

## 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 applying to life & health are not uniformly extended to workers' compensation. There is an extensive new section dealing with workers' compensation contracts between insurers and TPAs, and between TPAs and insured employers.

- (f) Version 1 will not allow a TPA to agree with an employer to have the employer adjust its own workers' compensation claims, and an employer cannot avoid this prohibition by simply licensing an affiliated business entity as a TPA in order to handle its own workers' compensation claims.
- (g) Version 1 exempts payments made by employers to TPAs for handling workers' compensation claims under a large deductible contract from premium taxes.

The account-related provisions in the 2001 model were substantially revised. Most notably, the Guideline deletes the requirement that accounts administered by the TPA must be in the name of the insurance company, as long as claims trust funds held by the TPA are not commingled with premium trust funds.

A state's best use of the Guideline will depend on whether it currently has a TPA law and/or whether it wants to have a TPA law that extends to the handling of workers' compensation claims:

- For a state that wishes to enact a TPA law that extends to workers' compensation, Version 1 should be an excellent starting point. Study the language carefully to make whatever amendments may be necessary on account of state-specific issues with workers' compensation, agent licensing and adjuster licensing statutes. The adjuster licensing statutes will probably require an especially careful examination to have a good "mesh" and to avoid duplicative requirements, while workers' compensation statutes will need to be studied to determine whether the provisions of this document regarding the rights of employers to involve themselves in claims handling or disputes are in agreement. While part of a possible response to conflicts could be to change adjuster licensing or workers' compensation laws to match this document, it is not the purpose of the Guideline to call for changes to other statutes. Although drafting notes will provide assistance in this regard, one should not skim over sections without drafting notes. There are more state-to-state differences than can be easily summarized by drafting notes.
- A state that already has a TPA law, but that wants to extend it to workers' compensation, will also find Version 1 to be an excellent reference. The advice for such a state is again to review this document carefully, looking to see where it differs from the state's current law and carefully noting where the changes proposed in this document may conflict with the state's other statutes.
- A state with or without a current TPA law, that wants to have a TPA law that does not extend to workers' compensation, is advised to consider Version 2. Version 2 is essentially the same as Version 1, but with provisions and language related to workers' compensation removed. This law still includes stop-loss and other refinements made to the previous NAIC model. Admittedly, the motivation for a state to make changes to its existing laws is likely to depend on whether it has identified a reason that it needs to "fix" its current laws. Absent the identification of any practical problems, states may assign a lower priority to the improvements contained in this document.

## **2. Name of Group Responsible for Drafting the Model and States Participating**

The Large Deductible Study Implementation (C) Working Group of the Workers' Compensation (C) Task Force was the primary author of the draft Guidelines. After the Large Deductible (C) Working Group completed its revisions to the guidelines, it formally referred the recommended changes to the Producer Licensing (EX) Task Force for consideration. The Producer Licensing (EX) Task Force had no changes at the 2011 Spring National Meeting and has recommended adoption of the Guideline by the Property and Casualty (C) Committee and Executive Committee.

**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 conference call and in person for nearly four and a half years. After the Large Deductible (C) Working Group completed its revisions to the guidelines and received feedback from the Regulatory Framework (B) Task Force, it formally referred the recommended changes to the Producer Licensing (EX) Task Force for consideration.

**5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)**

The drafting was complex. Not only did it require numerous amendments to an already complex statute, drafters encountered places where the original NAIC model could be improved. As a result, the changes include a number of improvements to the prior law, regardless of whether an extension to workers' compensation is desired.

The Subgroup met via conference call on nearly a monthly basis. Current revisions of the Guideline, along with appropriate supplementary materials, were kept on the Subgroup's webpage. Comments were solicited as revisions occurred and these also were posted on the webpage. All parties were invited on the monthly conference calls and kept apprised of the most recent changes to the draft Guideline. Numerous drafts of the Guideline were created until the Subgroup finalized the Guideline in March 2010.

**6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)**

- ***The definition of "Home State"***-There was considerable debate over the state that would have jurisdiction over TPAs that were doing business in more than one state. Task force members sought to create a law that would ensure that only one jurisdiction would have the authority to regulate the TPA.
- ***Exemption for Business Entities Performing TPA Work for an Affiliated Insurance Company.*** There was discussion regarding whether these types of entities should be exempted from the law because the affiliated company would already be subject to regulation. The group finally adopted wording which read: "The insurer is responsible for the acts of the administrator and is responsible for providing all the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner."

**7. Any Other Important Information (e.g., amending an accreditation standard).**

## **PROJECT HISTORY - 2001**

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

#### **1. Project Description**

The Third Party Administrator Statute 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.

To help facilitate the drafting process, the Agent Licensing Working Group appointed the Third Party Administrator Statute Subgroup. Sue Stead (OH) chaired this subgroup. The initial subgroup was comprised of the District of Columbia, Kentucky and Michigan. As the drafting process proceeded all members of the Agent Licensing Working Group were invited to join the subgroup.

#### **3. Charge Authorizing Project**

The D Committee had the following charge during 2001: Appoint a working group to complete the review of the existing NAIC Managing General Agents Model Act and Third Party Administrator Statute. Consider modifications to the models to recognize that there have been and will be changes that will impact the delivery systems of insurance products and that this changing environment will require flexibility in regulating the production of insurance through various methodologies and technologies. Report by the NAIC Fall National Meeting.

#### **4. General Description of Drafting Process**

The drafting process was very open as the working group and subgroup solicited comments from all interested parties, including interested regulators, funded consumer representatives and industry representatives. The working group and subgroup also solicited key concerns from interested parties and funded consumer representatives. All of the meetings and conference calls of the working group, subgroup and the Market Conduct and Consumer Affairs (D) Committee were open to all interested parties. All revised drafts of the paper were posted on the NAIC website and circulated for public comment. The working group and subgroup received and reviewed numerous comments from interested parties.

#### **5. Significant Issues Raised**

The most significant revision was the adoption of a new section addressing non-resident licensing for TPAs and the creation of a new Uniform Application for Third Party Administrators. While a TPA must obtain a license in each state in which it operates, the model statute clarifies that the home state of TPA is principally responsible for regulating the TPA and determining the good standing of the TPA. The Uniform Application for

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 were added to the model statute to ensure a state law based upon the model statute would not impermissibly “relate to” an ERISA plan and be preempted.

There were numerous discussions regarding bond requirements for TPAs. The Third Party Administrator Subgroup and the Agent Licensing Working Group incorporated the following bond requirement for self-funded or governmental plans: “An administrator licensed or applying for a home state certificate of authority/license that administers or will administer governmental or church self-insured plans in its home state or any other state shall maintain a surety bond for the use and benefit of the home state commissioner and the insurance regulatory authority of any additional state in which the administrator is authorized to conduct business and cover individuals and persons who have remitted premiums or insurance charges or other monies to the administrator in the course of the administrator’s business in the greater of the following amounts: (1) \$100,000; or (2) ten percent (10%) of the aggregate total amount of self-funded coverage under church plans or governmental plans handled in the administrator’s home state and all additional states in which the administrator is authorized to conduct business.”

Finally, there were significant discussions regarding an exemption from licensure for associations. An exemption for associations was not incorporated into the model statute. Interested parties with a vested interest in this issue may submit a white paper outlining the issues surrounding the association exemption. The Agent Licensing Working Group will receive the white paper as a general comment but is not currently planning to use the white paper as a basis for an official NAIC white paper on the issue.

## **6. Other Pertinent Information**

The creation of a more efficient and reciprocal licensing framework for TPAs coincides with the broader uniform and reciprocal licensing initiatives of the NAIC.