

# ACT NO. 7965

BILL NO. 31-0446

## THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS

### Regular Session

2016

An Act amending title 22 Virgin Islands Code adding chapter 60 to enact The Virgin Islands Third Party Administrators Act, updating the insurance laws of the Virgin Islands to reflect the licensing requirements contained in the model laws of the National Association of Insurance Commissioners

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**WHEREAS**, title 22 of the Virgin Islands Code governs all insurance and insurance transactions occurring in the Virgin Islands or affecting subjects located wholly or in part to be performed within the Virgin Islands and all persons having to do therewith; and

**WHEREAS**, third party administrators are engaged in the business of insurance administration within certain limitations and under the authority set forth in the appropriate statutory provisions; and

**WHEREAS**, there is currently no Virgin Islands law governing the licensure and regulation of third party administrators in the Territory; and

**WHEREAS**, insurance is an ever-evolving industry; and

**WHEREAS**, in observance of this growth of the insurance industry, the National Association of Insurance Commissioners has adopted a model law that has been enacted in many United States jurisdictions; and

**WHEREAS**, as the insurance industry grows, it is incumbent upon the Virgin Islands to participate fully in the growth of the industry and to provide effective protection to the policyholders and members of the Territory; Now, Therefore,

*Be it enacted by the Legislature of the Virgin Islands:*

**SECTION 1.** Title 22 of the Virgin Islands Code is amended by adding chapter 60 to read as follows:

## **“CHAPTER 60 THIRD PARTY ADMINISTRATORS**

**§ 1520 Short Title.** This chapter maybe cited as “The Virgin Islands Third Party Administrators Act”.

**§ 1521 Definitions.** For purposes of this chapter:

(a) “Affiliate” or “affiliated” means a person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person.

(b) “Business entity” means a corporation, association, partnership, limited liability company or other legal entity.

(c) “Collateral” means funds, letters of credit or any item with economic value owned by the payor, but held by an insurer or Third Party Administrator (TPA) if it needs to be used to fulfill premium or loss reimbursement obligations in accordance with a contract between the insurer or TPA and the payor. Collateral includes anticipated loss prepayments made before the payment of losses, pursuant to arrangements where reimbursement is not due until after losses have been paid.

(d) “Commissioner” means the Commissioner of Insurance.

(e) “Control”, including the terms “controlled by” and “under common control with”, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing section 325(k) of this title that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact notwithstanding the absence of a presumption to that effect.

(f) “GAAP” means United States Generally Accepted Accounting Principles, consistently applied.

(g) “Home state” means the TPA’s state of domicile that has granted the TPA a TPA license. It does not include jurisdictions that are outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico and other U.S. territories.

(h) “Insurer” means an entity licensed in a United States jurisdiction to provide life, annuity, health or stop-loss coverage as an insurance company, health maintenance organization,

fraternal benefit society, multiple employer welfare arrangements, employee leasing company, professional employer organization, prepaid hospital or medical care plan.

(i) "Insurance producer" or "producer" means a person required to be licensed under the laws of the Virgin Islands to sell, solicit or negotiate insurance.

(j) "Nonresident TPA" means a TPA whose home state is any United States jurisdiction other than the Virgin Islands.

(k) "Payor" means an insurer or an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control.

(l) "Person" means an individual or a business entity.

(m) "Stop-loss Insurance" means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against obligations under the plan, but "stop-loss insurance" does not include reinsurance written for an insurance company.

(n) "Third Party Administrator" or "TPA" means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of the Virgin Islands, in connection with life, annuity, health or stop-loss coverage. The term does not include a person whose only actions that would otherwise cause it to be considered a TPA consist of:

(1) A person working for a TPA to the extent that the person's activities are subject to the supervision and control of the TPA;

(2) An employer administering its employee's benefits plan or the employee benefit plan of an affiliated employer under common management and control;

(3) The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of the Virgin Islands are pre-empted pursuant to the Employee Retirement Income Security Act of 1974, as the act existed on September 15, 2015;

(4) A union administering a benefit plan on behalf of its members;

(5) An insurer administering insurance coverage for its policyholders, subscribers or certificate holders, or those of an affiliated insurer under common management and control;

(6) An insurer directly or indirectly underwriting, collecting charges, collateral or premiums from, or adjusting or settling claims on behalf of a client that is not a policyholder, subscriber or certificate holder, and that has its United States headquarters or principal location of business in a jurisdiction in which the insurer is licensed to write that coverage;

