THIRD PARTY ADMINISTRATOR ACT

Act 218 of 1984

AN ACT to provide for the regulation of third party administrators; to provide for the licensure of administrative service managers; to provide for certain powers and duties for certain state agencies and officers; to provide for the confidentiality of certain personal data; and to prescribe penalties for a violation of this act.

History: 1984, Act 218, Eff. Jan. 1, 1985
Compiler's Notes: For transfer of the Department of Insurance and Office of the Commissioner on Insurance from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws. For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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The People of the State of Michigan enact:

550.901 Short title.

Sec. 1.

This act shall be known and may be cited as the "third party administrator act".

History: 1984, Act 218, Eff. Jan. 1, 1985
Compiler's Notes: For transfer of the Department of Insurance and Office of the Commissioner on Insurance from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.902 Definitions.

Sec. 2.

As used in this act:

(a) "Administrative services manager" or "manager" means an individual responsible for conducting the daily operations of a third party administrator.

(b) "Benefit plan" or "plan" means a medical, surgical, dental, vision, or health care benefit plan and may include coverage under a policy or certificate issued by a carrier.

(c) "Board" means the TPA advisory board created under section 19.

(d) "Carrier" means an insurer, including a health maintenance organization, regulated under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or a dental care corporation regulated under 1963 PA 125, MCL 550.351 to 550.373.

(e) "Claim" means a request for payment for administering, filling, or refilling a drug or for providing a pharmacy service or a medical supply or device to an enrollee as that term is defined in section 116 of the insurance code of 1956, 1956 PA 218, MCL 500.116.

(f) "Commissioner" means the director.

(g) "Department" means the department of insurance and financial services.

(h) "Director" means the director of the department.

(i) "ERISA" means the employee retirement income security act of 1974, Public Law 93-406.

(j) "Health plan" means a qualified health plan as that term is defined in section 1261 of the insurance code of 1956, 1956 PA 218, MCL 500.1261.

(k) "Manufacturer" means that term as defined in section 17706 of the public health code, 1978 PA 368, MCL 333.17706.

(l) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(m) "Personal data" means any record or information pertaining to the diagnosis, treatment, or health of an individual covered by a plan.

(n) "Pharmacy" means that term as defined in section 17707 of the public health code, 1978 PA 368, MCL 333.17707.

(o) Except as otherwise provided in subdivision (p), "pharmacy benefit manager" means an entity that contracts with a pharmacy or a pharmacy services administration organization on behalf of a health plan or carrier to provide pharmacy health services to individuals covered by the health plan or carrier or administration that includes, but is not limited to, any of the following:

(i) Contracting directly or indirectly with pharmacies to provide drugs to enrollees or other covered persons.

(ii) Administering a drug benefit.

(iii) Processing or paying pharmacy claims.

(iv) Creating or updating drug formularies.

(v) Making or assisting in making prior authorization determinations on drugs.

(vi) Administering rebates on drugs. As used in this subparagraph, "rebate" means a formulary discount or remuneration attributable to the use of prescription drugs that is paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefit manager after a claim has been adjudicated at a pharmacy. Rebate does not include a fee, including, but not limited to, a bona fide service fee or administrative fee, that is not a formulary discount or remuneration described in this subparagraph. As used in this subparagraph, "third party" does not include a pharmacy benefit manager.

(vii) Establishing a pharmacy network.

(p) "Pharmacy benefit manager" does not include the department of health and human services, a carrier, or an insurer.

(q) "Pharmacy services administration organization" means an entity that provides contracting and other administrative services relating to prescription drug benefits to pharmacies.

(r) "Processes claims" means the administrative services performed in connection with a claim for benefits under a plan.

(s) "Service contract" means the written agreement for the provision of administrative services between the TPA and a plan, a sponsor of a plan, or a carrier.

(t) "Third party administrator" or "TPA" means a person that directly or indirectly processes claims under a service contract and that may also provide 1 or more other administrative services under a service contract, other than under a worker's compensation self-insurance program pursuant to section 611 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.611. Third party administrator includes a pharmacy benefit manager. Third party administrator does not include a carrier or employer sponsoring a plan.

