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**HOUSE BILL 2445**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Robinson, Cody, Riccelli, Jinkins, Tarleton, and Kilduff; by request of Insurance Commissioner

AN ACT Relating to third-party administrators and benefits managers; adding a new chapter to Title 48 RCW; repealing RCW 19.340.010, 19.340.020, 19.340.030, 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080, 19.340.090, 19.340.100, and 19.365.010; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(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) "Benefit manager" means a person who performs one or more of the following functions on behalf of a carrier, third-party administrator, or self-insured company:

(a) Claims processing for services and procedures;

(b) Utilization review;

(c) Outcomes management;

(d) Disease management; and

(e) Payment or authorization of payment to providers or facilities for services or procedures.

Benefit manager includes, but is not limited to, pharmacy benefit managers, radiology benefit managers, and mental health benefit managers.

(3) "Carrier" means an entity authorized in this state to provide disability, health, or stop-loss coverage as an insurance company, health maintenance organization, fraternal benefit society, health care service contractor, or self-funded multiple employer welfare arrangement.

(4) "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 nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by RCW 48.31B.025(11) 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.

(5) "Insurance producer" has the same meaning as in RCW 48.17.010.

(6) "Stop-loss insurance" means insurance against the risk of economic loss assumed under a self-funded employee disability benefit plan.

(7) "Third-party administrator" or "TPA" means a person who performs one or more of the following functions on behalf of a carrier, either directly or indirectly, in connection with disability, health, or stop-loss coverage: Underwriting business; collecting charges or premiums; adjusting or settling claims; performing utilization reviews, credentialing providers, prior authorization of treatments or quality audits; acting as a benefit manager such as pharmacy benefit manager or radiology benefit manager. A person is not a TPA if that person's only actions are among the following activities:

(a) An individual working for a TPA to the extent that the individual'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, as the act existed on the effective date of this section;

(d) A union administering a benefit plan on behalf of its members;

(e) A carrier administering insurance coverage for its policyholders, subscribers, or certificate holders, or those of an affiliated carrier under common management and control;

(f) A carrier directly or indirectly underwriting, collecting charges, premiums, or adjusting or settling claims, provided that the carrier is authorized in this state to write that line of insurance coverage;

(g) An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;

(h) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(i) A trust and its trustees and agents acting under the trust established in conformity with 29 U.S.C. Sec. 186;

(j) A trust exempt from taxation under section 501(a) of the internal revenue code and its trustees acting under the trust, or a custodian and the custodian's agents acting under a custodian account which meets the requirements of section 401(f) of the internal revenue code;

(k) A credit union or a 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 carriers in connection with loan payments;

(l) A credit card issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;

(m) 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;

(n) A person authorized under chapter 48.98 RCW to act as a managing general agent in this state when acting within the scope of that authority; or

(o) A multiple employer welfare arrangement acting pursuant to 29 U.S.C. Sec. 1002 or chapter 48.125 RCW, other than a self-funded multiple employer welfare arrangement regulated under chapter 48.125 RCW.

(8) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program.

NEW SECTION. **Sec.**  A person may not act as a TPA in this state unless that person is registered as a TPA under this chapter. This prohibition does not apply to an individual while employed by, or when operating under contract to, a TPA that is registered under this chapter.

NEW SECTION. **Sec.**  (1) To conduct business in this state, a TPA must register with the office of the insurance commissioner and annually renew the registration.

(2) To register under this section, a TPA must:

(a) Submit an application containing the following information:

(i) The identity of the TPA;

(ii) The name, business address, phone number, email address, and contact person for the TPA; and

(iii) The federal tax employer identification number for the entity; and

(b) Pay a registration fee. The registration fee must be set by the commissioner to allow the registration and oversight activities to be self-supporting.

(3) Annually, a renewal fee must be paid and any information required in subsection (2) of this section must be updated. The renewal fee must be set by the commissioner to allow the renewal and oversight activities to be self-supporting.

(4) All receipts from registrations and renewals collected by the commissioner must be deposited into the insurance commissioner's regulatory account created in RCW 48.02.190.

(5) Any TPA that is transacting business to which this chapter applies on July 1, 2017, must register and pay the registration fee on or before January 1, 2018. If a TPA does not register on or before October 1, 2017, it must discontinue operations in this state after January 1, 2018, until it is registered with the office of the insurance commissioner.

NEW SECTION. **Sec.**  (1) Carriers must file all contracts executed between the carrier and TPAs and all contracts executed between those TPAs and other persons that directly or indirectly provide health care services with the commissioner thirty calendar days before use. A TPA that contracts with a carrier must provide to the carrier all contracts executed between the TPA and persons that directly or indirectly provide health care services.

(a) Any contracts filed with the commissioner under this section not affirmatively disapproved by the commissioner are deemed approved, except the commissioner may extend the approval date an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period.

(b) Changes to previously filed and approved contracts must be filed and are deemed approved upon filing if no other changes are made to the previously approved contract.