- (7) An insurer directly or indirectly underwriting, collecting charges, collateral or premiums, or adjusting or settling claims, if the insurer is licensed in the Virgin Islands to write that line of insurance coverage;
- (8) An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;
- (9) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (10) A trust and its trustees and agents acting pursuant to such trust established in conformity with 29 U.S.C. section 186;
- (11) A trust exempt from taxation under section 501(a) of the Internal Revenue Code and its trustees acting pursuant to such trust, or a custodian and the custodian's agents acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code;
- (12) A credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, when collecting or remitting premiums to licensed insurance producers or to limited lines producers or authorized payors in connection with loan payments;
- (13) A credit card issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection if that company does not adjust or settle claims;
- (14) An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
- (15) A person licensed as a managing general agent in the Virgin Islands when acting within the scope of that license; or
- (16) A business entity that is affiliated with a licensed insurer while acting as a TPA for the direct and assumed insurance business of an affiliated insurer.
- (o) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program.
- (p) "Covered Individual" means any individual eligible for life or accident or health benefits under a plan.



(q) "Contributions" means any money charged a covered individual, plan sponsor or other entity to fund the self-insured portion of any plan in accordance with written provisions of the plan or contract of insurance. The term includes administrative fees charged to a covered individual. "Administrative fee" means any compensation paid by a covered individual for services performed by an administrator.

(r) "Premiums" means any money charged a covered individual, plan sponsor or other entity to provide life or accident or health insurance under a plan. The term premium includes amounts paid by or charged to a covered individual plan sponsor or other entity for stop loss or excess insurance.

(s) "Charges" means any compensation paid by a plan sponsor or insurer for services performed by an administrator.

(t) "Third Party Administrator Trust Fund Account" or "TPATFA", means a special fiduciary account established and maintained by an administrator pursuant to section 1527 from which claims and claims adjustment expenses are disbursed.

(u) "Claims Administrative Services Account" or "CASA", means a special fiduciary account established and maintained by an administrator pursuant to section 1528 from which claims and claims adjustment expenses are disbursed.

(v) "Financial Institution" means any federal, state or territorial chartered bank or savings and loan institution that is insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

(w) "Plan" means any plan, fund or program established or maintained by a plan sponsor or insurer to the extent that the plan, fund or program was established or is maintained to provide through insurance or alternatives to insurance any type of life or health coverage.

**§ 1522. Licensing necessary.** It is unlawful for a person to act as a TPA in the Virgin Islands unless that person is licensed as a TPA under this chapter. This prohibition does not apply to a person while employed by, or when operating under contract with the TPA licensed under this chapter. Any entity doing business as a TPA in the Virgin Islands on the effective date of this chapter shall apply for a license not later than 30 days after the effective date of this chapter and may not act as, or hold himself out to be a TPA 90 days after the effective date of this chapter without being duly licensed as required under this chapter.

**§ 1523. Payment to a TPA.** If an insurer uses the services of a TPA, any premiums or charges for insurance paid to the TPA by or on behalf of the insured party, or any collateral furnished to the TPA by or on behalf of the insured party, is considered to have been received by the insurer, and the return of collateral or the payment of return premiums or claim payments forwarded by the insurer to the TPA is not considered paid to the insured party or claimant until the payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the TPA resulting from the failure of the TPA to make payments to the insurer, insured parties or claimants.

**§ 1524. Maintenance of information.**

(a) A TPA shall maintain in its principal office and make available to the payor complete books and records of all transactions performed on behalf of the payor. The books and records must be maintained as part of the TPA's official records in accordance with prudent standards of insurance record keeping and must be maintained during the term of the agreement referenced in section 1526 and for a period of not fewer than five years after the expiration of the agreement.

(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit and inspection. The provisions of chapter 5 of this title apply to the examinations as if the TPA were an insurer under this title. Any information, documents, or other materials in the possession or control of the Commissioner that are furnished by a TPA, payor, insurance producer or an employee or agent thereof acting on behalf of the TPA, payor or insurance producer, or obtained by the Commissioner in an investigation or examination are confidential and privileged, and are not subject to examination by the public, to subpoena, to discovery or admissible in evidence in any private civil action. However, the Commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(c) Neither the Commissioner nor any person who receives documents, materials or other information while acting under the authority of the Commissioner is permitted or required to testify in any private civil action concerning confidential documents, materials, or information subject to be received pursuant to subsection (b).

(d) To assist in the performance of the Commissioner's duties, the Commissioner may:

(1) share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (b), with state, federal and international regulatory agencies, with the NAIC, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) enter into agreements governing sharing and use of information consistent with this section.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information may occur as a result of disclosure to the Commissioner or as a result of sharing as authorized in subsection (d).

