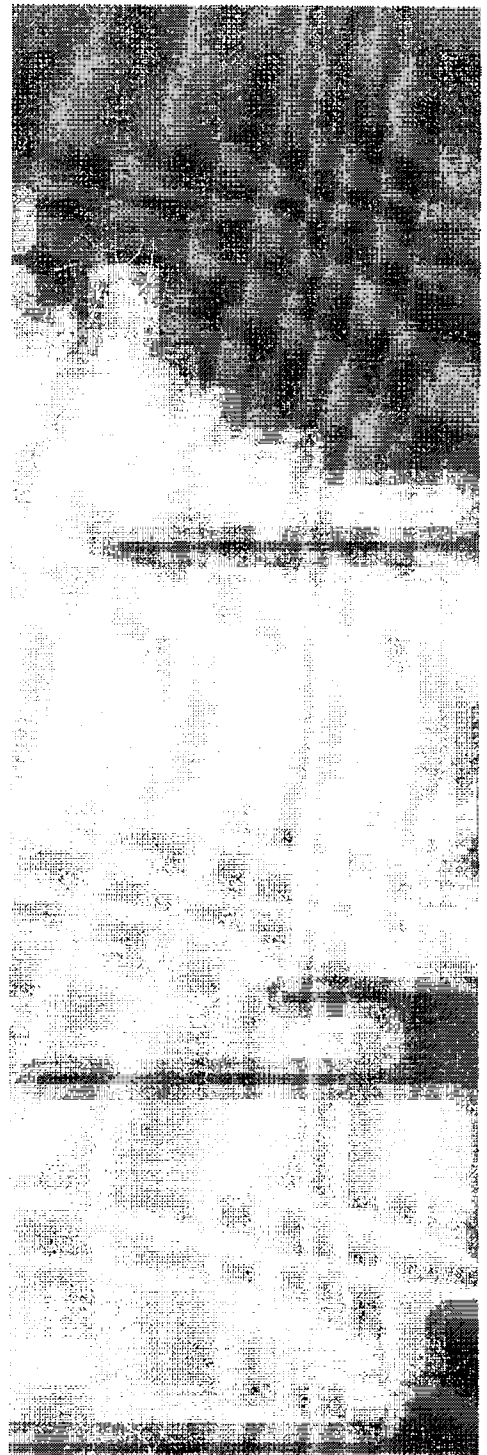
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such financial statements or reports have been completed. Financial reports shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.

6. A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting, and
 7. Such other pertinent information as may be required by the Commissioner.
- E. A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with payors or other persons utilizing the TPA's services.
 - F. A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
 - G. The Commissioner may refuse to issue or renew a license if the Commissioner determines that the TPA or any individual responsible for the conduct of affairs of the TPA is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in Section 15 of this Act exists with respect to the TPA.
 - H. A license issued under this section shall remain valid, unless surrendered, suspended, non-renewed or revoked by the Commissioner, for so long as the TPA continues in business in this state and remains in compliance with this rule.
 - I. TPAs making an initial application for a license to operate in Vermont shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

Section 14. Registration Requirement.

A person who is not required to be licensed as a TPA under this Act and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall register with the commissioner annually, verifying its status as herein described. This section shall not apply to an insurer or to an individual performing these actions as an employee of an insurer. This section shall also not apply to a person performing these actions under contract to or as an employee of a TPA.



Section 15. Nonresident TPA License.

- A. Unless a TPA has obtained a resident license in Vermont under this rule, any TPA who performs TPA duties in Vermont shall obtain a nonresident TPA license in accordance with this section by filing with the commissioner the Uniform Application, accompanied by a letter of certification. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries.
- B. A TPA shall not be eligible for a nonresident TPA license under this section if it does not hold a home state certificate of authority or license in a state that has adopted the NAIC model regulation for the registration and regulation of TPAs or that applies substantially similar provisions as are contained in this rule to that TPA.
- C. Except as otherwise provided, the Commissioner shall issue a nonresident TPA license to the TPA promptly upon receipt of a complete application.
- D. Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries, each nonresident TPA shall annually file a statement that its home state TPA certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.
- E. At the time of filing the statement required under subsection D of this section or, if the Commissioner has notified the nonresident TPA that the commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database, on an annual date determined by the Commissioner, the nonresident TPA shall pay a filing fee as required by the Commissioner.
- F. A TPA licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- G. A nonresident TPA licensed in its home state is not required to hold a nonresident TPA license in this state if it services no more than one hundred (100) certificate holders who reside in Vermont.

