

Third Party Administrator & Pharmacy Benefit Manager Update

TPA & PBM LICENSING AND COMPLIANCE DEVELOPMENTS

Florida Proposes New Pharmacy Benefit Manager Rules

On September 18, 2023, the Florida Office of Insurance Regulation (“OIR”) published proposed rules to implement provisions of the Prescription Drug Reform Act (Florida Senate Bill 1550) governing Pharmacy Benefit Managers (“PBMs”). The Prescription Drug Reform Act requires all PBMs to become licensed as an Administrator with the OIR in order to continue operating legally in Florida after December 31, 2023. Per the OIR’s Informational Memorandum OIR-23-04M (“Memorandum”), beginning on January 1, 2024, PBMs already operating in Florida must continue to be registered with the OIR under Section 624.490 F.S. and must also hold a valid Certificate of Authority as an Administrator under Sections 626.88 and 626.8805 F.S. The OIR also announced that pursuant to Section 626.8805(1) F.S., any PBM operating in Florida without a valid Certificate of Authority as an Administrator will be subject to a fine of \$10,000 per violation, per day beginning on January 1, 2024.

The proposed rules published by the OIR include Rules 69O 197.001, 69O 197.004, 69O 197.005, and 69O 197.006 F.A.C. as well as proposed amendments to Rule 69O 238.001 F.A.C. The proposed rules specify the application form requirements for Administrators, including PBMs. The rules also specify requirements for the remittance PBMs must provide to pharmacies and requirements for independent professional examiners who may conduct examinations of PBMs. Proposed amendments to Rule 69O 238.001 F.A.C. update the existing, separate registration requirements for PBMs.

The OIR has also recently sent correspondence to all PBMs that are currently operating in Florida reinforcing the new licensing requirements under Florida law and published additional information about the application process, including the application forms and instructions, to its [website](#).

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 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 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.

PBMs operating in Florida should submit their Administrator 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.

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



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