(f) Nothing in this chapter prohibits the Commissioner from releasing final adjudicated actions, including for cause terminations that are open to public inspection pursuant to section 3 V.I.C. 881 or to a database or other clearinghouse service maintained by the NAIC, its affiliates or subsidiaries.

(g) Notwithstanding any contractual agreements between the payor and the TPA which operate to the contrary, the TPA retains the right to sufficient continuing access to books and records to permit the TPA to fulfil all its contractual obligations to insured parties, claimants, and the payor.

(h) If the payor or the TPA cancel their agreement; notwithstanding the provisions of subsection (a), the TPA may, by written agreement with the payor, transfer all records to a new TPA rather than retain them for five years. In such cases, the new TPA must acknowledge in writing, that the TPA is responsible for retaining the records of the old TPA as required in subsection (a).

**§ 1525. Approval of advertising.** A TPA who advertises on behalf of its client may use only advertising that has been approved in writing by the client in advance of its use and which conforms to the requirements of chapter 49 of this title. A TPA who mentions any current or former client in its advertising must obtain the client's prior written consent.

**§ 1526. Responsibilities of the payor and TPA.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the payor. A copy of the agreement must be retained by the TPA for the duration of the agreement and for five years thereafter. The agreement must contain all provisions required by this section, except insofar as the TPA does not perform all the functions referenced in this section.

(b) A payor who uses the services of a TPA retains responsibility for the benefits, premium rates, collateral and reimbursement procedures, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance or stop-loss insurance. The rules pertaining to these matters, to the extent that they are relevant to the duties of the TPA, must be agreed to in writing by the payor and the TPA.

(c) An insurer using the services of a TPA is responsible for the acts of the TPA and is responsible for providing the TPA's books and records relevant to the insurer to the Commissioner upon request.

(d) The written agreement between the TPA and the payor must provide that communications between the TPA and claimants must avoid deceptive statements regarding the responsibilities of the TPA, payor and any insurer as to claims or premiums.

(e) The TPA and the payor must adhere to the requirements of chapter 49 of this title regarding the prohibition on engaging in unfair practices and fraud.

(f) If a dispute arises between the payor and the TPA regarding which of them is to fulfil a lawful obligation with respect to a policy, certificate or claim, subject to the written agreement, the payor shall fulfill such obligation.

(g) The payor has the duty to ensure competent administration of its programs administered by a TPA and within the scope of this chapter.

(h) When a TPA administers benefits in connection with life, annuity, health and employee benefit stop-loss coverage for more than 100 certificate holders, subscribers, claimants or policyholders on behalf of an insurer, the insurer shall, at least semi-annually, conduct a review of the operations of the TPA. At least one such review must include an on-site audit of the operations of the TPA. The cost of such reviews or audits must be borne by the insurer and not reimbursed by the TPA. The requirements of this subsection do not apply when the TPA and the insurer are affiliated.

(i) Each TPA shall advise the Commissioner of any ownership interest in or affiliation of any kind with any payor responsible directly or through reinsurance for providing benefits to any plan for which the administrator provides services.

(j) The TPA shall file with the Commissioner the names and addresses of the payors with whom the TPA has service agreements. If a payor does not assume or bear the risk, the TPA shall disclose the name and address of the ultimate risk bearer. This filing requirement applies to the initial application for a TPA's license and for the renewal of TPA license.

(k) The payor owns the records generated by the TPA pertaining to the payor, except that the TPA retains the right to continuing access to books and records to permit the TPA to fulfill all its contractual obligations to the payor.

#### **§ 1527. Collection of premium, fiduciary duties of TPA.**

(a) All insurance charges, premiums, collateral, and loss reimbursements collected by a TPA on behalf of or for a payor, the return of premiums or collateral received from a payor, and any funds held by the TPA for the payment of claims, must be held by the TPA in a fiduciary capacity. The funds may not be used as general operating funds of the TPA and must be immediately remitted to the person entitled to them, or must be deposited promptly in a fiduciary account established and maintained by the TPA in a federally insured financial institution. This special fiduciary account must be known as a "Third Party Administrator Trust Fund Account" (TPATFA). The TPA shall render a periodic accounting to the payor detailing all transactions performed by the TPA pertaining to the business of the payor and the written agreement between the payor, and the TPA must include the specifications of this reporting. All TPATFA funds must be deposited and maintained in financial institutions that are located within the Virgin Islands and are subject to the jurisdiction of courts located within the Virgin Islands.



