

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 627
HOUSE BILL 482

AN ACT TO REWRITE THE LAWS ON THIRD PARTY ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. Article 56 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"§ 58-56-2. Definitions.

The following definitions apply in this Article:

- (1) Affiliate. Any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.
- (2) Control. Defined in G.S. 58-19-5(2).
- (3) Insurance. Any coverage offered or provided by an insurer.
- (4) Insurer. A person who undertakes to provide life or health insurance or benefits in this State that are subject to this Chapter. The term 'insurer' does not include a bona fide employee benefit plan established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.
- (5) Third party administrator. A person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State, or residents of another state from offices in this State, in connection with life or health insurance or annuities, except any of the following:
 - a. An employer on behalf of its employees or the employees of one or more of its affiliates.
 - b. A union on behalf of its members.
 - c. An insurer that is licensed under Articles 1 through 67 of this Chapter or that is acting as an insurer with respect to a policy lawfully issued and delivered by it and pursuant to the laws of a state in which the insurer is licensed to write insurance.
 - d. An agent or broker who is licensed by the Commissioner to sell life or health insurance and whose activities are limited exclusively to the sale of insurance.
 - e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

- f. A trust and its trustees, agents, and employees acting pursuant to the trust established in conformity with 29 U.S.C. § 186.
 - g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code and its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code.
 - h. A financial institution subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent the financial institution or mortgage lender collects and remits premiums to licensed insurance agents or authorized insurers in connection with loan payments.
 - i. An attorney-at-law who adjusts or settles claims in the normal course of business as an attorney-at-law and who does not collect charges or premiums in connection with life or health insurance or annuities.
 - j. An adjuster licensed by the Commissioner whose activities are limited to adjustment of claims.
 - k. A person who acts solely as a TPA of one or more bona fide employee benefit plans established by an employer, an employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Income Security Act of 1974. The person shall comply with the requirements of G.S. 58-56-51(f).
 - l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.
- (6) TPA. A third party administrator.
- (7) Underwriting. This term includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the planning and coordination of an insurance program, and the ability to procure bonds and excess insurance.

"§ 58-56-6. Written agreement necessary.

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, to the extent those requirements apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the kinds of insurance the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer must fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA.

"§ 58-56-11. Payment to TPA.

If an insurer uses the services of a TPA, the payment to the TPA of any premiums or charges for insurance by or on behalf of the insured party is considered payment to the insurer. The payment of return premiums or claim payments forwarded by the insurer to the TPA is not considered payment to the insured party or claimant until the payments are received by the insured party or claimant. This section does not limit 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.

"§ 58-56-16. Records to be kept.

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

"§ 58-56-21. Approval of advertising.

A TPA may use only the advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

"§ 58-56-26. Responsibilities of the insurer.

(a) If an insurer uses the services of a TPA, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters must be provided, in writing, by the insurer to the TPA. The

responsibilities of the TPA as to any of these matters shall be set forth in the agreement between the TPA and the insurer.

(b) It is the sole responsibility of the insurer to provide for competent administration of its programs.

(c) In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an on-site audit of the operations of the TPA.

"§ 58-56-31. Premium collection and payment of claims.

(a) All insurance charges or premiums collected by a TPA on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the TPA in a fiduciary capacity. These funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally or State insured financial institution. The agreement between the TPA and the insurer shall require the TPA to periodically render an accounting to the insurer detailing all transactions performed by the TPA pertaining to the business underwritten by the insurer.

(b) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The TPA shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

(c) The TPA shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from this account shall be made only as provided in the agreement between the TPA and the insurer. The agreement shall address, but not be limited to, the following:

- (1) Remittance to an insurer entitled to remittance.
- (2) Deposit in an account maintained in the name of the insurer.
- (3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (d) of this section.
- (4) Payment to a group policyholder for remittance to the insurer entitled to the remittance.
- (5) Payment to the TPA of its commissions, fees, or charges.
- (6) Remittance of a return premium to the person entitled to the return premium.

(d) All claims paid by the TPA from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

"§ 58-56-36. Compensation to the TPA.

A TPA shall not enter into any agreement or understanding with an insurer that makes the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the insurer's obligations. This section does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services and does not prevent the

compensation of a TPA from being based on premiums or charges collected or the number of claims paid or processed.

"§ 58-56-41. Notice to covered individuals; disclosure of charges and fees.

(a) When the services of a TPA are used, the TPA shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the TPA, the policyholder, and the insurer.

(b) 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 paid for by the insurer.