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History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 2022, Act 12, Imd. Eff. Feb. 23, 2022

550.910 Third party administrator; certificate required; requirements; instances in which TPA subject to act; name.

Sec. 10.

(1) A person shall not operate as a third party administrator without obtaining and maintaining a certificate of authority pursuant to this act.

(2) A third party administrator shall continue to meet the requirements of this act at all times.

(3) A third party administrator is subject to this act in the following instances:

(a) The TPA is domiciled in this state.

(b) The TPA has its principal administrative office or principal headquarters located in this state.

(c) The TPA solicits a plan or sponsor of a plan or provides administrative services to a plan or sponsor of a plan, which plan or sponsor is either domiciled in this state or has its principal headquarters or principal administrative office in this state. This subdivision shall not apply to a TPA who has been licensed or certified as a TPA in that TPA's state of domicile pursuant to a statute or regulation similar to this act.

(d) The TPA provides substantial administrative services to a carrier for the carrier's business in this state.

(4) Each TPA shall transact its business under its own name. A TPA shall not be permitted to do business in this state under a name which is the same as or which closely resembles the name of a TPA which is authorized to do business under the laws of this state.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.912 Application for certificate of authority; form, verification, and contents; filing notice of modification.

Sec. 12.

(1) An application for a certificate of authority to operate as a TPA shall be in a form prescribed by the commissioner, shall be verified by an officer or authorized representative of the TPA, and shall include all of the following:

(a) All basic organizational documents of the TPA, such as the articles of incorporation, bylaws, articles of association, trade name certificate, and other similar documents and all amendments to those documents.

(b) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of the affairs of the TPA, including all administrative services managers, members of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers and shareholders owning stock representing 10% or more of the voting shares of the TPA in the case of a corporation; and the partners or members in the case of a partnership or association.

(c) A description of the TPA, its services, facilities, and personnel.

(d) A power of attorney duly executed by the TPA if not domiciled in this state, appointing the commissioner, the commissioner's successors in office, and the commissioner's duly authorized deputies as the attorney of the TPA in and for this state, upon whom process in any

legal action or proceeding against the TPA on a cause of action arising in this state may be served. The fee for such service shall be $5.00, payable at the time of service.

(e) Recent financial statements showing the third party administrator's assets, liabilities, and sources of financial support sufficient in the opinion of the commissioner, upon the advice of the board, to show financial viability of the third party administrator. If the third party administrator's financial affairs are prepared by independent public accountants, a copy of the most recent regular financial statement shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act.

(f) Such other information as the commissioner may reasonably require. The commissioner may not demand trade secret information from a TPA.

(2) Within 30 days following any significant modification of information submitted with the application for a certificate of authority, a third party administrator shall file a notice of the modification with the commissioner.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.914 Certificate of authority; issuance; notice of disapproval; continued compliance with subsection (1).

Sec. 14.

(1) The commissioner shall issue a certificate of authority to operate as a TPA if the commissioner is satisfied that the TPA has adequate facilities, personnel, and managers to act as a third party administrator.

(2) If the commissioner disapproves an application for a certificate of authority, he or she shall notify the applicant in writing of the reasons for the disapproval.

(3) A TPA shall continue to meet the conditions required under subsection (1) after the certificate of authority is issued.

History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 2002, Act 74, Imd. Eff. Mar. 15, 2002

550.916 Repealed. 2002, Act 74, Imd. Eff. Mar. 15, 2002.

Compiler's Notes: The repealed section pertained to license as administrative services manager.

550.918 Fees; payment; collection; and designation.

Sec. 18.

(1) The commissioner shall collect, and the persons affected shall pay to the commissioner, the following fees:

(a) Filing fee to accompany application for third party administrator's certificate of authority	$ 200.00.
(b) Certificate of authority for a third party administrator	$ 25.00.
(c) Filing fee for annual statement of a third party administrator, each year	$ 25.00.

(2) Fees paid under this section shall be designated for the insurance bureau to cover the additional costs incurred as a result of this act.

History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 2002, Act 74, Imd. Eff. Mar. 15, 2002

550.919 TPA advisory board; creation; appointment, qualifications, and terms of members; expenses; duty of board; report.

Sec. 19.

