

Third Party Administrator & Pharmacy Benefit Manager Update

TPA & PBM LICENSING AND COMPLIANCE DEVELOPMENTS

Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Developments

South Dakota

The South Dakota Division of Insurance (“Division”) recently took regulatory action against a TPA that has held a valid TPA registration in South Dakota since 2006. In 2021, the TPA submitted its TPA renewal application to the Division while they were under an investigation by the Division. As a result of the investigation, the Division alleged that the TPA failed to timely process claims going back to 2019, in violation of SDCL §§ 58-12-19, 58-12-20, and 58-29D-31. Based on the above alleged violations of law, the TPA entered into a Consent Order with the Division in which it agreed to pay a monetary penalty of \$25,000. The Division also approved the TPA’s renewal application as of the effective date of the Consent Order.

Florida

Florida Governor Ron DeSantis recently signed a new law that significantly increases the regulation of pharmacy benefit managers (“PBMs”) doing business in Florida. The new law will go into effect on July 1, 2023. Prior to the enactment of the new law, PBMs were only required to register as a PBM with the Florida Office of Insurance Regulation (“Florida OIR”). However, the new law will significantly change how PBMs are regulated in Florida and will dramatically expand the Florida OIR’s authority to license and regulate PBMs. Several key changes under the new law include:

- Requires PBMs to become licensed as Administrators in Florida.
- Provides the Florida OIR the authority to examine and investigate PBMs.
- Prohibits PBMs from requiring consumers to receive their prescriptions by mail.
- Places restrictions on PBMs that have affiliated pharmacy business.

The Florida Administrator application requirements are some of the most challenging and robust of any state that licenses TPAs. Entities seeking licensure as an Administrator in Florida must submit an electronic application packet to the Florida OIR on its portal which requires the following information and documents to be extensively reviewed by the Florida OIR:

- Biographical affidavits, fingerprints and background investigation reports conducted by approved vendors will be required from each officer, director and individual owner of 10% or more of the applicant Administrator. Additional

information is required with respect to ownership and officers and directors for the parent entity, any persons or entities with ownership in a parent entity, and any persons or entities with ownership in those entities all the way up to the ultimate parent entities.

- Audited Financial Statements.
- Comprehensive business plan for the Administrator.
- Copies of contracts between the applicant Administrator and pharmacies.
- Data security plan and disaster recovery plan.
- Numerous additional state-specific forms, statements, and other documents.

Polsinelli has successfully licensed a significant number of its TPA clients in Florida for many years. For assistance or questions regarding the new Florida PBM law, please contact one of the authors, a member of Polsinelli's PBM/TPA team, or your Polsinelli attorney.

Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services

Polsinelli's Third Party Administrator and Pharmacy Benefit Manager Team has significant experience representing TPAs and PBMs on a national basis regarding a variety of business and compliance issues. The group includes attorneys who were formerly in-house counsel for TPAs, as well as attorneys who were formerly insurance regulators and attorneys who are currently members of the Federation of Regulatory Counsel.

Polsinelli's experience in the third party administrator and pharmacy benefit manager industries is demonstrated by these representative examples:

- National and multi-state TPA and PBM licensing projects.
- Assistance with investigations, market conduct examinations and formal regulatory actions brought by state insurance departments.
- Monitor regulatory and legislative activity affecting our TPA and PBM clients and provide periodic reports regarding such activity.
- Maintain licensure as a TPA or PBM through periodic renewal and annual report filings.

To learn more about Polsinelli's [Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services](#) practice, contact a member of the Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services team.

POLSINELLI'S THIRD PARTY ADMINISTRATOR AND PHARMACY BENEFIT MANAGER LICENSING AND COMPLIANCE SERVICES TEAM



Steven L. Imber
Practice Group Chair
Shareholder
913.234.7469
simber@polsinelli.com
Member of the Federation of
Regulatory Counsel (FORC)



Jennifer L. Osborn
Shareholder
913.234.7472
josborn@polsinelli.com
Member of the Federation of
Regulatory Counsel (FORC)



Justin T. Liby
Shareholder
913.234.7427
jliby@polsinelli.com



Zachary R. Dyer
Shareholder
816.360.4352
zdyer@polsinelli.com