(2) The commissioner may not base a disapproval of a contract filed under this section on the amount of compensation or other financial arrangements between the carrier and the TPA, unless that compensation amount causes the underlying health benefit plan to otherwise be in violation of state or federal law. This subsection does not grant the commissioner the authority to regulate provider reimbursement amounts.

(3) The commissioner may withdraw approval of a contract at any time for cause.

(4) Third-party administrators' compensation contracts filed under this section are confidential and not subject to public inspection under RCW 48.02.120(2), or public disclosure under chapter 42.56 RCW, if filed in accordance with the procedures for submitting confidential filings through the system for electronic rate and form filings and the general filing instructions as set forth by the commissioner. In the event the referenced filing fails to comply with the filing instructions setting forth the process to withhold the contract from public inspection, and the carrier indicates that the contract is to be withheld from public inspection, the commissioner shall reject the filing and notify the carrier through the system for electronic rate and form filings to amend its filing to comply with the confidentiality filing instructions.

(5) In the event a contract is disapproved or withdrawn from use by the commissioner, the carrier has the right to demand and receive a hearing under chapters 48.04 and 34.05 RCW.

NEW SECTION. **Sec.**  Every TPA registered under this chapter must renew their registration annually by paying the renewal fee and updating the registration information on or before March 1st of each year, or within an extension of time as the commissioner for good cause may grant. A request for an extension must be received by the commissioner at least ten days before the renewal is due.

NEW SECTION. **Sec.**  If a carrier utilizes the services of a TPA, any premiums or charges for insurance paid to the TPA by or on behalf of the insured party are deemed to have been received by the carrier, and the return of the payment of return premiums or claim payments forwarded by the carrier to the TPA is not deemed to have been paid to the insured party or claimant until the payments are received by the insured party or claimant. This section does not limit any right of the carrier against the TPA resulting from the failure of the TPA to make payments to the carrier, insured parties, or claimants.

NEW SECTION. **Sec.**  A carrier must be able to produce any TPA records and books of all transactions performed on behalf of the carrier if requested by the commissioner. The books and records must be maintained in accordance with prudent standards of insurance recordkeeping and must be maintained for a period of not less than seven years from the date of their creation.

NEW SECTION. **Sec.**  (1) A TPA may not act as such without a written agreement between the TPA and the carrier. A copy of the agreement must be retained by the TPA for the duration of the agreement and for seven years thereafter.

(2) A carrier that utilizes the services of a TPA must retain responsibility for the benefits, premium rates, and reimbursement procedures, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance or stop-loss insurance, if any. The rules pertaining to these matters, to the extent that they are relevant to the duties of the TPA, must be agreed to in writing by the carrier and the TPA.

(3) A carrier utilizing the services of a TPA is responsible for the acts of the TPA and is responsible for providing the TPA's books and records relevant to the carrier to the commissioner upon request.

(4) The written agreement between the TPA and the carrier must provide that communications between the TPA and claimants must avoid deceptive statements with regard to the responsibilities of the TPA, carrier, and any carrier with regard to claims or premiums.

(5) In the event of a dispute between the carrier 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 carrier must fulfill the obligation.

(6) The carrier has the duty to provide for competent administration of its programs administered by a TPA and within the scope of this chapter.

(7) When a TPA administers benefits in connection with disability, health, and employee benefit stop-loss coverage for more than one hundred certificate holders, subscribers, claimants, or policyholders on behalf of a carrier, the carrier must, at least semiannually, conduct a review of the operations of the TPA. At least one review must include an on-site audit of the operations of the TPA. The cost of the reviews or audits must be borne by the carrier and not reimbursed by the TPA. The requirements of this subsection do not apply when the TPA and the carrier are affiliated.

NEW SECTION. **Sec.**  (1) All insurance charges, premiums, and loss reimbursements collected by a TPA on behalf of or for a carrier, the return of premiums received from a carrier, and any funds held by the TPA for the payment of claims, are held by the TPA in a fiduciary capacity. Funds must be immediately remitted to the person entitled to them or must be immediately deposited in a fiduciary account established and maintained by the TPA in a federally insured financial institution. The TPA must render a periodic accounting to the carrier detailing all transactions performed by the TPA pertaining to the business of the carrier, and the written agreement between the carrier and the TPA must include the specifications of this reporting.

(2) The TPA must keep copies of all records of any fiduciary account maintained or controlled by the TPA, and, upon request of a carrier, must furnish the carrier with copies of the records pertaining to the deposits and withdrawals made on behalf of the carrier. If funds deposited in a fiduciary account have been collected on behalf of or for more than one carrier, or for the payment of claims associated with more than one policy, the TPA must keep records clearly recording the deposits in and withdrawals from the account on behalf of each carrier and relating to each policyholder.

(3) The TPA must not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from a fiduciary account must be made as provided in the written agreement between the TPA and the carrier, and only for the following purposes:

(a) Remittance to a carrier entitled to remittance;

(b) Deposit in an account maintained in the name of the carrier;

(c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (4) of this section;

(d) Payment to a group policyholder for remittance to the carrier entitled to the remittance;

(e) Payment to the TPA of its earned commissions, fees, or charges;

(f) Remittance of return premium to the person or persons entitled to the return premium; and

(g) Payment to other service providers as authorized by the carrier.