Section 16. Annual Report.

- A. Each TPA licensed under this rule shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year, or within such extension of time as the Commissioner for good cause may grant. The annual report shall include:
 - 1. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations

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of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two (2) officers of the TPA.

2. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, a financial statement certified by at least two (2) officers of the TPA to be true and correct. The statement shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet, b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes.

- B. The annual report shall include the complete names and addresses of all payors with which the TPA had agreements during the preceding fiscal year.
- C. The Commissioner shall review the most recently filed annual report of each TPA on or before September 1 of each year. Upon completion of its review, the commissioner shall either:
 - 1. Issue a certification to the TPA that the annual report shows (a) that the TPA has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or (b) noting any deficiencies found in that annual report and financial statements; or
 - 2. Update any electronic database maintained by the NAIC, its affiliates or subsidiaries, indicating (a) that the annual report shows that the TPA has a positive net worth as evidenced by audited financial statements and complies with existing law, or (b) noting any deficiencies found in the annual report.

Section 17. Grounds for Denial, Suspension or Revocation of Licensure.

- A. The Commissioner shall deny, suspend or revoke the license of a TPA, or shall issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:
 - 1. Is in an unsound financial condition,
 - 2. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
 - 3. Has failed to pay any judgment rendered against it in this state within sixty (60) days after the judgment has become final.
- B. The Commissioner may deny, suspend, or revoke the license of a TPA, or may issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:

1. Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this state;
 2. Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the TPA, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the TPA; and any other person who exercises control or influence over the affairs of the TPA; has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;
 3. Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA or a payor which it represents to secure full payment or settlement of such claims;
 4. Is required under this rule to have a license and fails at any time to meet any qualification for which issuance of a license could have been refused had the failure then existed and been known to the Commissioner, unless the Commissioner issued a license with knowledge of the ground for disqualification and had the authority to waive it;
 5. Is under suspension or revocation in another state; or
 6. Has failed to file a timely annual report under this rule;
- C. The Commissioner may, without advance notice, and before a hearing may issue an order immediately suspending the license of a TPA, or may issue a cease and desist order should the TPA not have a license, if the Commissioner finds that one or more of the following circumstances exist:
1. The TPA is insolvent or impaired;
 2. A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state; or
 3. The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of Vermont residents.
- D. At the time an order has been issued by the Commissioner in accordance with subsection C of this section, the Commissioner shall serve notice to the TPA that the TPA may request a hearing within ten business days after the receipt of the order. If a hearing is requested, the Commissioner shall schedule a hearing within ten business days after receipt of the request. If a hearing is not requested and the Commissioner orders none, the order shall remain in effect until modified or vacated by the Commissioner.

E. If the Commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this part, or for a cease and desist order, the Commissioner may, in lieu of or in addition to the suspension, revocation or cease and desist order, impose a fine upon the TPA.

Section 18. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall be not affected thereby.

Section 19. Conflict with Federal Law.

Nothing in this rule is intended to or should be construed to be in conflict with federal law.

Section 20. Effective Date.

This rule shall become effective July 1, ~~2021~~ 2022.

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Third Party Administrator Rule

Reg. I-2021-01

Section 1. Purpose

The purpose of this rule is to set forth standards and requirements, pursuant to the authority contained in 8 V.S.A. § 15 and 18 V.S.A. §§ 9402(8) and 9417, for entities engaged in the business of insurance, as defined in 8 V.S.A. § 3301a, that directly or indirectly underwrite, collect charges, collateral or premiums from, or adjust or settle claims on residents of this state.

Section 2. Authority.

This rule is adopted under the authority granted to the Commissioner by 8 V.S.A. §§ 15 and 3301a, and as required under 18 V.S.A. § 9417.

Section 3. Definitions.

For purposes of this rule:

1. "Affiliate" or "affiliated" means a person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person.
2. "Business entity" means a corporation, association, partnership, limited liability company, or other legal entity.
3. "Collateral" means funds, letters of credit or any item with economic value owned by the payor but held by an insurer or TPA in case it needs to be used to fulfill premium or loss reimbursement obligations in accordance with a contract between the insurer or TPA and the payor. "Collateral" shall include anticipated loss prepayments made prior to the payment of losses, pursuant to arrangements where reimbursement is not due until after losses have been paid.
4. "Commissioner" means the Commissioner of the Department of Financial Regulation.
5. "Control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by [insert appropriate reference to state law regulating holding companies] that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.
6. "Flexible spending account" or "FSA" has the same meaning as in 18 V.S.A. § 9417(a)(1).

