

# **THE NAIC CREATES A NEW MODEL THIRD PARTY ADMINISTRATOR ACT TO MAKE TPA LICENSING EASIER AND MORE EFFICIENT IN ALL STATES**

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At the December 2001 Winter Meeting, the National Association of Insurance Commissioners (“NAIC”) completed the Working Group process of revising the existing Third Party Administrators Act, hereafter referred to as the (“ACT”). All that remains is for the ACT to go through the final approval process of the NAIC. By the June 2002 meeting, barring some unforeseen issue, the ACT will be ready for final adoption by the NAIC and ready for the states to act upon. The ACT is a major improvement over the existing act and will benefit TPAs which have a positive balance sheet and audited financial statements. There is a process for newly created TPAs to become licensed, but presently there is no provision for a TPA that does not have a solvent financial statement to either obtain or retain a license. This abstract will discuss the changes that are substantive in the new ACT. To read all of the changes to the ACT along with the ACT’s new applications go to our firm’s web site at [www.alexlawfirm.com](http://www.alexlawfirm.com) click on Articles and then click on NAIC Third Party Administrator Act and Applications.

The ACT will apply to life, annuity and health products underwritten by an insurance company and administered by a TPA. Many of the same exceptions that are in the current Model remain and some were clarified as the Working Group thought appropriate. What is new, and accomplishes the objective of the two law firms<sup>1</sup> that contributed nearly all of the interested party comments to the regulators, is that a TPA will now have to submit to only one thorough financial and character review in order to receive a “Home state” license. Once the TPA has the Home state license, it will be able to qualify in all of the other states in which it does business simply by completing a non-resident TPA application (which is a simplified registration form) and file the application and state fee. Once the TPA is qualified in a Home state, the TPA must re-qualify only in the Home state on an annual basis. Again, once the Home state has completed its annual re-qualification, the TPA will then file the registration statement and state fee in the non-resident states in which it does business. The simplified licensure process is a continuation of the NAIC’s modernization and regulatory re-engineering program.

The following is a section-by-section analysis of the major changes to the ACT.

## ***Section I. Definitions***

- A. “Administrator” was changed to include annuities for the lines of business to which the ACT applies. Also, the products must be offered by an insurer. New or revised exemptions to the paragraph include an exclusion from licensure as a TPA for products who just sell, solicit or negotiate insurance products. Also, a TPA who is affiliated with an insurer, but only does the administration work for the insurer, does not need a TPA license.
- F. “Home state” is defined to be the state that the TPA selects to be its home state. The flexibility was created to allow TPAs who are corporately domiciled in a state which does not have the ACT, or have executive offices in a state other than their domiciliary state, to make a selection of a state to be its Home state.
- G. “Insurer” was broadened to include insurance companies that offer life, health, annuity or self-funded coverage under a governmental plan or church plan. The definition also includes employers who self-insure life, health, annuity or self-funded governmental plans or church plans. Self-funded ERISA plans are not included.

## ***Section II. Home State Certificate of Authority/License***

This section creates the process for a TPA to select a “Home state” to become qualified as a TPA for licensure purposes. A TPA may select any state which has the ACT to be its Home state. To become qualified, the TPA will have to complete the Uniform Application. The Uniform Application asks for the usual and customary information required by insurance departments. In addition to the Uniform Application, the TPA must also include with the Uniform Application:

- Articles;
- By-laws;
- NAIC Biographical Affidavits for the individuals who are responsible for the conduct of affairs of the TPA, including all members of the board of directors, executive committee, principal officers or principal partners or members holding directly or indirectly 10% or more of the voting stock of the TPA;
- Audited annual financial statements for the past 2 fiscal years showing a positive net worth;
- A business plan;
- Any other information that the Commissioner may request; and
- A surety bond if the TPA will administer governmental or church self-insured plans.

#### ***Section 12. Registration Requirement***

This section requires TPAs who directly or indirectly underwrite, collect charges or premiums or adjust or settle claims on residents of a state, in connection with life, annuity or health coverage provided by an ERISA Plan and other than a governmental or church plan, to register with the Commissioner annually, and to verify its status since the last registration. The Working Group members insisted that the insurance departments wanted to be able to have some oversight over ERISA Plans. The registration process is designed to be a simple, one-page form that will allow an insurance department to have information on how to contact a TPA.

#### ***Section 13. Nonresident Administrator Certificate of Authority***

This section is designed to allow a TPA to file for registration in all of the states in which the TPA does business. The nonresident form will be filed annually after September 1<sup>st</sup>, the date by which all Home states will have finished the annual review of the TPA. The nonresident state should then re-qualify the TPA unless the nonresident Commissioner has additional information that would disqualify the TPA in the Home state, or if the TPA is now in such condition that the granting of a nonresident license would be hazardous to the citizens of the nonresident state.

#### ***Section 14. Annual Report and Filing Fee***

The changes to this section require the TPA to file the annual report by July 1<sup>st</sup> each year. The annual report is to include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidation or combining worksheet that shall be filed with the report and include the following; a) amounts shown on the consolidation audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately; and c) explanations of consolidating and eliminating entries shall be included.

#### ***Section 15. Grounds for Denial, Suspension or Revocation of Certificate of Authority***

The new grounds include the refusal of any individual who is in control of the TPA to produce accounts, records and files for examination. Any individual who controls the TPA who has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or failed to timely file the annual report also creates grounds for denial, suspension or revocation.

Then a TPA considers whether to seek qualification in a nonresident state, the NAIC changed the existing de minimus test to a calculation of 100 lives in a state for all plans that the TPA administers. This defers from the existing model where a TPA could use the de minimus test per plan.

Late in the drafting process, the surety industry effectively lobbied the Working Group to have the surety issue reconsidered. The end result of the second round of discussions was the insertion into the ACT a requirement that a TPA must have a surety bond that will be good for all states to cover only the business of self-funded governmental and church plans.

Finally, what are the chances that the states will actively commence the process of presenting this ACT to their respective legislatures? The NAIC has of yet not made a decision whether to make this ACT one of the accreditation statutes which the states must act on. As of now it looks like it will be the TPAs and the life and health insurers who will have to take the initiative in each legislature to get this ACT passed. We will be working with the NAIC to encourage it to have the TPA model included in one of its accreditation levels. The new ACT is a solid and functional statutory scheme to regulate TPAs in a manner that will not cause them to have to spend an exorbitant amount of time and money to become licensed.

#### *Endnotes*

1. Hugh Alexander, of Alexander Law Firm, P.C. and Kevin Fitzgerald, of Foley & Lardner.