**PROJECT HISTORY – 2011**

# GUIDELINE FOR REGISTRATION AND REGULATION OF THIRD PARTY ADMINISTRATORS (TPAs) (#1090)

## 1. Description of the Project, Issues Addressed, etc.

The Workers' Compensation (C) Task Force was charged in 2006 with expanding the scope of the NAIC's TPA Model Act to include workers' compensation. The nearly five year drafting effort was complex and involved substantial input from regulators familiar with producer licensing concerns.

The final guideline, offered in two versions, is a revision of the Third Party Administrator Statute, which was first adopted by the NAIC as a model law in 1977 and which had been most recently amended in 2001. Version 1 of the Guideline expands the scope of the prior model by adding workers' compensation and stop-loss coverages. Version 2 of the Guideline omits workers' compensation, which makes it similar in scope to the prior model, with the difference being in those states where stop-loss insurance was defined as liability insurance and not as health insurance.

In addition to numerous editorial changes, some of the substantive changes to what was previously in the 2001 NAIC model law are as follows:

(a) The language of the 2001 model required individuals adjusting life and health claims to be licensed as TPAs, even though it is clear that it was never the intent of the drafters or the states that adopted the model to implement a licensure requirement for employees of TPAs or insurers adjusting life and health claims. In addition, the licensing provisions in the 2001 model allowed an individual to become licensed to act as a full-fledged TPA. While the Guideline has language to allow previously licensed individuals to be "grandfathered," it provides that only business entities can be newly licensed as TPAs. As a practical matter, licensure requirements are not cleanly met by an individual.

(b) The 2001 model exempted licensed insurers operating as TPAs from all requirements of the Act. The Guidelines maintain this exemption for lines other than workers' compensation. For workers' compensation, while Version 1 exempts insurers from licensure requirements and from audit and reporting requirements when they handle workers' compensation claims for an employer that is not their policyholder, it subjects such insurer/TPAs to many other operational requirements of the Act for workers' compensation.

(c) The Guideline adds cease & desist orders to those actions available to the commissioner and also addresses concerns that the 2001 model may have been deficient with regard to due process.

(d) The Guideline extends the life & health scope of the 2001 model to so-called "stop-loss" insurance. This may be viewed a clarification in states where stop-loss is already considered to be health insurance and cannot be written as liability insurance, but it will be a modest expansion in other states.

(e) Version 1 extends the scope of the 2001 model to workers' compensation insurance. One should note, however, that various provisions of the model p

 

(f) Version 1 will not allow a TPA to agree with an employer to have the employer adjust its own workers'

**3. Project Authorized by What Charge and Date First Given to the Group 2006 CHARGES- (Adopted by Plenary on 3/5/06) WORKERS' COMPENSATION (C) TASK FORCE**

- Appoint a Large Deductible Study Implementation Working Group to assure that the NAIC charges presented in the Findings and Recommendations of the Workers' Compensation Large Deductible Study are properly completed.

- Consider amending the NAIC model law Third-Party Administrator Act to extend it to workers' compensation claims.

**4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated**

The Large Deductible Study Implementation (C) Working Group drafted the Guideline by meeting via

**PROJECT HISTORY - 2001**

**THIRD PARTY ADMINISTRATOR STATUTE (#90)**

## 1. Project Description

The Third Party Administrator Statue provides the basic regulatory framework for the licensing of Third Party Administrators (TPAs). The model statute was revised to create a more efficient and streamlined licensing framework. The key revisions focused on licensing reciprocity and the creation of a Uniform Application for TPAs.

## 2. Group Responsible for Drafting Model and States Participating

The Agent Licensing Working Group of the Market Conduct and Consumer Affairs (D) Committee was responsible for revising the model statute. Gene Reed (DE) and Sam Meyer (SD) co-chaired the working group. The following states were members of the working group: Alabama, Alaska, Arizona California, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington and Wisconsin.

TPAs may be used for both resident and non- resident licensing and the issuance of new and renewal licenses.

The model statute was revised to require the filing of a Biographical Affidavit and audited financial statements with the home state of the TPA. In addition, each TPA must file an annual report with its home state so the home state regulator of the TPA may make a proper determination regarding the positive net worth and good standing of the TPA.

With input from the ERISA Working Group, the Third Party Administrator Subgroup and the Agent Licensing Working Group concluded the state registration requirement for self-funded ERISA plans is a minimal requirement, is peripheral to an employee benefit plan, and would not lead to preemption of a state law because of the state law impermissibly "relating to" an ERISA plan. At the same time, additional modifications