7. "GAAP" means United States generally accepted accounting principles consistently applied.
8. "Health reimbursement arrangement" or "HRA" has the same meaning as in 18 V.S.A. § 9417(a)(2).
9. "Health savings account" or "HSA" has the same meaning as in 18 V.S.A. § 9417(a)(3).
10. "Home state" means a United States jurisdiction that has adopted the National Association of Insurance Commissioners (NAIC) model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs and that has granted the TPA a home state TPA license.
11. "Insurer" means an entity licensed in a United States jurisdiction to provide life, annuity, health, or stop-loss coverage as an insurance company, health maintenance organization, fraternal benefit society, multiple employer welfare arrangement (MEWA), professional employer organization (PEO), or prepaid hospital or medical care plan.
12. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, and also includes a business entity whose primary activities are the sales, solicitation and negotiation of insurance.
13. "Nonresident TPA" means a TPA whose home state is any jurisdiction other than this state.
14. "Payor" means an insurer or an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control.
15. "Person" means an individual or a business entity.
16. "Third party administrator" or "TPA" means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity, health or stop-loss coverage, including HRA, FSA, HSA, or similar tax-advantaged accounts for health-related expenses, except that a person shall not be considered a TPA if that person's only actions that would otherwise cause it to be considered a TPA are among the following:
 - a. A person working for a TPA to the extent that the person's activities are subject to the supervision and control of the TPA;
 - b. An employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control;
 - c. The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 (ERISA);
 - d. A union administering a benefit plan on behalf of its members;
 - e. An insurer administering insurance coverage for its policyholders, subscribers, or certificate holders, or for those of an affiliated insurer under common management and control;

- f. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums from, or adjusting or settling claims on behalf of a client that is not a policyholder, subscriber or certificate holder, and that has its United States headquarters or principal location of business in a jurisdiction in which the insurer is licensed to write life, annuity, or health coverage;
 - g. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums, or adjusting or settling claims, provided that the insurer is licensed in this state to write life, annuity, or health coverage;
 - h. An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;
 - i. A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
 - j. A trust and its trustees and agents acting pursuant to such trust established in conformity with 29 U.S.C. § 186;
 - k. A trust exempt from taxation under 26 U.S.C. § 501(a) of the Internal Revenue Code and its trustees acting pursuant to such trust, or a custodian and the custodian's agents acting pursuant to a custodian account which meets the requirements of 26 U.S.C. § 401(f);
 - l. A credit union or other financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, when collecting or remitting premiums to licensed insurance producers or to limited lines producers or authorized payors in connection with loan payments;
 - m. A credit card issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;
 - n. An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
 - o. A person licensed as a managing general agent in Vermont under 8 V.S.A. § 4815 when acting within the scope of that license; or
 - p. A business entity that is affiliated with a licensed insurer while acting as a TPA for the direct and assumed insurance business of an affiliated insurer;
17. "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program.
18. "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators.

Section 4. Licensing Required.

No person shall act as a TPA in this state unless that person is licensed as a TPA pursuant to this rule or unless exempted under this rule. This prohibition shall not apply to a person while employed by, or when operating under contract to, a TPA that is licensed pursuant to this rule, or exempted from this rule's licensing requirements.

Section 5. Payment to a TPA.

If an insurer, HRA, FSA, or HSA utilizes the services of a TPA, any payments made to the TPA by or on behalf of the insured party, or any collateral furnished to the TPA by or on behalf of the insured party, shall be held in trust by the TPA and shall be deemed to have been received by the insurer, HRA, FSA, or HSA, and the return of any collateral or payment forwarded by the insurer, HRA, FSA, or HSA to the TPA shall not be deemed to have been paid to the insured party until payment is received by the insured party. Nothing in this section limits any right of the insurer, HRA, FSA, or HSA against the TPA resulting from the TPA's failure to make payments to the insurer, HRA, FSA, or HSA, insured parties, or claimants.

Section 6. Books and Records.