(1) A TPA advisory board is created. The board shall consist of 7 members appointed by the commissioner, at least 4 of whom shall be individuals employed by TPAs who are not in the employ of a carrier and who do not have a significant ownership interest in a carrier. The members of the board shall serve 3-year terms and shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The board shall advise the commissioner as to the operations of this act, including:

(a) The procedure for granting licenses and certificates.

(b) The subject areas for the written examination for managers.

(c) The implementation of this act.

(d) Making recommendations to the commissioner for guidelines for the implementation of sections 40 to 44.

(e) Making recommendations to the commissioner regarding the regulatory standards for excess loss insurance required by section 32(4).

(2) The board shall issue a report to the commissioner on the operations of this act not later than 3 years after the effective date of this act.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.920 Authority of commissioner.

Sec. 20.

The commissioner shall have the same authority with respect to a TPA or manager as he or she does with respect to an insurance agency or agent under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, including but not limited to the rights of examination, suspension, revocation, and limitation of authority, and liquidations and receiverships.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.922 Hearings.

Sec. 22.

The commissioner may designate 1 or more persons to conduct hearings provided for under this act, hearings required by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, and hearings which the commissioner considers necessary and appropriate for fact-finding or information gathering before making decisions, policies, and determinations allowable or required by law in the course of carrying out the duties of the commissioner. Hearings under this act shall be conducted in the same manner as hearings conducted under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.924 Destruction or disposal of records, books, papers, and other data.

Sec. 24.

The commissioner is authorized to destroy or otherwise dispose of all records, books, papers, and other data on file with the department which in his or her opinion and on the advice of the attorney general, are of no further material value to the state of Michigan; but the destruction or other disposal thereof shall not be ordered or made by him or her of any records, books, papers, or other data required by law to be filed or kept on file with the insurance bureau until the expiration of a period of 10 years, nor of any such records, books, papers, or other data filed during his or her administration or administrations. Such authorization shall be effected through official rules of the commissioner. However, this authorization shall not extend to articles of incorporation, and amendments thereto, copies of bylaws and amendments thereto, copies of certificates or other written evidence of authorization to transact business or of approval of articles of incorporation and bylaws.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.926 340B Program entities; reimbursement, co-pay, and discrimination prohibitions; definitions.

Sec. 26.

(1) A carrier or third party administrator that is a pharmacy benefit manager shall not prohibit a 340B Program entity or a pharmacy that has a license in good standing in this state under contract with a 340B Program entity from participating in the carrier's or third party administrator that is a pharmacy benefit manager's provider network solely because it is a 340B Program entity or a pharmacy under contract with a 340B Program entity. A carrier or third party administrator that is a pharmacy benefit manager shall not reimburse a 340B Program entity or a pharmacy under contract with a 340B Program entity differently than other similarly situated pharmacies. As used in this subsection, "340B Program entity" means an entity authorized to participate in the federal 340B Program under section 340B of the public health service act, 42 USC 256b.

(2) A carrier or other third party, or a third party administrator that is a pharmacy benefit manager, shall not, except as required by law to prevent a duplicate rebate, require a claim for a drug to include a modifier or otherwise to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the Medicaid program. As used in this subsection:

(a) "Medicaid program" means the program for medical assistance established under title XIX of the social security act, 42 USC 1396 to 1396w-6.

(b) "Rebate" means a formulary discount or remuneration attributable to the use of prescription drugs that is paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefit manager after a claim has been adjudicated at a pharmacy. Rebate does not include a fee, including, but not limited to, a bona fide service fee or administrative fee, that is not a formulary discount or remuneration described in this subdivision.

(c) "Third party" does not include a pharmacy benefit manager or carrier.

(d) "340B drug" means a covered drug as that term is defined in 42 USC 256b.

(3) A third party administrator that is a pharmacy benefit manager shall not exclude or discriminate against a pharmacy solely based on the carrier not having a vested financial interest in the pharmacy. As used in this subsection, "having a vested financial interest" means

having ownership, having co-ownership, being a shareholder, or having another connection from which financial gain or loss could be realized.

History: Add. 2022, Act 12, Imd. Eff. Feb. 23, 2022

550.927 Disclosure of current selling prices; prohibited contract provisions.

Sec. 27.