(b) The TPA shall keep copies of all records of any TPATFA maintained or controlled by the TPA, and, upon request of a payor, shall furnish the payor with copies of the records pertaining to the deposits and withdrawals made on behalf of the payor. If funds deposited in a TPATFA have been collected on behalf of or for more than one payor or for the payment of claims associated with more than one policy, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each payor and relating to each policyholder.

(c) The TPA may not pay any claim by withdrawals from a TPATFA in which premiums or charges are deposited. Withdrawals from a TPATFA must be made as provided in the written agreement between the TPA and the payor, and only for the following purposes:

- (1) remittance to a payor entitled to remittance;
- (2) deposit in an account maintained in the name of the payor;
- (3) transfer to and deposit in a CASA, with claims to be paid as provided in section 1528;
- (4) payment to a group policyholder for remittance to the payor entitled to such remittance;
- (5) payment to the TPA of its earned commissions, fees or charges as set forth in the written agreement between the TPA and the payor;
- (6) remittance of return premium to the person or persons entitled to such return premium; or
- (7) payment to other service providers as authorized by the payor.

**§ 1528. Payment of claims, fiduciary duties of TPA.** The TPA is the trustee for all money that is received to pay claims and claim adjustment expenses. All claim moneys must be deposited in a special fiduciary account in a financial institution that is located in the Virgin Islands. The special fiduciary account must be designated as a CASA. All claims paid by the TPA from funds collected on behalf of or for a payor must be paid only as authorized by the payor. Payments from an account maintained or controlled by the TPA for purposes including the payment of claims must be made only for the following purposes:

- (1) payment of valid claims;
- (2) payment of expenses associated with claims handled by the TPA or to other service providers approved by the payor;
- (3) remittance to the payor, or transfer to a successor TPA, as directed by the payor, for the purpose of paying claims and associated expenses; or

(4) return of funds held as collateral or prepayment to the person entitled to those funds, upon a determination by the payor that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

**§ 1529. TPA's fiduciary duties regarding the TPATFA and the CASA.**

(a) For each plan that requires a TPATFA, the balance at all times must be the amount deposited plus accrued interest less authorized disbursements. If the TPATFA balance is less than the amount deposited plus accrued interest less authorized disbursements, it is presumed that the TPA misappropriated fiduciary funds and has acted in a financially irresponsible manner.

(b) If the TPATFA is interest bearing or income producing, the full nature of the account must be disclosed to the payor. The TPA shall secure written permission and authorization from the payor to invest the funds or otherwise dispose of the interest or earnings. No investment may be made that assumes any risk other than the risk that the obligor may not pay the principal when due. The use of specialized techniques or strategies that incur additional risks to generate higher returns or to extend maturities is not permitted. Such techniques include, but may not be limited to, the use of financial futures or options, buying on margins and pledging of TPATFA balances.

(c) The TPA may place TPATFA funds in interest-bearing or income-producing investments and retain the interest or income thereon, if the TPA obtains the prior written authorization of the payor. In addition to savings and checking accounts, a TPA may invest in the following:

(1) direct obligations of the United States of America or U.S. Government agency securities with maturities of not more than one year;

(2) certificates of deposit, with a maturity of not more than one year, issued by financial institutions that are insured by the FDIC or FSLIC, so long as the deposit does not exceed the maximum level of insurance protection provided to certificates of deposits held by such institutions;

(3) repurchase agreements with financial institutions or government securities dealers recognized as primary dealers by the Federal Reserve System if:

(A) The value of the repurchase agreement is collateralized with assets which are allowable investments for TPATFA funds; and

(B) The collateral has a market value at the time the repurchase agreement is entered into at least equal to the value of the repurchase agreement; and

(C) The repurchase agreement does not exceed 30 days;

(4) commercial paper, if the commercial paper is rated at least P-1 by Moody's Investors Service, Inc. or at least A-1 by Standard & Poor's Corporation;

(5) money market funds, if the money market funds invest exclusively in assets that are allowable investments under paragraphs (1) through (4) for TPATFA funds and the following conditions are met:

(A) Each investment transaction must be made in the name of the TPA's TPATFA;

(B) The TPA shall maintain evidence of any investments; and

(C) Each investment transaction must flow through the TPA's TPATFA.

(d) No deposit may be made into a CASA or disbursement made from a CASA except for claims and claims adjustment expenses.

(e) For each plan where a CASA is required, the balance in the CASA must at all times be the amount deposited less claims and claims adjustment expenses paid. If the balance is less than that amount, it is presumed that the TPA has misappropriated the funds and has acted in a financially irresponsible manner.