- A. A TPA shall maintain and make available to the payor complete books and records of all transactions performed on behalf of the payor. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for five (5) years from the date of their creation, unless another provision of law or regulation requires a longer period.
- B. The Commissioner and the Commissioner's designees shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, payor, insurance producer or an employee or agent thereof acting on behalf of the TPA, payor or insurance producer, or obtained by the commissioner in an investigation shall be kept confidential under 8 V.S.A. § 3574(d)(4). However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.
- C. Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection B of this section.
- D. In order to assist in the performance of his or her duties, the Commissioner may:
 - 1. Share documents, materials or other information, including the confidential documents, materials or information subject to subsection B of this section, with other state, federal and international regulatory agencies, with the NAIC, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality status of the document, material or other information;
 - 2. Receive documents, materials or information, including otherwise confidential documents, materials or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain

as confidential any document, material or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material or information;

- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection D of this section.
- F. Notwithstanding any contractual agreements between the payor and the TPA that operate to the contrary, the TPA shall retain the right to sufficient continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the payor.
- G. In the event the payor or the TPA cancels their agreement; notwithstanding the provisions of subsection A of this section, the TPA may, by written agreement with the payor, transfer all records to a new TPA rather than retain them for five (5) years. In such cases, the new TPA shall affirm to the Commissioner, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection A of this section.

Section 7. Approval of Advertising.

A TPA that advertises on behalf of its client may only use advertising that has been approved in writing by the client in advance of its use. A TPA that mentions any current or former client in its advertising must obtain the client's prior written consent. Such approvals and consents shall be maintained pursuant to Section six with other books and records.

Section 8. Responsibilities of the Payor and TPA.

- A. No TPA shall act as such without a written agreement between the TPA and the payor. A copy of the agreement shall be retained by the TPA for the duration of the agreement and for five (5) years thereafter, subject to Section six. The agreement shall contain all provisions required by this section, except insofar as the TPA does not perform all of the functions referenced in this section.
- B. A payor that utilizes the services of a TPA shall retain responsibility for the benefits, collateral and reimbursement procedures, and claims payment procedures applicable to the account. The rules pertaining to these matters, to the extent that they are relevant to the duties of the TPA, shall be agreed to in writing by the payor and the TPA.
- C. The written agreement between the TPA and the payor shall provide that communications between the TPA and claimants shall avoid deceptive statements with regard to the TPA or payor's responsibilities.
- D. In the event of a dispute between the payor and the TPA regarding which of them is to fulfill a lawful obligation with respect to a policy, certificate, or claim subject to the written agreement, the payor shall fulfill such obligation.
- E. The payor has the duty to provide for competent administration of its programs administered by a TPA and within the scope of this rule.

Section 9. Deposits and Claims.

- A. All monies collected by a TPA on behalf of or for a payor, and any funds held by the TPA for the payment of claims, shall be held by the TPA in a fiduciary capacity. Funds shall be immediately remitted to the person entitled to them upon demand, or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally insured financial institution. The TPA shall render a periodic accounting to the payor detailing all transactions performed by the TPA pertaining to the business of the payor, and the written agreement between the payor and the TPA shall include the specifications of this reporting.
- B. The TPA shall keep copies of all records of any fiduciary account maintained or controlled by the TPA, and, upon request of a payor, shall furnish the payor with copies of the records pertaining to the deposits and withdrawals made on behalf of the payor. If funds deposited in a fiduciary account have been collected on behalf of or for more than one payor, or for the payment of claims associated with more than one policy, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each payor and relating to each policyholder.
- C. The TPA shall not pay any claim by withdrawals from a fiduciary account in which payments or charges are deposited. Withdrawals from a fiduciary account shall be made as provided in the written agreement between the TPA and the payor, and only for the following purposes:
1. Remittance to a payor entitled to remittance;
 2. Deposit in an account maintained in the name of the payor;
 3. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection D of this section;
 4. Payment to a group policyholder for remittance to the payor entitled to such remittance;
 5. Payment to the TPA of its earned commissions, fees, or charges;
 6. Remittance of return premium to the person or persons entitled to such return premium; and
 7. Payment to other service providers as authorized by the payor.
- D. All claims paid by the TPA from funds collected on behalf of or for a payor shall be paid only as authorized by the payor. Payments from an account maintained or controlled by the TPA for purposes including the payment of claims may be made only for the following purposes:
1. Payment of valid claims;
 2. Payment of expenses associated with claims handling to the TPA or to other service providers approved by the payor;
 3. Remittance to the payor, or transfer to a successor TPA as directed by the payor, for the purpose of paying claims and associated expenses; and

4. Return of funds held as collateral or prepayment, to the person entitled to those funds, upon a determination by the payor that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

Section 10. Compensation to the TPA.