A contract between a carrier or third party administrator that is a pharmacy benefit manager and a pharmacy must not prohibit the pharmacy from disclosing the current selling price of a drug in accordance with section 17757 of the public health code, 1978 PA 368, MCL 333.17757. This section applies to a contract described in this section executed, extended, or renewed on or after the effective date of the amendatory act that added this section.

History: Add. 2022, Act 12, Imd. Eff. Feb. 23, 2022

550.930 Provision of administrative services pursuant to written service contract; maintenance of books and records; TPA and manager as fiduciary.

Sec. 30.

(1) A TPA may only provide administrative services pursuant to a written service contract. For the duration of the service contract, a TPA shall maintain at its principal administrative office the TPA's books and records of all transactions under the service contract in accordance with generally accepted accounting principles or as required by ERISA.

(2) A TPA and a manager are a fiduciary when collecting, expending, and maintaining money for the payment of claims pursuant to the service contract.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.932 Benefit plan; notice; plan covering less than 500 individuals; service contract between TPA and governmental entity not subject to ERISA; construction of act.

Sec. 32.

(1) A TPA, in connection with a benefit plan, shall provide in its service contract a provision that the person contracting for the services shall provide written notice to each individual covered by the plan, which written notice shall contain the following information:

(a) What benefits are being provided.

(b) Of changes in benefits.

(c) The fact that individuals covered by the plan are not insured or are only partially insured, as the case may be.

(d) If the plan is not insured, the fact that in the event the plan or the plan sponsor does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the individuals covered by the plan may be liable for those expenses.

(e) The fact that the TPA merely processes claims and does not insure that any medical expenses of individuals covered by the plan will be paid.

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(f) The fact that complete and proper claims for benefits made by individuals covered by the plan will be promptly processed but that in the event there are delays in processing claims, the individuals covered by the plan shall have no greater rights to interest or other remedies against the TPA than as otherwise afforded them by law.

(2) The written notice required by subsection (1) shall be prominently displayed in the summary plan description or in a separate document. The notice shall be communicated to the individuals covered by the plan within 60 days after becoming covered, upon each republication of the summary plan description, and in any case not less than every 5 years in a manner calculated to be received and understood by the average individual covered by the plan. As used in subsections (1) and (2), "individual covered by a plan" includes only 1 individual per family covered by a plan. The written notice required by this section shall not apply to any plan in effect on the effective date of this act until the earlier of the following:

(a) The due date under ERISA for distributing updated summary plan descriptions.

(b) Two years after the effective date of this act.

(3) Except as provided in subsection (4), a TPA shall not enter into a service contract for a plan covering less than 500 individuals.

(4) A TPA may enter into a service contract for a plan covering less than 500 individuals, if either the TPA makes arrangements for excess loss insurance or the sponsor of the plan is liable for the plan's liabilities and is a sponsor of 1 or more plans covering 500 or more individuals in the aggregate. The commissioner, upon the advice of the board, shall establish the standards for the manner and amount of the excess loss insurance required by this subsection. A TPA may continue to provide administrative services under a service contract for a plan covering less than 500 individuals if the service contract was in existence on the effective date of this act, including the renewal of that service contract.

(5) A service contract between a TPA and a governmental entity not subject to ERISA, whose plan provides coverage under a collective bargaining agreement utilizing a policy or certificate issued by a carrier before the signing of the service contract, is void unless the governmental entity has provided the written notice described in subsection (1) to the collective bargaining agent and to the members of the collective bargaining unit not less than 30 days before signing the service contract. The voiding of a service contract under this subsection shall not relieve the governmental entity of any obligations to the TPA under the service contract.

(6) Nothing in this act shall be construed to regulate or authorize an employee welfare benefit plan which is a multiple employer welfare arrangement. Nothing in this act shall be construed to permit an actionable interference by a TPA with the rights and obligations of the parties under a collective bargaining agreement.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.934 Confidentiality.

Sec. 34.