(f) The TPA shall maintain detailed books and records that reflect all transactions involving the receipt and disbursement of:

(1) contributions and premiums received on behalf of a payor; and

(2) claims and claim adjustment expenses received and paid on behalf of a payor.

(g) The detailed preparation, journalizing and posting of books and records must be maintained on a timely basis, and all journal entries for receipts and disbursements must be supported by evidential matter that must be referenced in the journal entry so that it may be traced for verification. The TPA shall prepare and maintain monthly financial institution account reconciliation of all TPATFA and CASA established by the TPA. The minimum detail required is as follows:

(1) the sources, amounts and dates of any money received and deposited by the TPA;

(2) the date and person to whom a disbursement is made. If the amount disbursed does not agree with the amount billed or authorized, the TPA shall prepare a written record as to the reason; and

(3) a description of the disbursement in such detail to identify the source document substantiating the purpose of the disbursement.

(h) Failure of the TPA to accurately and timely maintain the books and records is considered untrustworthy, hazardous or injurious to participants in the plan or the public and financially irresponsible.

#### **§ 1530. Compensation to the TPA.**

(a) It is unlawful for a TPA to enter into an agreement or understanding with a payor in which the effect is to make the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the payment of losses covered by the payor's obligations. This subsection does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services, from providing managed care or related services, or from being compensated for subrogation expenses.

(b) It is unlawful for a payor to enter into an agreement with a TPA in violation of this section.

(c) This section does not prevent the compensation of a TPA from being based on premiums or charges collected or the number of claims paid or processed.

(d) It is unlawful for a TPA to receive from a payor, covered individual or beneficiary under a plan any compensation or other payments, except as expressly set forth in the agreement between the administrator and the payor.

#### **§ 1531. Disclosure of charges and fees.**

(a) When a TPA collects funds, the reason for collection of each item must be identified to the insured party, and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been already paid for by the payor.

(b) The TPA shall disclose to the payor all charges, fees and commissions that the TPA receives arising from services it provides for the payor, including any fees or commissions paid by payors providing reinsurance or stop-loss insurance.

**§ 1532. Delivery of materials to covered individuals.** Any policies, certificates, booklets, termination notices, or other written communications delivered by the payor to the TPA for delivery to insured parties or covered individuals must be delivered by the TPA promptly after receipt of instructions from the payor to deliver them. All policies, certificates, booklets, termination notices or other written communications must conform to any rules and regulations promulgated by the Commissioner and the provisions of this title.



**§ 1533. TPA's application for licensure**

(a) A TPA applying in the Virgin Islands for licensure shall do so on a form provided by the Commissioner accompanied by the certification of an authorized representative of the TPA.

(b) The application must include or be accompanied by the following information and documents:

(1) the names, titles and contact information for all authorized company representatives who are the applicant's contact for department communications regarding licensure and related filings, consumer complaints and the required statutory deposit;

(2) unless a TPA who is a nonresident of Virgin Islands is notified by the Commissioner that the Commissioner is able to verify the TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, an annual statement filed by nonresident TPA, its affiliates, or subsidiaries, from the nonresident's home state's licensing authority stating that its home state TPA certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.

(3) all basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and any other documents governing the operation of applicant that are applicable to the applicant's form of business organization and all amendments to such documents;

(4) a copy of the executed bylaws, rules, regulations or similar documents regulating the operation of the applicant's internal affairs;

(5) the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the applicant; any person who loaned funds to the applicant for the operation of the business; and any other person who exercises control or influence over the affairs of the applicant;

(6) a fully completed and notarized biographical affidavit for each individual who is listed in paragraph (5);

(7) annual financial statements or reports, prepared in accordance with GAAP and audited by an independent certified public accountant, for the two most recent fiscal years that prove that the applicant has a positive net worth. If the financial affairs of the

applicant's parent company are audited by an independent certified public accountant, but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, audited by an independent certified public accountant, must be submitted. A consolidated financial statement of the applicant and the parent company satisfies this requirement unless the Commissioner determines that additional or more recent information is required for the proper administration of this chapter. If the applicant has been in existence for less than two fiscal years, the application must include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial or annual report prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the report and include the following:

- (A) amounts shown on the consolidated audited financial report must be shown on the worksheet;
  - (B) amounts for each entity must be stated separately; and
  - (C) explanations of consolidating and eliminating entries must be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant;
- (8) a copy of the applicant's business plan that includes, but is not limited to, information on staffing levels and activities proposed in the Virgin Islands and nationwide. The plan must provide details setting forth the applicant's source of initial funding, and a statement of the applicant's qualifications and capability to carry out the plan and for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting;
- (9) a list of benefit payors under contract with the applicant and a copy of the standard contract or contracts used by the applicant in the course of business;
- (10) a resolution duly executed by the applicant, appointing the Commissioner and the Commissioner's successor in office as the true and lawful agent of the applicant in and for the Virgin Islands upon whom all lawful process in any legal action, or proceeding against the organization on a cause of action arising in the Virgin Islands may be served;
- (11) a non-refundable filing fee and a license fee to be established by the Commissioner; and
- (12) other pertinent information as may be required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection to the Commissioner copies of all contracts with payors or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a license if the Commissioner determines that the TPA or any individual responsible for the conduct of affairs of the TPA is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in section 1539 of this chapter exists with respect to the TPA.

