

***Financial Institutions &
Insurance Committee***

HB 1383

Brief Description: *Regulating the activities of insurance third party administrators.*

Sponsors: *Representatives Campbell, Schual-Berke, Skinner and Cody.*

Brief Summary of Bill

- *Creates a new chapter in Title 48 RCW for the purpose of regulating third party administrators within the insurance industry.*

Hearing Date: *2/7/01*

Staff: *Thamas Osborn (786-7129).*

Background:

The insurance industry is regulated by the Insurance Commissioner (the commissioner), pursuant to the statutory provisions set forth in Title 48 RCW. The commissioner oversees the corporate activities of insurance companies and regulates the provision of insurance services to consumers.

A "third party administrator" (TPA) manages an insurance program or health plan for an organization, and functions as a sort of middleman between an insurer and an insured. TPAs are sometimes used by insurers with respect to traditional insurance programs and are often used by employers who are self insured. TPAs typically process claims and may also collect premiums, solicit enrollees, and underwrite. Some TPAs are given broad authority in managing the insurance plan, including rejecting claims. The increased focus on cost cutting, especially in the health care arena, has generally resulted in closer relationships between employers and TPAs.

There are currently no state statutes or regulations specific to the regulation of TPAs

Summary of Bill:

A new chapter is added to the insurance code, Title 48 RCW, setting forth a statutory scheme for the regulation by the commissioner of "third party administrator"s (TPA). A TPA is defined as "a person who directly or indirectly underwrites, collects charges or premiums, or adjusts or settles claims, in connection with life, annuity, or health insurance coverage offered by an insurer.". Certain entities are excepted from the definition, including employers, unions, credit unions, etc. The chapter addresses licensing requirements, the regulatory powers of the commissioner, and the legal obligations among the insurer, the insured, and the TPA.

A detailed written agreement is required between a TPA and an insurer that addresses the duties assumed by the TPA on behalf of the insurer, agreements regarding underwriting, and the identification of the types of insurance to be handled by the TPA. The agreement must address all TPA functions required under the chapter.

The TPA is required to keep extensive records regarding all transactions. The commissioner has a right of access to these records, but such access does not otherwise affect the confidentiality of the records. The commissioner is barred from any disclosure of the records, except to the extent necessary in the exercise of his regulatory authority.

The business relationship between the TPA and the insurer is subject to considerable regulation, with the insurer being primarily responsible for the proper management of the program.

The insurer is solely responsible for determining the terms of coverage and the terms of other agreements with insurers. The responsibilities of the TPA with respect to such matters must be explicitly stated in a written agreement with the insurer.

The handling of moneys by the TPA must also be pursuant to written agreement with the insurer. The TPA has a fiduciary duty to the insurer with respect to moneys collected via premiums and charges.

Agreements between the TPA and the insurer may not link the income of the TPA to the savings effected by the TPA in the process of the payment, settlement, or adjustment of claims. This does not bar all performance-based compensation agreements.

The TPA has a duty of disclosure to both the insurer and an insured. An insured must be informed of the nature of the contractual relationship among the parties and any fees charged by the TPA must be itemized separate from any premium. The TPA must inform the insurer of any fees or commissions it receives in providing services to the insured.

The licensing requirements for TPAs are subject to extensive regulation by the commissioner, who is granted broad latitude with respect to the issuance, suspension and revocation of licenses.

The commissioner may deny a license if he determines that an applicant is incompetent, untrustworthy, financially irresponsible, has a poor personal or business reputation, has been subject to denial or revocation of a license in another jurisdiction, or would be subject to license suspension or revocation as provided elsewhere in the chapter.

It is mandatory that the commissioner deny, suspend or revoke a license if a TPA is found

to be in unsound financial condition, or the business is potentially injurious to insurers or the public, or the TPA has failed to pay any judgment within 60 days of entry. Such action is discretionary for certain violations of law or regulations, failure to cooperate with the regulatory process, criminal behavior, insolvency, or potentially harmful business practices. A fine may be imposed in lieu of other discretionary action by the commissioner.

A TPA is required to file an annual report with the commissioner identifying the insurers represented by the TPA and such other information as may be required by the commissioner. The commissioner, in turn, is required to complete a review of each TPA doing business in this state. The commissioner must certify that the TPA is either solvent and in compliance with existing law, or note any deficiencies in the operations of the TPA.

Appropriation: *None.*

Fiscal Note: *Requested on February 1, 2001.*

Effective Date: *Ninety days after adjournment of session in which bill is passed.*