(1) A TPA shall provide for the confidentiality of personal data identifying an individual covered by a plan. A TPA shall not disclose records containing personal information that may be associated with an identifiable individual covered by a plan to a person other than the individual to whom the information pertains. Except as is necessary to comply with a court order, an administrator shall not disclose personal data concerning a covered individual without the prior consent of the covered individual. If the individual covered by a plan has authorized the release of information to a third person, the third person shall not release that

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information unless the individual executes in writing another consent authorizing the additional release.

(2) Subsection (1) shall not be construed to apply to information disclosed for any of the following reasons:

(a) For claims adjudication.

(b) For claims verification.

(c) For other proper plan administration.

(d) For an audit conducted pursuant to ERISA.

(e) To an insurer for the purchase of excess loss insurance and for claims under the excess loss insurance. However, an insurer obtaining information under this subdivision shall be subject to the requirements of subsection (1).

(f) To the plan or a fiduciary of the plan.

(g) To the commissioner. However, information obtained by the commissioner under this subdivision shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(h) As required by law.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.936 Annual statement; report.

Sec. 36.

By July 1, 2022 and each July 1 after that date, a third party administrator shall prepare under oath and file with the director a statement concerning the third party administrator's affairs on a form provided by the director. A third party administrator shall file the annual statement required under this section by July 1 of the year following the year covered by the statement. On request and for good cause shown, the director may grant to a third party administrator a reasonable extension of time not to exceed 30 days within which the statement must be filed. A third party administrator shall pay the annual statement filing fee prescribed in section 18.

History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 2022, Act 12, Imd. Eff. Feb. 23, 2022

550.940 Prohibited conduct generally.

Sec. 40.

A TPA or manager, in processing claims, shall not do any of the following:

(a) Misrepresent pertinent facts relating to coverage.

(b) Fail to make a good faith effort to acknowledge promptly or to act reasonably and promptly upon communications with respect to a claim for benefits.

(c) Fail to adopt and implement reasonable standards for the prompt investigation of a claim for benefits.

(d) Refuse to process claims without conducting a reasonable investigation based upon the available information.

(e) Fail to communicate affirmation or denial of coverage of a claim for benefits within a reasonable time after a claim has been received.

(f) Fail to make a good faith effort to promptly, fairly, and equitably process a claim for benefits.

(g) Fail to promptly provide a reasonable explanation of the basis for denial or partial denial of a claim for benefits.

(h) Refuse to process claims because of race, color, creed, marital status, sex, national origin, residence, age, disability, or lawful occupation.

(i) Knowingly compel individuals covered by the plan to institute litigation to recover amounts due under a benefit plan by offering substantially less than the amounts due unless the amounts due are reasonably in dispute.

(j) For the purpose of coercing an individual covered by the plan to accept a settlement or compromise of a claim, inform the individual of a policy of the TPA of appealing judicial, arbitration, or administrative hearing decisions which are in favor of individuals covered by the plan.

(k) Delay the investigation or processing of a claim by requiring an individual covered by the plan, or the provider of services to the individual covered by the plan, to submit a preliminary claim and then requiring subsequent submission of a formal claim, seeking solely the duplication of a verification. This subdivision does not apply to the predetermination or precertification of benefits.

History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 1998, Act 79, Imd. Eff. May 4, 1998

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550.942 Additional prohibited conduct.

Sec. 42.

A manager or TPA, in order to induce a person to contract or to continue to contract with the TPA; to induce a person to lapse, forfeit, or surrender a service contract entered into with a TPA; or to induce a person to secure or terminate coverage with a carrier or other person, shall not directly or indirectly:

(a) Offer to make or make an agreement relating to a service contract or issue or deliver to the person money or any other valuable consideration other than as plainly expressed in the service contract.

(b) Give or pay or offer to give or pay, directly or indirectly, a rebate or adjustment of the fee payable under the service contract, or an advantage in the services thereunder, except as reflected in the fee and expressly provided in the service contract.

(c) Make, issue, or circulate, or cause to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of a service contract, the advantages provided thereunder, or the true nature thereof.

(d) Make a misrepresentation in a comparison, whether oral or written, between service contracts of the TPA and another TPA or between service contracts of the TPA and a carrier.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.944 Additional prohibited conduct.

Sec. 44.

(1) A TPA shall not refuse to enter into a service contract or provide administrative services other than processing claims because of race, color, creed, marital status, sex, national origin, residence, age, disability, or lawful occupation.