(4) All claims paid by the TPA from funds collected on behalf of or for a carrier must be paid only as authorized by the carrier. 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:

(a) Payment of valid claims;

(b) Payment of expenses associated with claims handling to the TPA or to other service providers approved by the carrier;

(c) Remittance to the carrier, or transfer to a successor TPA as directed by the carrier, for the purpose of paying claims and associated expenses; and

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

NEW SECTION. **Sec.**  (1) A TPA must not enter into an agreement or understanding with a carrier 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 carrier's obligations. This subsection does 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.

(2) A carrier must not enter into an agreement with a TPA in violation of this section.

(3) This section does not prevent the compensation of a TPA from being based on premiums or charges collected or the number of claims paid or processed.

NEW SECTION. **Sec.**  (1) When a TPA collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. A TPA cannot charge and collect any funds from an insured for the TPA's fees.

(2) The TPA must disclose to the carrier all charges, fees, and commissions that the TPA receives arising from services it provides for the carrier, including any fees or commissions paid by a carrier providing reinsurance or stop-loss insurance.

NEW SECTION. **Sec.**  Any policies, certificates, booklets, termination notices, or other written communications delivered by the carrier to the TPA for delivery to insured parties or covered individuals must be delivered by the TPA promptly after receipt of instructions from the carrier to deliver them.

NEW SECTION. **Sec.**  (1) A TPA is in violation of this chapter if the commissioner finds that the TPA or any person responsible for the conduct of the TPA's affairs, including but not limited to employees, independent contractors, board members, and principal officers:

(a) Violated any insurance law, or violated any rule, subpoena, or order of the commissioner or of another insurance regulator;

(b) Provided incorrect, misleading, incomplete, or materially untrue information to the commissioner, a carrier, or an insured;

(c) Was convicted of, or entered a plea of guilty or nocontest to, a felony without regard to whether adjudication was withheld.

(2) If a TPA is in violation of this chapter, the commissioner may, subject to chapter 48.04 RCW:

(a) Place on probation, suspend, revoke, or refuse to issue or renew the TPA's registration;

(b) Issue a cease and desist order against the TPA;

(c) Fine the TPA up to five thousand dollars per violation;

(d) Issue an order against the TPA, or a carrier affiliated with the TPA, or both, requiring corrective action;

(e) Charge the TPA for the costs, fees, and other expenses incurred by the commissioner in the conduct of any investigation, hearing, or court proceeding involving the TPA;

(f) Temporarily suspend a TPA's registration that is not subject to a stay of action until proceedings for revocation are concluded if the commissioner finds that the public safety or welfare requires emergency action; or

(g) Issue an order with any combination of the actions described in this subsection.

(3) The commissioner may take an action authorized in this section:

(a) By cease and desist order that has immediate effect;

(b) By an order that becomes effective not less than fifteen days after the date of its service;

(c) By an order on hearing that becomes effective not less than ten days after the date of its service; or

(d) By an order for temporary registration suspension that becomes effective not less than three days after the date of its service.

(4) A stay of action is not available for actions the commissioner takes by cease and desist order, by order on hearing, or by order for temporary registration suspension.

NEW SECTION. **Sec.**  Upon receipt of any inquiry from the commissioner, every TPA must furnish the commissioner with an adequate response to the inquiry, including but not limited to providing a statement or testimony, producing its accounts, records and files, response to complaints, or responses to surveys and general requests within the time and in the form required by the commissioner.

NEW SECTION. **Sec.**  The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. **Sec.**  This act takes effect July 1, 2017.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 through 16 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 19.340.010 (Definitions) and 2014 c 213 s 1;

(2)RCW 19.340.020 (Definitions applicable to RCW 19.340.040 through 19.340.090) and 2014 c 213 s 3;

(3)RCW 19.340.030 (Pharmacy benefit managers—Registration—Renewal) and 2014 c 213 s 2;

(4)RCW 19.340.040 (Auditing of claims—Requirements—Prohibited practices) and 2014 c 213 s 4;

(5)RCW 19.340.050 (Basis of finding of claim) and 2014 c 213 s 5;

(6)RCW 19.340.060 (Contract with third party—Prohibited practices) and 2014 c 213 s 6;

(7)RCW 19.340.070 (Evidence of validation of claim) and 2014 c 213 s 7;

(8)RCW 19.340.080 (Preliminary audit report—Dispute or denial of claim—Final audit report—Recoupment of disputed funds) and 2014 c 213 s 8;

(9)RCW 19.340.090 (Application) and 2014 c 213 s 9;

(10)RCW 19.340.100 (Pharmacy benefit managers—Maximum allowable cost of drugs—Appeals) and 2014 c 213 s 10; and

(11)RCW 19.365.010 (Registration required—Requirements) and 2015 c 166 s 1.

**--- END ---**