

# Third Party Administrator & Pharmacy Benefit Manager 2023 Newsletter

## TPA & PBM LICENSING AND COMPLIANCE DEVELOPMENTS

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### Florida OIR Issues Informational Memorandum OIR-23-04M to PBMs

On July 19, 2023, the Florida Office of Insurance Regulation (“OIR”) issued Informational Memorandum OIR-23-04M (“Memorandum”) to Pharmacy Benefit Managers (“PBMs”) to notify them how the OIR is implementing the requirements pertaining to PBMs under the Prescription Drug Reform Act (Florida Senate Bill 1550) signed into law by Florida Governor DeSantis in May. The Memorandum provides, in part, the following information to PBMs:

- Beginning January 1, 2024, PBMs operating in Florida must continue to be registered with the OIR under Fla. Stat. § 624.490 and hold a valid certificate of authority as an Administrator (“TPA”) in Florida under Fla. Stat. § 626.8805.
- According to Fla. Stat. § 626.8805(1), any PBM operating in Florida without a valid certificate of authority as a TPA will be subject to a fine of \$10,000 per violation per day.
- Beginning January 1, 2025, PBMs will be subject to biennial exams to ensure they are in compliance with Florida law.

The Florida TPA application requirements are some of the most challenging and robust of any state that licenses TPAs. Entities seeking licensure as a TPA to operate as a PBM 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 TPA. 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 TPA.
- Copies of contracts between the applicant TPA and pharmacies.
- Data security plan and disaster recovery plan.
- Numerous additional state-specific forms, statements, and other documents.

PBMs operating in Florida should submit their TPA applications to the OIR as soon as possible to allow time for the OIR to review and approve the application and issue the Certificate of Authority by the upcoming deadline. 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.

## Louisiana Insurance Department Issues Cease and Desist Orders to a TPA and the Louisiana Office of Group Benefits for Failure to Pay Rx Claims in a Timely Manner

The Louisiana Insurance Department ("Department") recently issued separate Cease and Desist Orders to both a TPA operating as a Pharmacy Benefit Manager ("PBM") and the Office of Group Benefits, a Louisiana state agency that is part of the Louisiana Division of Administration. The Office of Group Benefits provides health and life insurance benefits to qualified state employees and retirees of participating state agencies in Louisiana and their eligible dependents.

Per a press release recently issued by the Department, the Cease and Desist Orders were the result of a market conduct investigation of the TPA initiated by the Department in the second quarter of 2022 after receiving complaints from the Louisiana Independent Pharmacy Association regarding the TPA's alleged failure to timely pay pharmacy

claims that had been electronically adjudicated. Specifically, Louisiana Revised Statute 22:1854(A) provides “Any claim for payment for covered prescription drugs or other products and supplies, and pharmacist services submitted by a pharmacist or a pharmacy to a health insurance issuer as an electronic claim that is electronically adjudicated shall be paid not later than the fifteenth day after the date on which the claim was electronically adjudicated.” According to the Department, after the market conduct investigation was initiated, the TPA informed the Department that it had failed to timely pay 1,310,507 electronically adjudicated claims between January and July 2022.

As a result of the failure to timely pay these electronic claims, both the Office of Group Benefits and the TPA were ordered to cease and desist from continuing to make untimely payments of electronic claims. Furthermore, the Department reported the Cease and Desist Orders as administrative actions to the National Insurance Producer Registry (“NIPR”).

## Third Party Administrator 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.

## TPA Agreement Filing and Compliance Requirements

The NAIC Model Third Party Administrator Act, and nearly every state that has enacted laws regulating TPAs’ administrative service agreements, requires such agreements to comply with the following:

- The TPA shall not act without a written agreement between a TPA and the insurer.
- The written agreement must contain all the provisions required by state TPA laws.
- The written agreement must be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for a prescribed number of years thereafter.

While almost every state that has enacted TPA laws imposes the above requirements pertaining to administrative service agreements, there are a number of states that also have affirmative requirements to file the agreements with state insurance regulators or to report the existence of such agreements to the regulators within prescribed time periods after execution.

In order to assist our TPA and insurer clients compliance with all of the TPA laws under the state insurance codes, we have created a national regulatory addendum, which contains mandated statutory provisions under all state TPA laws. The compliance addendum is also designed to assist with meeting various state insurance departments’ checklist requirements for administrative service agreements during the TPA licensing process.

The national regulatory addendum is available on a flat-fee basis. For more information regarding our national regulatory addendum, please contact the authors.

## Louisiana Insurance Department Revises and Reissues Bulletin 07-01 Regarding Catastrophe Response Plans

The Louisiana Insurance Department (“Department”) revised and reissued [Bulletin 07-01](#) to all insurers, Health Maintenance Organizations (“HMOs”) and Third Party Administrators (“TPAs”) and provided updated requirements for catastrophe response plans. Specifically, effective January 1, 2023, all insurers, HMOs and TPAs, are required to maintain a catastrophe response plan that describes how the insurer, HMO or TPA will respond to a catastrophe affecting policyholders in Louisiana.

Catastrophe response plans must be submitted to the Department no later than June 1, 2023 through the Department’s online portal. Additionally, the catastrophe response plans will be considered confidential and proprietary information subject to the protections of the Louisiana Uniform Trade Secrets Act and shall not be subject to public records disclosure or made public by the Department.

The catastrophe response plans should include the following information:

1. Emergency contact information of key or essential personnel.
2. Alternative office locations or work sites likely to be used in the event of a catastrophe
3. Procedures to address the following:
  - a. The backup, storage, retrieval, and security of records and data used to adjust claims.
  - b. The handling and processing of claims, whether prior to or subsequent to the catastrophe.
  - c. Relevant training of staff.
  - d. Communication with agents, policyholders, and subscribers, in the event of mail delivery or other communication system disruption. Procedures shall address the process for filing claims and methods for obtaining information concerning a claim.
  - e. The distribution of catastrophe claims information to policyholders or subscribers.
4. Considering the scale of the catastrophe and the number of policies issued in the affected area, the methodology for determining the following:
  - a. The approximate number of field adjusters, desk adjusters, and other administrative personnel necessary to respond to the catastrophe.
  - b. The process for timely providing claims and administrative personnel claims and administrative personnel to service policyholder and subscriber needs.
  - c. The process through which the insurer will provide logistical support for claims and administrative personnel in the area affected by the catastrophe.

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



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