(f) Unless surrendered, suspended or revoked by the Commissioner, a license issued under this section remains valid for so long as the TPA continues in business in the Virgin Islands, if the holder of the license maintains a valid bond as required by section 1534 and pays the annual fee to be established from time to time by the Commissioner prior to the anniversary date of the license, and remains in compliance with this chapter.,

(g) A TPA licensed or applying for licensure under this section shall notify the Commissioner within 30 days after any material change in its ownership, control, contact person for the TPA or other fact or circumstance affecting its qualification for a license in the Virgin Islands. The Commissioner shall report any such changes to the appropriate electronic database maintained by the AIC or its affiliates.

(h) A TPA who is a non-resident of the Virgin Islands is not eligible for a TPA license under this section if it does not hold a home state certificate of authority or license in a state that has adopted the NAIC Third Party Administrator Model Law or a state that applies substantially similar provisions as are contained in that Model Law to that TPA. If the TPA act, in the TPA's home state does not extend to stop-loss insurance, but if the home state otherwise applies substantially similar provisions as are contained in the Model Law to that TPA, then that omission does not operate to disqualify the TPA from receiving a TPA license in the Virgin Islands.

(i) Each license must contain the name, business address, an assigned identification number for the applicant, the issue date, date of expiration and any other information the Commissioner considers necessary.

(j) A TPA license may not be issued to TPAs who are not domiciled in the United States, District of Columbia, Commonwealth of Puerto Rico or in some territory of the United States.

**§ 1534. Bond requirement for TPAs**

(a) Every applicant for a TPA license shall file with the application and maintain while so licensed, a fidelity bond in favor of the Government of the Virgin Islands executed by a surety company and payable to any party injured under the terms of the bond. The bond must be continuous and in one of the following amounts:

(1) for a TPA that maintains a TPATFA but does not maintain a CASA, the greater of \$50,000 or 5 percent of contributions and premiums projected to be received or collected in the TPATFA for the forthcoming plan year from Virgin Islands residents, but not to exceed \$1,000,000;

(2) for a TPA that maintains a CASA but does not maintain a TPATFA, the greater of \$50,000 or 5 percent of the claims and claim expenses projected to be held in the CASA for the forthcoming year to pay claims and claim expenses for Virgin Islands residents, but not to exceed \$1,000,000; and

(3) for a TPA that maintains both a TPATFA and a CASA, the greater amount in paragraphs (1) or (2), but not to exceed \$1,000,000.

(b) Notwithstanding paragraphs (1), (2), and (3) of subsection (a), upon an administrative finding by the Commissioner that the amounts prescribed in one or more of the paragraphs provide inadequate protection to the public, the Commissioner may, by regulation, prescribe higher amounts. A bond is required of a TPA who maintains or should maintain funds in a fiduciary capacity as set forth in sections 1527, 1528 and 1529, unless the TPA has contracted with the insurer as a TPA and if the plan is fully insured by the insurer on whose behalf the funds are being held.

(c) The bond remains valid until the surety is released from liability by the Commissioner or until the bond is cancelled by the surety. The surety may cancel the bond and be released from further liability upon 30 days' advance written notice to the Commissioner. The cancellation does not affect any liability incurred or accrued under the bond before the end of the 30-day period. Upon receipt of any notice of cancellation, the Commissioner shall immediately notify the licensee of the cancellation.

(d) The license required by section 1533 automatically terminates if the bond required is cancelled or otherwise not valid. Not later than 30 days after cancellation or invalidity of the bond, the TPA shall return the license to the Commissioner for cancellation.

**§ 1535. Registration requirement.** A person who is not required to be licensed as a TPA under this chapter and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of the Virgin Islands, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall register with the Commissioner annually, verifying its status as described in this section. This section does not apply to an insurer or to an individual performing these actions as an



employee of an insurer. This section also does not apply to a person performing these actions under contract to or as an employee of a TPA.

