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## Health Care & Wellness Committee

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### HB 2445

**Brief Description:** Addressing third-party administrators and benefits managers.

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

#### Brief Summary of Bill

- Requires third party administrators to register with the Office of the Insurance Commissioner.
- Imposes requirements relating to the relationship between a third party administrator and a carrier, amounts collected or distributed by a third party administrator, and disclosures to the Office Insurance Commissioner.
- Repeals provisions regulating pharmacy benefit managers and radiology benefit managers.

**Hearing Date:** 1/20/16

**Staff:** Jim Morishima (786-7191).

#### Background:

A third party administrator (TPAs) is an entity that administers all or part of a health benefit plan or other insurance arrangement. A TPA may perform a variety of functions, including underwriting, premium collection, claims adjusting, utilization review, credentialing providers, or benefit management. There are two types of benefit managers subject to state regulation: pharmacy benefit managers (PBMs) and radiology benefit managers (RBMs).

A PBM doing business in Washington must register with the Department of Revenue's Business Licensing Program. To register, a PBM must submit an application containing certain identifying information and pay a registration fee of \$200. Registered PBMs must also comply with requirements relating to maximum allowable cost lists and internal appeals.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

An RBM owned by a health carrier or acting as a subcontractor to a health carrier must register with the Department of Revenue's Business Licensing Program. To register, an RBM must submit an application containing certain identifying information and pay a registration fee of \$200.

### **Summary of Bill:**

#### Duty to Register.

Beginning January 1, 2018, a TPA may not do business in Washington unless it annually registers with the Insurance Commissioner (Commissioner). To register, a TPA must submit an application containing:

- the identity of the TPA;
- the name, business address, phone number, e-mail address, and contact person for the TPA; and
- the federal tax employer identification number for the entity.

A TPA must pay an annual registration fee to the Commissioner in an amount sufficient to allow the registration and oversight activities of the Commissioner to be self-supporting. The Commissioner may grant renewal extensions for good cause.

#### Definition of "TPA".

A TPA is a person who performs any of the following functions for a disability, health, or stop-loss insurer:

- underwriting;
- collecting charges or premiums;
- adjusting or settling claims;
- performing utilization reviews, credentialing of providers, granting prior authorization, or performing quality audits; or
- acting as a benefit manager.

The following persons or entities are not TPAs:

- an employee of a TPA;
- an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control;
- the administrator of an employee benefit plan that is not subject to state regulation under the federal Employment Retirement Income Security Act of 1974;
- a union administering a benefit plan on behalf of its members;
- a carrier administering insurance coverage;
- an insurance producer selling insurance or related activities;
- a creditor acting on behalf of its debtors with respect to insurance covering the debtors' debt;
- a trust established under federal law;
- a trust or custodian exempt from federal taxation;
- a credit union, financial institution, or mortgage lender, when collecting or remitting premiums to insurance producers, limited lines producers, or authorized carriers in connection with loan payments;

- a credit card issuing company;
- an attorney adjusting or settling claims in the normal course of practice or employment if he or she does not collect charges or premiums in connection with insurance;
- a person authorized to act as a managing general agent; and
- a multiple employer welfare arrangement, other than a self-funded multiple employer welfare arrangement.

#### Relationship between TPA and Carrier.

A carrier utilizing a TPA is responsible for the acts of the TPA and must retain responsibility for the benefits premium rates, reimbursement procedures, underwriting criteria, claims payment procedures, and stop loss insurance (if any). The carrier must provide for the competent administration of its programs administered by the TPA.

A TPA and a carrier must have a written agreement that must be retained by the TPA for seven years after the duration of the agreement. The agreement must provide that communications between the TPA and claimants must avoid deceptive statements regarding the responsibilities of the TPA, and any carrier with regard to claims or premiums. The agreement must also include periodic accounting requirements between the TPA and the carrier. In the event of a dispute between the carrier and the TPA regarding which one of them must fulfill an obligation under a policy, certificate, or claim subject to the agreement, the carrier must fulfill the obligation.

Neither a carrier nor a TPA may enter into an agreement or understanding that makes the amount paid to the TPA contingent on savings affected in the payment of losses covered by the carrier. A TPA may, however, receive performance-based compensation for providing hospital or auditing services, provide managed care or related services, and be compensated for subrogation expenses. The TPA's compensation may be based on premiums or charges collected or the number of claims paid or processed.

A carrier must semiannually review the operations of an unaffiliated TPA that administers benefits for more than 100 certificate holders, subscribers, claimants, or policyholders. At least one of the reviews must include an on-site audit. The cost of the reviews must be borne by the carrier only.

A TPA must deliver policies, certificates, booklets, termination notices, or other written communications delivered by the carrier to the TPA for delivery to insured parties or covered individuals.

#### Amounts Collected or Distributed by the TPA.

Premiums or charges for insurance paid to the TPA are deemed to have been received by the carrier. Payments forwarded by the carrier to the TPA are not deemed received by the insured party or claimant until actual receipt by the insured party or claimant.

Amounts collected and held by the TPA are held in a fiduciary capacity. The TPA must render a periodic accounting to the carrier detailing all transactions performed by the TPA pertaining to the carrier. Funds must be immediately remitted to the person entitled to them or must be

deposited into a fiduciary account established by the TPA in a federally insured financial institution.

The TPA may not pay claims out of a fiduciary account in which premiums or charges are deposited. The TPA may only make withdrawals from the fiduciary account for the following reasons:

- remittance to a carrier;
- deposit in an account maintained in the name of the carrier;
- transfers or deposits in a claims-paying account;
- payment to a group policyholder for remittance to a carrier;
- payment to the TPA of its earned commissions, fees, or charges;
- remittance of return premiums; and
- payment to other service providers authorized by the carrier.

All claims paid out of a fiduciary account must be authorized by the carrier and may be made only for the following purposes:

- payment of valid claims;
- payment of claims handling expenses;
- remittance to the carrier or successor TPA for the purpose of paying claims and associated expenses; and
- return of funds held as pre-payment upon a determination by the carrier that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

The TPA must identify the reason for collecting funds to the insured party and each item must be shown separately from any premium. A TPA may not collect funds from an insured for the TPA's fees. The TPA must disclose to the carrier all charges, fees, and commissions the TPA receives arising from services it provides to the carrier.

The TPA must keep copies of all fiduciary account records and must furnish copies of records pertaining to deposits and withdrawals to the carrier upon request. If the account contains funds from more than one carrier or policy, the TPA must keep records clearly recording the deposits and withdrawals on behalf of each carrier and relating to each policyholder.

#### Disclosures to the Commissioner.

A carrier must produce any TPA records and books of all transactions performed on behalf of the carrier upon the request of the Commissioner. The books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The books and records must be maintained for a period of no less than seven years after their creation.

At least 30 days before use, a carrier must file with the Commissioner all contracts between the carrier and a TPA and all contracts between a TPA and providers (the TPA must also provide TPA-provider contracts to the carrier). Any contracts not disapproved by the Commissioner are deemed approved, except the Commissioner may extend the approval date by 15 days. Changes to previously filed contracts must be filed and are deemed approved upon filing, unless no other changes are made to the contracts. The Commissioner may not base a disapproval of a contract on the amount of compensation or other financial arrangements between the carrier and the TPA,

unless the compensation causes the underlying health benefit plan to violate state or federal law. The Commissioner may not regulate provider reimbursement amounts. If a contract is disapproved or withdrawn from use by the Commissioner, the carrier has a right to an administrative hearing.

The compensation contracts of a TPA are confidential and not subject to public inspection if filed using the procedures for submitting confidential filings through the system for electronic rate and form filings and the general filing instructions set forth by the Commissioner. If a filing does not comply with the filing instructions, and the carrier indicates that the filing is to be withheld from public inspection, the Commissioner must reject the filing and notify the carrier to amend its filing to comply with the confidentiality filing instructions.

A TPA must furnish an adequate response to any inquiry from the Commissioner within the time frame and in the form required by the Commissioner.

### Violations.

A TPA commits a violation if it:

- violates any insurance law or a rule, subpoena, or order of the Commissioner or another insurance regulator;
- provides incorrect, misleading, incomplete, or materially untrue information to the Commissioner, a carrier, or an insured; or
- is convicted of, or entered a plea of guilty of no contest to, a felony.

The Commissioner may take the following actions against a TPA that has committed a violation:

- place on probation, suspend, revoke, or refuse to issue or renew the TPA's registration;
- issue a cease and desist order;
- issue a fine of up to \$5,000 per violation;
- issue an order against the TPA or affiliated carrier requiring corrective action;
- charge the TPA for costs, fees, and other expenses incurred by the Commissioner in the conduct of any investigation, hearing, or court proceeding involving the TPA; or
- temporarily suspend the TPAs 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.

The Commissioner may take action by:

- a cease and desist order that is effective immediately;
- an order that is effective no less than 15 days after service;
- an order on hearing that is effective no less than 10 days after service;
- an order for temporary registration suspension that is effective no less than three days after service.

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.

### Repeal of PBM and RBM regulations.

Statutes relating to the regulation of PBMs and RBMs are repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.