- A. A TPA shall not enter into an agreement or understanding with a payor in which the effect is to make the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the payment of losses covered by the payor's obligations. This provision shall not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services, from providing managed care or related services, or from being compensated for subrogation expenses.
- B. A payor shall not enter into an agreement with a TPA in violation of this section.
- C. This section shall not prevent the compensation of a TPA from being based on deposits or charges collected or the number of claims paid or processed.

Section 11. Disclosure of Charges and Fees.

- A. When a TPA collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any deposits received. Additional charges may not be made for services to the extent the services have been already paid for by the payor.
- B. The TPA shall disclose to the payor all charges, fees and commissions that the TPA receives arising from services it provides for the payor, including any fees or commissions paid by payors providing reinsurance or stop-loss insurance.

Section 12. Delivery of Materials to Covered Individuals.

Any notices or other written communications delivered by the payor to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the payor to deliver them.

Section 13. Resident TPA License.

- A. If a TPA is incorporated in this state or this state is its principal place of business within the United States, then the TPA may designate this state as its home state and apply to this state for licensure as a TPA. If neither the state in which a TPA is incorporated nor the state that is its principal place of business have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, and if the TPA has not designated any other state that has adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs as its home state, then the TPA may apply for licensure in Vermont as its home state.
- B. A TPA applying to Vermont as its home state shall apply for licensure using the Uniform Application and designate an individual as the TPA's contact person for department communications.

- C. If a TPA designates this state as its home state because neither its state of incorporation nor the state that is its principal place of business within the United States have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, but if one or both of these other jurisdictions have licensed the TPA, then the Commissioner may consult with that state or states and may give due consideration to any relevant findings made by that state or states in order to avoid an unnecessarily duplicative review of the application.
- D. The Uniform Application shall include or be accompanied by the following information and documents:
1. All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;
 2. The bylaws, rules, regulations, and similar documents regulating the internal affairs of the applicant;
 3. An NAIC Biographical Affidavit for each individual who is responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;
 4. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.
 5. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, financial statements certified by at least two (2) officers of the TPA to be true and correct that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which

such financial statements or reports have been completed. Financial reports shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.

6. A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting; and
 7. Such other pertinent information as may be required by the Commissioner.
- E. A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with payors or other persons utilizing the TPA's services.
 - F. A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
 - G. The Commissioner may refuse to issue or renew a license if the Commissioner determines that the TPA or any individual responsible for the conduct of affairs of the TPA is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in Section 15 of this Act exists with respect to the TPA.
 - H. A license issued under this section shall remain valid, unless surrendered, suspended, non-renewed or revoked by the Commissioner, for so long as the TPA continues in business in this state and remains in compliance with this rule.
 - I. TPAs making an initial application for a license to operate in Vermont shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

Section 14. Registration Requirement.

A person who is not required to be licensed as a TPA under this Act and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall register with the commissioner annually, verifying its status as herein described. This section shall not apply to an insurer or to an individual performing these actions as an employee of an insurer. This section shall also not apply to a person performing these actions under contract to or as an employee of a TPA.

Section 15. Nonresident TPA License.

- A. Unless a TPA has obtained a resident license in Vermont under this rule, any TPA who performs TPA duties in Vermont shall obtain a nonresident TPA license in accordance with this section by filing with the commissioner the Uniform Application, accompanied by a letter of certification. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries.
- B. A TPA shall not be eligible for a nonresident TPA license under this section if it does not hold a home state certificate of authority or license in a state that has adopted the NAIC model regulation for the registration and regulation of TPAs or that applies substantially similar provisions as are contained in this rule to that TPA.
- C. Except as otherwise provided, the Commissioner shall issue a nonresident TPA license to the TPA promptly upon receipt of a complete application.
- D. Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries, each nonresident TPA shall annually file a statement that its home state TPA certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.
- E. At the time of filing the statement required under subsection D of this section or, if the Commissioner has notified the nonresident TPA that the commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database, on an annual date determined by the Commissioner, the nonresident TPA shall pay a filing fee as required by the Commissioner.
- F. A TPA licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- G. A nonresident TPA licensed in its home state is not required to hold a nonresident TPA license in this state if it services no more than one hundred (100) certificate holders who reside in Vermont.

Section 16. Annual Report.

- A. Each TPA licensed under this rule shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year, or within such extension of time as the Commissioner for good cause may grant. The annual report shall include:
 - 1. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations

of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two (2) officers of the TPA.

2. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, a financial statement certified by at least two (2) officers of the TPA to be true and correct. The statement shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes.
- B. The annual report shall include the complete names and addresses of all payors with which the TPA had agreements during the preceding fiscal year.
- C. The Commissioner shall review the most recently filed annual report of each TPA on or before September 1 of each year. Upon completion of its review, the commissioner shall either:
1. Issue a certification to the TPA that the annual report shows (a) that the TPA has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or (b) noting any deficiencies found in that annual report and financial statements; or
 2. Update any electronic database maintained by the NAIC, its affiliates or subsidiaries, indicating (a) that the annual report shows that the TPA has a positive net worth as evidenced by audited financial statements and complies with existing law, or (b) noting any deficiencies found in the annual report.

Section 17. Grounds for Denial, Suspension or Revocation of Licensure.

- A. The Commissioner shall deny, suspend or revoke the license of a TPA, or shall issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:
1. Is in an unsound financial condition;
 2. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
 3. Has failed to pay any judgment rendered against it in this state within sixty (60) days after the judgment has become final.
- B. The Commissioner may deny, suspend, or revoke the license of a TPA, or may issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:

1. Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this state;
 2. Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the TPA, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the TPA; and any other person who exercises control or influence over the affairs of the TPA; has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;
 3. Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA or a payor which it represents to secure full payment or settlement of such claims;
 4. Is required under this rule to have a license and fails at any time to meet any qualification for which issuance of a license could have been refused had the failure then existed and been known to the Commissioner, unless the Commissioner issued a license with knowledge of the ground for disqualification and had the authority to waive it;
 5. Is under suspension or revocation in another state; or
 6. Has failed to file a timely annual report under this rule;
- C. The Commissioner may, without advance notice, and before a hearing may issue an order immediately suspending the license of a TPA, or may issue a cease and desist order should the TPA not have a license, if the Commissioner finds that one or more of the following circumstances exist:
1. The TPA is insolvent or impaired;
 2. A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state; or
 3. The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of Vermont residents.
- D. At the time an order has been issued by the Commissioner in accordance with subsection C of this section, the Commissioner shall serve notice to the TPA that the TPA may request a hearing within ten business days after the receipt of the order. If a hearing is requested, the Commissioner shall schedule a hearing within ten business days after receipt of the request. If a hearing is not requested and the Commissioner orders none, the order shall remain in effect until modified or vacated by the Commissioner.

- E. If the Commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this part, or for a cease and desist order, the Commissioner may, in lieu of or in addition to the suspension, revocation or cease and desist order, impose a fine upon the TPA.

Section 18. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall be not affected thereby.

Section 19. Conflict with Federal Law.

Nothing in this rule is intended to or should be construed to be in conflict with federal law.

Section 20. Effective Date.

This rule shall become effective July 1, 2022.

The Vermont Statutes Online

Title 8 : Banking And Insurance

Chapter 001 : Policy And Administration

(Cite as: 8 V.S.A. § 15)

§ 15. Rules, orders, and administrative interpretations

(a) In addition to other powers conferred by this title and 18 V.S.A. chapter 221, the Commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of 18 V.S.A. chapter 221, and to carry out the purposes of such titles.

(b) The Commissioner may, whether or not requested by any person, issue written advisory interpretations, advisory opinions, non-objection letters, and no action letters under this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. The Commissioner may make public all or a portion of an advisory interpretation.

(c) The Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the Commissioner deems necessary to permit the Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the Commissioner under this title, Title 9, or 18 V.S.A. chapter 221.

(d) Upon written request by the Office of Child Support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the Commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, 9 V.S.A. chapter 150, and 18 V.S.A. chapter 221, if the Commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the Office of Child Support to the Commissioner shall constitute prima facie evidence. The Office of Child Support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the Commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or

introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the Department receives a certificate issued by the Office of Child Support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a; 2013, No. 73, § 58, eff. June 5, 2013; 2015, No. 63, § 3, eff. June 17, 2015; 2019, No. 20, § 106.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 8 : Banking And Insurance

Chapter 101 : Insurance Companies Generally

Subchapter 001 : Formation

(Cite as: 8 V.S.A. § 3301a)

§ 3301a. Insurance defined

As used in this title, "insurance" means an agreement to indemnify or otherwise assume an obligation, provide services or any other thing of value on the happening of a particular event or contingency, or to provide indemnity for loss with respect to a specified subject by specified circumstances in return for a consideration. Without limiting the generality of the term, "insurance" shall include any business defined in section 3301 of this title, annuity contracts, and the business of health maintenance organizations and continuing care retirement communities. (Added 2001, No. 71, § 2, eff. June 16, 2001.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 18 : Health

Chapter 221 : Health Care Administration

Subchapter 001 : Quality, Resource Allocation, And Cost Containment

(Cite as: 18 V.S.A. § 9402)

§ 9402. Definitions

As used in this chapter, unless otherwise indicated:

(1) "Commissioner" means the Commissioner of Financial Regulation or the Commissioner's designee.

(2) "Community report" means the hospital report prepared under section 9405a of this title.

(3) "Department" means the Department of Financial Regulation.

(4) [Repealed.]

(5) "Expenditure analysis" means the expenditure analysis developed pursuant to section 9383 of this title.

(6) "Health care facility" means all institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer or healing, but includes all institutions included in subdivision 9432(8) of this title, except health maintenance organizations.

(7) "Health care provider" means a person, partnership, or corporation, other than a facility or institution, licensed or certified or authorized by law to provide professional health care service in this State to an individual during that individual's medical care, treatment, or confinement.

(8) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, managed care organizations, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health maintenance organization" means any person certified to operate a health maintenance organization by the Commissioner pursuant to 8 V.S.A. chapter 139.

(10) "Health Resource Allocation Plan" means the plan published by the Green

Mountain Care Board in accordance with subsection 9405(b) of this title.

(11) "Home health agency" means a for-profit or nonprofit health care facility providing part-time or intermittent skilled nursing services and at least one of the following other therapeutic services made available on a visiting basis, in a place of residence used as a patient's home: physical, speech, or occupational therapy; medical social services; home health aide services; or other non-nursing therapeutic services, including the services of nutritionists, dieticians, psychologists, and licensed mental health counselors.

(12) "Home health services" means activities and functions of a home health agency, including nurses, home health aides, physical therapists, occupational therapists, speech therapists, medical social workers, or other non-nursing therapeutic services directly related to care, treatment, or diagnosis of patients in the home.

(13) "Hospital" means an acute care hospital licensed under chapter 43 of this title.

(14) "Managed care organization" means any financing mechanism or system that manages health care delivery for its members or subscribers, including health maintenance organizations and any other similar health care delivery system or organization.

(15) "Health care spending estimate" means the spending estimate established in accordance with section 9383 of this title.

(16) "State Health Improvement Plan" means the plan developed under section 9405 of this title.

(17) "Green Mountain Care Board" or "Board" means the Green Mountain Care Board established in chapter 220 of this title. (Added 1991, No. 160 (Adj. Sess.), § 1, eff. May 11, 1992; amended 1995, No. 180 (Adj. Sess.), § 8; 2003, No. 53, §§ 2, 26; 2005, No. 57, § 3, eff. June 13, 2005; 2007, No. 27, § 11; 2009, No. 49, § 9; 2011, No. 48, § 19; 2011, No. 171 (Adj. Sess.), § 13, eff. May, 16, 2012; 2015, No. 54, § 33; 2017, No. 167 (Adj. Sess.), §§ 3, 10, eff. May 22, 2018.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 18 : Health

Chapter 221 : Health Care Administration

Subchapter 001 : Quality, Resource Allocation, And Cost Containment

(Cite as: 18 V.S.A. § 9417)

§ 9417. Tax-advantaged accounts for health-related expenses; administration; rulemaking

(a) As used in this section:

(1) "Flexible spending account" or "FSA" has the same meaning as in 26 U.S.C. § 106(c)(2).

(2) "Health reimbursement arrangement" or "HRA" means any account-based reimbursement arrangement funded solely by employer contributions that reimburses an employee, spouse, or dependents, or a combination thereof, for medical care expenses incurred by the employee, spouse, dependents, or a combination thereof, up to a maximum coverage amount set by the employer for a given coverage period, and that is established pursuant to 26 U.S.C. §§ 105-106 and applicable guidance from the Internal Revenue Service.

(3) "Health savings account" or "HSA" has the same meaning as in 26 U.S.C. § 223(d)(1).

(b) Any entity administering one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State is subject to the jurisdiction of the Commissioner of Financial Regulation pursuant to 8 V.S.A. § 10 and all other applicable provisions.