**§ 1536. Standards for license issuance and approval of registration.** The Commissioner may issue a license to an applicant or approve an application for registration as a TPA if the Commissioner finds that the applicant meets the standards established by this chapter including, but not limited to, the following:

- (1) All of the materials required by this chapter or by the Commissioner have been filed;
- (2) The persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;
- (3) The applicant has demonstrated the ability to assure that its services will be performed in a manner which will ensure the efficient operation of its business, including appropriate financial controls;
- (4) The standard contract forms to be used by the applicant are acceptable;
- (5) The applicant has adequate financial arrangements with the benefits payors for which it will perform its services and adequate arrangements for complying with the provisions of this chapter;
- (6) The compensation arrangements made between the applicant and benefits payors do not result in the assumption of financial risk by the applicant;
- (7) The bond requirement in section 1534 is met; and
- (8) In the case of an applicant for registration, the provisions of § 1533 subsections (d), (e) and (f) apply only to services provided by the applicant to benefits payors other than an insurer.

**§ 1537. Annual report and filing fee.**

(a) Each TPA licensed under section 1533 shall file an annual report in duplicate originals for the preceding calendar year with the Commissioner on or before March 31 of each year, or within such extension of time as the Commissioner for good cause may grant. The report must be in the form prescribed by the Commissioner and must contain such additional information and attachments as the Commissioner determines necessary including, but not limited to, a disaggregation of all health insurance premiums received and claim payments made by the TPA from all other premiums and payments. The annual reports must include an audited financial statement audited by an independent certified public accountant. An audited financial or annual report prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the report and include the following:

(1) Amounts shown on the consolidated audited financial report must be shown on the worksheet;

(2) Amounts for each entity must be stated separately, and

(3) Explanations of consolidating and eliminating entries must be included. The report must be verified by at least two officers of the TPA.

(b) The annual report must include the complete names and addresses of all payors with whom the TPA had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the TPA shall pay a filing fee as required by the Commissioner.

(d) The Commissioner shall review the most recently filed annual report of each TPA on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) issue a certification to the TPA that the annual report shows that the TPA has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in that annual report and financial statements; or

(2) update any electronic database maintained by the NAIC, its affiliates or subsidiaries, indicating that the annual report shows that the TPA has a positive net worth as evidenced by audited financial statements and complies with existing law, or noting any deficiencies found in the annual report.

#### **§ 1538. Examinations.**

(a) The Commissioner or the Commissioner's designee may examine the records of any applicant or holder of a TPA license.

(b) Any TPA or applicant being examined shall provide to the Commissioner or the Commissioner's designee convenient and free access during business hours to all books, records, documents and other papers relating to the TPA's or applicant's business affairs.

(c) The Commissioner or the Commissioner's designee may question under oath any employee, contractor or payor about the business practices of the TPA.

(d) The examiners designated by the Commissioner to conduct the examination may make reports to the Commissioner. Any report alleging substantive violations of this chapter must be in writing and must be verified by the examiners.

**§ 1539. Grounds for denial, suspension or revocation of licensure.**

(a) The Commissioner shall, deny, suspend or revoke the license of a TPA, or shall issue a cease and desist order if the TPA does not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:

- (1) is in an unsound financial condition;
- (2) is using such methods or practices in the conduct of its business so as to render its further transaction of business in the Virgin Islands hazardous or injurious to insured persons or the public;
- (3) has failed to pay any judgment rendered against it in the Virgin Islands within 60 days after the judgment has become final;
- (4) has, in the transaction of business under its license, used fraudulent, coercive or dishonest practices, or has demonstrated untrustworthiness or financial irresponsibility; or is not of good personal and business reputation; or
- (5) has obtained or attempted to obtain a license through misrepresentation or fraud.

(b) The Commissioner may deny, suspend or revoke the license of a TPA, or may issue a cease and desist order if the TPA does not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:

- (1) has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of the Virgin Islands;
- (2) has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the TPA, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the TPA, and any other person who exercises control or influence over the affairs of the TPA, has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner;
- (3) has failed to appear without reasonable cause or excuse in response to a subpoena, examination warrant or any other order lawfully issued by the Commissioner;
- (4) has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring

suit against the TPA or a payor that it represents to secure full payment or settlement of such claims;

(5) has misappropriated or converted to its own use, or improperly withheld, money required to be held in a fiduciary capacity;

(6) is required under this chapter to have a license and fails at any time to meet any qualification for which issuance of a license may have been refused had the failure then existed and been known to the Commissioner, unless the Commissioner issued a license with knowledge of the ground for disqualification and had the authority to waive it;

(7) has intentionally made a material misstatement on its application for a license;

(8) if any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs has been, within the past three years, convicted of, or has entered a plea of guilty or nolo contendere to a felony without regard to whether adjudication was withheld, unless the person demonstrates to the Commissioner sufficient rehabilitation to warrant the public trust;

(9) has had its license suspended or revoked or its application denied in any of the 50 states, the District of Columbia, or territories of the United States;

(10) is affiliated with and is under the same general management or control as another TPA that transacts business in the Virgin Islands without a license issued under this chapter; or

(11) has failed to file a timely annual report and the required filing fee pursuant to section 1537.