(2) A TPA or manager shall not misrepresent the financial condition of a TPA or of any person engaged in the business of insurance, or misrepresent the financial aspects of the services offered by the TPA or make a statement which is maliciously false, maliciously critical of, or maliciously derogatory to the financial condition of another TPA or of a person engaged in the business of insurance.

(3) A TPA or manager shall not misrepresent the nature of the services provided by the TPA, including but not limited to, the existence or identity of any carrier or other TPA involved with the plan; the extent of risk assumed by any particular named carrier, if any; or the regulatory status of the carrier or TPA.

(4) A TPA or manager shall not make, or participate in the making of, any fraudulent statement on a claims form for the purpose of obtaining money or other benefits.

(5) A TPA shall process claims for benefits on a timely basis.

History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 1998, Act 79, Imd. Eff. May 4, 1998

550.950 Violation; probable cause; notice; conference; disposition of matter upon agreement of parties; action for damages; hearing; findings and decision; cease and desist order; additional order.

Sec. 50.

(1) When the commissioner has probable cause to believe that a TPA or manager is violating, or has violated section 40, indicating a persistent tendency to engage in conduct prohibited by that section, or has probable cause to believe that a TPA or manager is violating, or has violated other provisions of this act, he or she shall give written notice to the TPA or manager, pursuant to the administrative procedures act, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, setting forth the general nature of the complaint against the TPA or manager and the proceedings contemplated under this section. Before the issuance of a notice of hearing, the staff of the bureau of insurance responsible for the matters which would be at issue in the hearing shall give the TPA or manager an opportunity to confer and discuss the possible complaint and proceedings in person with the commissioner or a representative of the commissioner, and the matter may be disposed of summarily upon agreement of the parties. This subsection shall not be construed to create or diminish any right of a person to bring an action for damages under this section.

(2) A hearing held pursuant to subsection (1) shall be held pursuant to the administrative procedures act, Act No. 306 of the Public Acts of 1969. If, after the hearing, the commissioner determines that the TPA or manager is violating, or has violated section 40, indicating a persistent tendency to engage in conduct prohibited by that section, or has violated or is violating other provisions of this act, the commissioner shall reduce his or her findings and decision to writing, and shall issue and cause to be served upon the TPA or manager a copy of the findings and an order requiring the TPA or manager to cease and desist from engaging in the prohibited activity, and the commissioner may order any of the following:

(a) Payment of a monetary penalty of not more than $500.00 for each violation but not to exceed an aggregate penalty of $5,000.00, unless the TPA or manager knew or reasonably should have known it was in violation of this act, in which case the penalty shall not be more than $2,500.00 for each violation and shall not exceed an aggregate penalty of $25,000.00 for all violations committed in a 6-month period.

(b) Suspension or revocation of the TPA's certificate of authority or the manager's license if the TPA or manager knowingly and persistently violated this act.

(c) Restitution or refund to an aggrieved person.

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History: 1984, Act 218, Eff. Jan. 1, 1985

550.952 Civil fine; suspension or revocation of certificate or license; refusal to issue; grounds for denial, suspension, revocation, or cease and desist order; definition.

Sec. 52.

(1) If a TPA or manager violates a cease and desist order under this act and has been given notice and an opportunity for a hearing held under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may order a civil fine of not more than $10,000.00 for each violation, or a suspension or revocation of the TPA's certificate of authority or manager's license, or both the fine and suspension or revocation.

(2) The director may refuse to issue a TPA certificate of authority under this act if the director 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.

(3) The director may deny, suspend, or revoke the license of a TPA, or may issue a cease and desist order if the TPA is not licensed, if the director finds, after notice and opportunity for hearing, any of the following:

(a) That the TPA has violated any lawful rule or order of the director or any provision of the insurance laws of this state.

(b) That the TPA refused to be examined or to produce its accounts, records, and files for examination, or that any individual responsible for the conduct of 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 director.

(c) That 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 or a payor that it represents to secure full payment or settlement of the claims.

(d) That the TPA is required under this act to have a license and fails at any time to meet any qualification for which issuance of a license could have been refused had the failure then existed and been known to the director, unless the director issued a license with knowledge of the grounds for disqualification and had the authority to waive it.