(c) The Commissioner of Financial Regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 to license and regulate, to the extent permitted under federal law, entities administering or proposing to administer one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State. The rules shall include:

(1) annual licensure or registration filing requirements; and

(2) such requirements and qualifications for such entities as the Commissioner determines necessary to protect Vermont consumers and employers and to help ensure that funds are disbursed appropriately.

(d) Following the adoption of rules pursuant to subsection (c) of this section, an entity

making an initial application for a license or registration to administer HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

(e) This section shall not apply to an employer that self-administers one or more tax-advantaged accounts on behalf of its own employees. (Added 2019, No. 54, § 1.)



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Mar 25, 2021

Please submit comments to the agency or primary contact person listed below, before the deadline.

Rule Details

Rule Number:	20P026
Title:	Third Party Administrator Rule
Type:	Standard
Status:	Proposed
Agency:	Department of Financial Regulation
Legal Authority:	8 V.S.A. §§ 15, 3301a; 18 V.S.A. §§ 9402, 9417.

Summary: The rule requires third party administrators (TPAs) for insurers, health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), and health savings accounts (HSAs) to become licensed with the Department, maintain books and records of all transactions, and hold all funds for the payment of claims in a fiduciary capacity.

Persons Affected: Vermont Education Health Initiative (VEHI); Vermont-NEA; Northeast Benefits Management, LLC; Healthy Dollars, Inc.; The Richards Group; Office of the Health Care Advocate; other Third Party Administrators.

Economic Impact: Because the rule does not include surplus or reserve requirements for TPAs, the Department does not anticipate that it will unduly burden small businesses that provide plan benefit services. It is likely that TPAs will pass on compliance costs to clients, incrementally increasing the cost to employers of obtaining TPA services. However, employers will indirectly benefit from TPA regulation in the form of reduced risks to their employee benefit plans.

Posting date: Dec 30,2020

Hearing Information

Information for Hearing # 1

Hearing date: 02-25-2021 10:00 AM

Location: Meeting to be held remotely via MS Teams

Address: Conference ID: 419 007 662# Phone: +1 802-828-7667

City: Montpelier

State: VT

Zip: 05620-6501

Hearing Notes:

Contact Information

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Keyword Information

Keywords:

TPA
 HRA
 HSA
 FSA
 benefit administration



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	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: Louise Corliss, APA Clerk

Date of Fax: December 28, 2020

RE: The "Proposed State Rules " ad copy to run on

January 7, 2021

PAGES INCLUDING THIS COVER MEMO:

2

***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact Louise Corliss at 802-828-2863, or E-Mail louise.corliss@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Clean Water Service Provider Rule.

Vermont Proposed Rule: 20P025

AGENCY: Agency of Natural Resources

CONCISE SUMMARY: The Agency proposes this rule to assign a CWSP to each basin described in 10 V.S.A. § 922(a) for the purpose of achieving pollutant reduction values established by the Secretary. This rule also establishes requirements for the implementation of 10 V.S.A., Chapter 37, subchapter 5, related to the operational, financial, managerial, and technical requirements associated with CWSP service, as well as the governance structure for Basin Water Quality Councils (BWQCs). The rule also proposes requirements related to conflicts of interest policy, oversight and evaluation of CWSP service, and renewal or removal of a CWSP assignment.

FOR FURTHER INFORMATION, CONTACT: Chris Rottler, Agency of Natural Resources, 1 National Life Drive, Davis 3, Montpelier, VT 05620 Tel: 802-461-6051 Email: chris.rottler@vermont.gov URL: <https://dec.vermont.gov/water-investment/statues-rules-policies/act-76>.

FOR COPIES: Katelyn Ellermann, Agency of Natural Resources, 1 National Life Drive, Davis 3, Montpelier, VT 05620 Tel: 802-522-7125 Email: katelyn.ellermann@vermont.gov

Third Party Administrator Rule

Vermont Proposed Rule: 20P026

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The rule requires third party administrators (TPAs) for insurers, health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), and health savings accounts (HSAs) to become licensed with the Department, maintain books and records of all transactions, and hold all funds for the payment of claims in a fiduciary capacity.

FOR FURTHER INFORMATION, CONTACT: E. Sebastian Arduengo, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101 Tel: 801-828-4846 Email: Sebastian.Arduengo@vermont.gov URL: <https://dfr.vermont.gov/view/regbul>.

FOR COPIES: Jill Rickard, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101 Tel: 801-828-1978 Email: Jill.Rickard@vermont.gov