(c) Denial of an application, suspension or revocation of a license, pursuant to subsections (a) and (b) must be by written order sent to the applicant or TPA by certified or registered mail at the address specified in the Commissioner's records. The order must state the grounds, charges or conduct on which denial, suspension or revocation is predicated upon. The applicant or TPA may make a written request for a hearing not later than 30 days after the postmarked date of the order, if mailed or from the date of receipt, if hand delivered. If a written request for a hearing is not received by the Commissioner within the time specified, the order becomes final 30 days after the date of the order. Upon receipt of the request for a hearing, the Commissioner shall issue an order scheduling:



(1) a specific date for the hearing which may not be less than 20 nor more than 30 days after receipt of the request for a hearing; and

(2) a specific place and time for the hearing.

(d) The Commissioner, in the Commissioner's discretion, without notice, and before a hearing, may issue an order immediately suspending the license of a TPA, or may issue a cease and desist order if the TPA does not have a license, if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the TPA has been commenced in any state; or

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety or welfare of the residents of the Virgin Islands.

(e) At the time an order has been issued by the Commissioner in accordance with subsection (d) (1) through (3), the Commissioner shall serve notice to the TPA that the TPA may request a hearing not later than 10 business days after the receipt of the order. If a hearing is requested, the Commissioner shall schedule a hearing not later than 10 business days after receipt of the request. If a hearing is not requested and the Commissioner orders none, the order remains in effect until modified or vacated by the Commissioner.

(f) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this chapter, or for a cease and desist order, the Commissioner may, in lieu of or in addition to the suspension, revocation or cease and desist order, impose a fine upon the TPA.

(g) Any TPA whose license is revoked, suspended, or whose application is denied under this section is ineligible to reapply for any license for two years after the date of revocation or suspension of the license or denial of the application. A suspension under this section may be for a period of up to two years.

#### **§ 1540. Administrative fine.**

(a) If the Commissioner finds that one or more grounds exist for the revocation or suspension of a license issued under this chapter, the Commissioner may, in lieu of, or in addition to such suspension or revocation, impose a fine upon the TPA.

(b) The Commissioner may impose a fine upon a TPA not to exceed \$5,000 for each violation for knowingly and willfully violating an order of the Commissioner. In no event, may the fine exceed an aggregate amount of \$25,000 for any violations arising out of the same action.

**§ 1541. Judicial review.** Any person aggrieved by an order of the Commissioner may appeal to the appropriate court in accordance with the appeals procedures set forth in chapter 7 of this title.

**§ 1542. Unauthorized activities.** Nothing in this chapter may be construed to permit any person or entity to receive or collect charges, contributions or premiums for, or adjust or settle claims in connection with any type of life or health benefit, unless that person or entity may through the insurance laws of a state or territory, or the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq., as amended (ERISA), provide benefits.

**§ 1543. Felony convictions.** Any TPA or any individual listed on the application as required by section 1533 who is convicted of a felony, must, not later than 30 days after the entry date of the judgment:

- (1) report the conviction to the Commissioner, and
- (2) provide the Commissioner with a copy of the judgment, the probation or commitment order and any other relevant documents.

**§ 1544. Regulations.** Pursuant to the authority vested in the Commissioner in chapter 3, of this title the Commissioner may issue regulations for the proper administration and functioning of the provisions of this chapter."

**SECTION 2.** Section 1 of this act takes effect 30 days after enactment.

Thus, passed by the Legislature of the Virgin Islands on December 20, 2016.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 5<sup>th</sup> Day of January, A.D., 2017.



*Neville A. James*  
Neville A. James  
President

*Myron D. Jackson*  
Myron D. Jackson  
Legislative Secretary



**Bill No. 31-0446 is hereby approved.**

**Witness my hand and the Seal of the  
Government of the United States  
Virgin Islands at Charlotte Amalie,  
St. Thomas, this 20<sup>th</sup> day of January, A.D., 2017.**

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**Kenneth E. Mapp  
Governor**