(e) That any of the individuals responsible for the conduct of affairs of the TPA has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld.

(f) That the TPA's license has been suspended or revoked in another state.

(g) That the TPA has failed to file a timely statement under section 36 or to pay a filing fee under section 18.

(4) As used in this section, "individual responsible for the conduct of affairs of the TPA" means any of the following:

(a) A member of the board of directors, board of trustees, executive committee, or other governing board or committee.

(b) A principal officer for a corporation or a partner or member for a partnership, association, or limited liability company.

(c) A shareholder or member holding directly or indirectly 10% or more of the voting stock, voting securities, or voting interest of the TPA.

(d) Any person who exercises control or influence over the affairs of the TPA.

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History: 1984, Act 218, Eff. Jan. 1, 1985 ;-- Am. 2022, Act 12, Imd. Eff. Feb. 23, 2022

550.954 Alteration, modification, or setting aside of order.

Sec. 54.

The commissioner may at any time, by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued by him or her under this act, when in his or her opinion conditions of fact or of law have so changed as to require that action or if the public interest shall so require.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.956 Judicial review; petition for review; transcript of record and copy of order or decision; hearing cause as civil case in equity; evidence; duty of court; incomplete record; stay of order or decision; jurisdiction.

Sec. 56.

(1) Any final order or decision made, issued, or executed by the commissioner under this act shall be subject to review, after hearing had before the commissioner or a deputy commissioner without leave by the circuit court of Ingham county or the circuit court of the county in which the principal office in this state of the TPA aggrieved by such order or decision is located, or where the person resides against whom such order is directed.

(2) A petition as of right for the review of such order or decision shall be filed within 30 days from the date of service of a copy of said order or decision upon the TPA or other person against whom said order or decision shall run. Copy of such petition for review as filed with and certified by the clerk of the court shall be served upon the commissioner, or in his or her absence upon someone in active charge of the insurance bureau, within 5 days after the filing thereof. If a petition for review is not filed within the 30 days, the party aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed, and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise. Within 10 days after the service of copy of the petition for review, unless the time be extended by order of court, the commissioner shall prepare and file with the clerk of the court in which the petition for review was filed, a complete transcript of the record of the hearing had before him or her, and a true and certified copy of his or her order or decision.

(3) The cause shall be heard before the court as a civil case in equity upon such transcript of the record and such additional evidence as may be offered by any of the parties at the hearing of the cause before the court. It shall be the duty of the court to hear and determine such petition with all convenient speed. If on the hearing before the court it appears that the record filed by the commissioner is incomplete, the court by appropriate order may direct the commissioner to certify any or all parts of the records so omitted. The commencement of proceedings under this section shall not operate as a stay of the enforcement of the commissioner's order or decision unless so ordered by the court or commissioner, and under such conditions as the court or commissioner may impose. The court shall have the jurisdiction to affirm, modify, or to set aside the order or decision of the commissioner and to restrain the enforcement thereof.

History: 1984, Act 218, Eff. Jan. 1, 1985

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550.958 Self-incrimination; false oath or affirmation.

Sec. 58.

(1) A person shall not be excused from attending and testifying, or producing any books, papers, or other documents before any court or magistrate, arbitrator or board of arbitrators, upon any investigation, proceeding, or trial, for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence documentary or otherwise, required of him or her may tend to incriminate him or her; but a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may so testify or produce evidence, documentary or otherwise, and testimony so given or produced shall not be used against him or her upon any criminal investigation or proceeding.

(2) A person required by this act to take an oath or affirmation who makes a false oath or affirmation is guilty of perjury.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.960 Rules.

Sec. 60.

(1) The commissioner, after notice and hearing, may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, as necessary to effectuate the purposes of this act.

(2) A copy of the rules promulgated under this act and any amendments thereto shall be mailed to each TPA authorized to do business in this state 30 days prior to the effective date thereof.

History: 1984, Act 218, Eff. Jan. 1, 1985

550.962 Repealed. 2002, Act 74, Imd. Eff. Mar. 15, 2002.

Compiler's Notes: The repealed section pertained to effective date of act.

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