(c) The TPA shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

"§ 58-56-46. Delivery of materials to covered individuals.

Any policies, certificates, booklets, termination notices, and other written communications delivered by the insurer to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the insurer to deliver them.

"§ 58-56-51. License required.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually.

(b) Each application for the issuance or renewal of a license shall be made upon a form prescribed by the Commissioner and shall be accompanied by a nonrefundable filing fee of one hundred dollars (\$100.00) and evidence of maintenance of a fidelity bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules of the Commissioner. Applications for issuance of licenses shall include or be accompanied by the following information and documents:

- (1) All organizational documents of the TPA, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, or trust agreement, any other applicable documents, and all amendments to these documents.
- (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA.
- (3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including all (i) members of the board of directors, board of trustees, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA.

- (4) Annual financial statements or reports for the two most recent years that prove that the applicant is solvent and any other information the Commissioner may require in order to review the current financial condition of the applicant.
- (5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description must provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.
- (6) If the applicant will be managing the solicitation of new or renewal business, evidence that it employs or has contracted with an agent licensed by this State for soliciting and taking applications. Any applicant that intends to directly solicit insurance contracts or to otherwise act as an insurance agent must provide proof of having a license as an insurance agent in this State.
- (7) Any other pertinent information required by rules of the Commissioner.

The information required by subdivisions (1) through (7) of this subsection, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA. Applications for renewals of licenses shall include or be accompanied by any changes in the information required by subdivisions (1) through (7) of this subsection.

(c) Each applicant shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons using the services of the TPA.

(d) 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 as defined in subdivision (b)(3) of this section, is not competent, trustworthy, financially responsible in accordance with subsection (b) of this section, or of good personal and business reputation, or has had an insurance or a TPA license denied, suspended, or revoked for cause by any state.

(e) A TPA is not required to be licensed as a TPA in this State if all of the following conditions are met:

- (1) The TPA's principal place of business is in another state.
- (2) The TPA is not soliciting business as a TPA in this State.
- (3) In the case of any group policy or plan of insurance serviced by the TPA, no more than either five percent (5%) or 100 certificate holders, whichever is fewer, reside in this State.

(f) A person is not required to be licensed as a TPA in this State if the person provides services exclusively to one or more bona fide employee benefit plans each of which is established by an employer, an employee organization, or both, and for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974. Persons who are not required to be licensed shall register with the Commissioner annually, verifying their status as described in this subsection.

(g) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, within 10 business days after the change.

(h) No bonding shall be required by the Commissioner of any TPA whose business is restricted solely to benefit plans that are either fully insured by an authorized insurer or that are bona fide employee benefit plans established by an employer, any employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974.

"§ 58-56-56. Waiver of application for license.

Upon request from a TPA, the Commissioner may waive the application requirements of G.S. 58-56-51(b) if the TPA has a valid license as a TPA issued in a state that has standards for TPAs that are at least as stringent as those contained in this Article.

"§ 58-56-61. Reserved.

"§ 58-56-66. Grounds for suspension or revocation of license.

(a) The Commissioner shall, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that either of the following apply to the TPA:

- (1) The TPA is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to insured persons or the public.
- (2) The TPA has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, suspend or revoke the license of a TPA if the Commissioner finds that any of the following apply to the TPA:

- (1) The TPA has violated a rule or an order of the Commissioner or any provision of this Chapter.
- (2) The TPA has refused to be examined or to produce its accounts, records, and files for examination, or any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to that examination, when required by the Commissioner.
- (3) The TPA 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 to secure full payment or settlement of the claims.
- (4) The TPA is an affiliate of or under the same general management, interlocking directorate, or ownership as another TPA or insurer that unlawfully transacts business in this State without having a license.
- (5) The TPA at any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the Commissioner at the time of the application.

(6) The TPA has been convicted of, or has entered a plea of guilty or **nolo contendere** to, a felony without regard to whether judgment was withheld.

(7) The TPA is under suspension or revocation in another state.

(c) The Commissioner may without advance notice or hearing immediately suspend the license of any TPA if the Commissioner finds that any of the following apply to the TPA:

(1) The TPA is insolvent or financially impaired. 'Financially impaired' means that the TPA is unable or potentially unable to fulfill its contractual obligations.

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

(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 this State."

Sec. 2. G.S. 58-56-1, 58-56-10, 58-56-15, 58-56-20, 58-56-25, 58-56-30, 58-56-35, 58-56-40, 58-56-45, 58-56-50, 58-56-55, and 58-56-60 are repealed.

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 10th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives