



# House of Representatives

General Assembly

**File No. 309**

February Session, 2010

House Bill No. 5090

*House of Representatives, April 6, 2010*

The Committee on Insurance and Real Estate reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT REGULATING THIRD-PARTY ADMINISTRATORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) As used in sections 1 to  
2 15, inclusive, of this act:

3 (1) "Adjuster" means an independent or contracted individual who  
4 investigates or settles loss claims. "Adjuster" does not include an  
5 employee of an insurer who investigates or settles claims incurred  
6 under insurance contracts written by the insurer or an affiliated  
7 insurer.

8 (2) "Affiliate" or "affiliated" has the same meaning as provided in  
9 section 38a-1 of the general statutes.

10 (3) "Business entity" means a corporation, a limited liability  
11 company or any other similar form of business organization, whether  
12 for profit or nonprofit.

13 (4) "Commissioner" means the Insurance Commissioner.

14 (5) "Control" or "controlled by" has the same meaning as provided  
15 in section 38a-1 of the general statutes.

16 (6) "Insurance producer" has the same meaning as provided in  
17 section 38a-702a of the general statutes.

18 (7) "Insurer" or "insurance company" means any person or  
19 combination of persons doing any kind or form of insurance business  
20 other than a fraternal benefit society, and includes a captive insurance  
21 company, as defined in section 38a-91aa of the general statutes, a  
22 captive insurer as defined in section 38-91k of the general statutes, a  
23 licensed insurance company, a medical service corporation, a hospital  
24 service corporation, a health care center, and a consumer dental plan  
25 that provides employee welfare benefits on a self-funded basis or as  
26 defined in section 38a-577 of the general statutes.

27 (8) "NAIC" means the National Association of Insurance  
28 Commissioners.

29 (9) "Person" has the same meaning as provided in section 38a-1 of  
30 the general statutes.

31 (10) "Sell" means the exchange of an insurance contract for money or  
32 other consideration, by any means, on behalf of an insurance company.

33 (11) "Third-party administrator" means any person who directly or  
34 indirectly underwrites, collects premiums or charges from, or adjusts  
35 or settles claims on, residents of this state in connection with life,  
36 annuity or health coverage offered or provided by an insurer. "Third-  
37 party administrator" does not include:

38 (A) An employer administering its employee benefit plan or the  
39 benefit plan of an affiliated employer under common management and  
40 control;

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

42 (C) An insurer that is licensed in this state or is acting as an  
43 authorized insurer with respect to insurance lawfully issued to cover a  
44 Connecticut resident, and sales representatives thereof;

45 (D) An insurance producer who is licensed to sell life, annuity or  
46 health coverage in this state, whose activities are limited exclusively to  
47 the sale of insurance;

48 (E) A creditor acting on behalf of its debtors with respect to  
49 insurance covering a debt between the creditor and its debtors;

50 (F) A trust and its trustees, agents and employees acting pursuant to  
51 such trust established in conformity with 29 USC Section 186, as  
52 amended from time to time;

53 (G) A trust exempt from taxation under Section 501(a) of the  
54 Internal Revenue Code of 1986, or any subsequent corresponding  
55 internal revenue code of the United States, as amended from time to  
56 time, and its trustees and employees acting pursuant to such trust, or a  
57 custodian and the custodian's agents and employees acting pursuant  
58 to a custodian account that meets the requirements of Section 401(f) of  
59 the Internal Revenue Code of 1986, or any subsequent corresponding  
60 internal revenue code of the United States, as amended from time to  
61 time;

62 (H) A credit union or a financial institution that is subject to  
63 supervision or examination by federal or state banking authorities, or a  
64 mortgage lender, to the extent such credit union, financial institution  
65 or mortgage lender collects or remits premiums to licensed insurance  
66 producers or limited lines producers or to authorized insurers, in  
67 connection with loan payments;

68 (I) A credit card issuing company that advances or collects  
69 premiums or charges from its credit cardholders who have authorized  
70 collection;

71 (J) An attorney-at-law who adjusts or settles claims in the normal  
72 course of such attorney's practice or employment and who does not

73 collect premiums or charges in connection with life, annuity or health  
74 coverage;

75 (K) An adjuster who is licensed in this state or is not subject to the  
76 licensure requirements of chapter 702 of the general statutes and  
77 whose activities are limited to adjusting claims;

78 (L) An insurance producer who is licensed in this state and acting as  
79 a managing general agent, as defined in section 38a-90a of the general  
80 statutes, whose activities are limited exclusively to those specified in  
81 said section;

82 (M) A business entity that is affiliated with an insurer licensed in  
83 this state and that undertakes activities as a third-party administrator  
84 only for the direct and assumed insurance business of the affiliated  
85 insurer;

86 (N) A consortium of federally qualified health centers funded by the  
87 state, providing services only to the recipients of programs  
88 administered by the Department of Social Services;

89 (O) A pharmacy benefits manager registered under section 38a-  
90 479bbb of the general statutes;

91 (P) An entity providing administrative services to the Health  
92 Reinsurance Association established under section 38a-556 of the  
93 general statutes; or

94 (Q) A nonprofit association or one of its direct subsidiaries that  
95 provides access to insurance as part of the benefits or services such  
96 association or subsidiary makes available to its members.

97 (12) "Underwrites" or "underwriting" means the acceptance of  
98 employer or individual applications for coverage of individuals in  
99 accordance with the written rules of the insurer or self-funded plan,  
100 and the overall planning and coordination of a benefits program.

101 (13) "Uniform application" means the current version of the

102 National Association of Insurance Commissioners' Uniform  
103 Application for Third-Party Administrators.

104 Sec. 2. (NEW) (*Effective October 1, 2010*) (a) No person shall offer to  
105 act as or hold himself out to be a third-party administrator in this state  
106 unless such person is licensed pursuant to section 11 of this act, or is  
107 exempt from licensure pursuant to subsection (b) of this section. This  
108 requirement shall not apply to a person employed by a third-party  
109 administrator to the extent that such person's activities are under the  
110 supervision and control of the third-party administrator. The authority  
111 granted to a third-party administrator pursuant to sections 1 to 10,  
112 inclusive, of this act shall not exempt such third-party administrator's  
113 employees from the licensing requirements of chapters 701b and 702 of  
114 the general statutes.

115 (b) (1) Any insurer licensed in this state that directly or indirectly  
116 underwrites, collects premiums or charges from, or adjusts or settles  
117 claims for other than its policyholders, subscribers and certificate  
118 holders shall be exempt from sections 1 to 15, inclusive, of this act,  
119 provided such activities only involve the lines of insurance for which  
120 such insurer is licensed in this state. Any such insurer shall (A) be  
121 subject to the provisions of chapter 704 of the general statutes, (B)  
122 respond to all complaint inquiries received from the Insurance  
123 Department, not later than ten calendar days after the date a complaint  
124 is received by the insurer, and (C) with respect to any advertising that  
125 mentions any customer, obtain such customer's prior written consent.

126 (2) Nothing in this section shall authorize the commissioner to  
127 regulate a self-insured health plan subject to the Employee Retirement  
128 Income Security Act of 1974. The commissioner is authorized to  
129 regulate those activities an insurer undertakes for the administration of  
130 a self-insured health plan that do not relate to the health benefit plan  
131 and that comport with the commissioner's statutory authority to  
132 regulate insurance and the business of insurance as provided for in 29  
133 USC 1144, as amended from time to time.

134 (c) No third-party administrator shall act as such without a written

135 agreement between such third-party administrator and an insurer or  
136 other person utilizing the services of the third-party administrator,  
137 which shall be retained as part of the official records of both the third-  
138 party administrator and such insurer or other person for the duration  
139 of such agreement and for five years thereafter. The agreement shall  
140 contain all provisions required by this section, except insofar as those  
141 provisions that do not apply to the activities performed by the third-  
142 party administrator.

143 (d) The written agreement set forth in subsection (c) of this section  
144 shall include, but not be limited to:

145 (1) A statement of activities that the third-party administrator shall  
146 undertake on behalf of the insurer or other person utilizing the services  
147 of the third-party administrator, and the lines, classes or types of  
148 insurance such third-party administrator is authorized to administer;

149 (2) A statement of the activities and responsibilities of the third-  
150 party administrator regarding the administration of or any standards  
151 pertaining to business underwritten by the insurer, benefits, premium  
152 rates, underwriting criteria or claims payment;

153 (3) A provision requiring the third-party administrator to render an  
154 accounting, on such frequency as the parties agree, that details all  
155 transactions performed by the third-party administrator pertaining to  
156 the business underwritten by the insurer or the business of the person  
157 utilizing the services of the third-party administrator;

158 (4) The procedures for any withdrawals to be made by the third-  
159 party administrator from the fiduciary account established under  
160 section 7 of this act. Such procedures shall address, but not be limited  
161 to: (A) Remittance to an insurer or other person utilizing the services of  
162 the third-party administrator who is entitled to remittance, (B) deposit  
163 in an account maintained in the name of the insurer or other person  
164 utilizing the services of the third-party administrator, (C) transfer to  
165 and deposit in a claims-paying account, with claims to be paid as  
166 provided for in subsection (d) of section 7 of this act, (D) payment to a

167 group policyholder for remittance to the insurer or other person  
168 utilizing the services of the third-party administrator entitled to such  
169 remittance, (E) payment to the third-party administrator for its  
170 commissions, fees or charges, and (F) remittance of return premiums to  
171 the person or persons entitled to such return premiums;

172 (5) Procedures and requirements for the disclosures required to be  
173 made by the third-party administrator under section 9 of this act; and

174 (6) A termination provision, by which either party to the written  
175 agreement may terminate such agreement for cause, that includes a  
176 procedure to resolve any disputes regarding the cause for termination  
177 of such agreement.

178 (e) A third-party administrator or insurer or other person utilizing  
179 the services of the third-party administrator may, with written notice,  
180 terminate the written agreement for cause as provided in such written  
181 agreement. The insurer may suspend the underwriting authority of the  
182 third-party administrator during the pendency of any dispute  
183 regarding the cause for termination of the written agreement. The  
184 insurer or other person utilizing the services of the third-party  
185 administrator shall fulfill any legal obligations with respect to policies  
186 or plans affected by the written agreement, regardless of any dispute  
187 between the third-party administrator and the insurer or other person  
188 utilizing the services of the third-party administrator.

189 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) If an insurer or other  
190 person utilizes the services of a third-party administrator, the payment  
191 of any premiums or charges by or on behalf of an insured to the third-  
192 party administrator shall be deemed to have been received by the  
193 insurer or other person utilizing the services of the third-party  
194 administrator.

195 (b) Return premium payments or claim payments forwarded by the  
196 insurer or other person utilizing the services of the third-party  
197 administrator to the third-party administrator shall not be deemed to  
198 have been paid to the insured or claimant until such payments are

199 received by such insured or claimant.

200 (c) Nothing in this section shall limit any right of an insurer or other  
201 person utilizing the services of a third-party administrator to bring a  
202 cause of action arising from the failure of such third-party  
203 administrator to make payments to the insurer, other person utilizing  
204 the services of the third-party administrator, insureds or claimants.

205 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) (1) Each third-party  
206 administrator shall maintain and make available to the insurer or other  
207 person utilizing the services of the third-party administrator complete  
208 books and records of all transactions performed on behalf of the  
209 insurer or other person utilizing the services of the third-party  
210 administrator. Each third-party administrator shall (A) maintain such  
211 books and records in accordance with prudent standards of insurance  
212 record keeping, and (B) retain such books and records for a period of  
213 not less than five years from the date of their creation.

214 (2) The insurer or other person utilizing the services of a third-party  
215 administrator shall own any records generated by such third-party  
216 administrator pertaining to such insurer or other person utilizing the  
217 services of such third-party administrator. The third-party  
218 administrator shall retain the right to maintain continued access to  
219 books and records to permit the third-party administrator to fulfill all  
220 of its contractual obligations to the insurer, other person utilizing the  
221 services of the third-party administrator, insureds or claimants.

222 (b) An insurer that is affiliated with a business entity as set forth in  
223 subparagraph (M) of subdivision (11) of section 1 of this act shall be  
224 responsible for the acts of such business entity to the extent of such  
225 business entity's activities as a third-party administrator for such  
226 insurer. Such insurer shall be responsible for furnishing the books and  
227 records of all transactions performed on behalf of the insurer to the  
228 commissioner upon the commissioner's request.

229 (c) The commissioner shall have access for the purposes of  
230 examination, audit and inspection to books and records maintained by

231 a third-party administrator. Any documents, materials or other  
232 information in the possession or control of the commissioner that are  
233 furnished by a third-party administrator, insurer, insurance producer  
234 or employee or agent thereof acting on behalf of such third-party  
235 administrator, insurer or insurance producer, or obtained by the  
236 commissioner in an investigation shall (1) be confidential by law and  
237 privileged; (2) not be subject to disclosure under section 1-210 of the  
238 general statutes; (3) not be subject to subpoena; and (4) not be subject  
239 to discovery or admissible in evidence in any private civil action. The  
240 commissioner may use such documents, materials or other information  
241 in the furtherance of any regulatory or legal action brought as a part of  
242 the commissioner's official duties.

243 (d) Neither the commissioner nor any person who receives  
244 documents, materials or other information as set forth in subsection (c)  
245 of this section while acting under the authority of the commissioner  
246 shall testify or be required to testify in any private civil action  
247 concerning such documents, materials or information.

248 (e) To assist the commissioner in the performance of the  
249 commissioner's duties, the commissioner may:

250 (1) Share documents, materials or other information, including  
251 documents, materials or other information deemed confidential and  
252 privileged pursuant to subsection (c) of this section, with other state,  
253 federal and international regulatory agencies, the National Association  
254 of Insurance Commissioners or its affiliates or subsidiaries and state,  
255 federal and international law enforcement authorities, provided the  
256 recipient of such documents, materials or other information agrees to  
257 maintain the confidentiality and privileged status of such documents,  
258 materials or other information;

259 (2) Receive documents, materials or other information, including  
260 confidential and privileged documents, materials or other information  
261 from the National Association of Insurance Commissioners or its  
262 affiliates or subsidiaries and from regulatory and law enforcement  
263 officials of foreign or domestic jurisdictions. The commissioner shall

264 maintain as confidential or privileged any documents, materials or  
265 other information received with notice or the understanding that such  
266 documents, materials or other information are confidential or  
267 privileged under the laws of the jurisdiction that is the source of such  
268 documents, materials or other information; and

269 (3) Enter into agreements governing the sharing and use of  
270 information consistent with this subsection.

271 (f) No waiver of any applicable privilege or claim of confidentiality  
272 in any documents, materials or other information shall occur as a  
273 result of disclosure to the commissioner or of sharing in accordance  
274 with subsection (e) of this section.

275 (g) Nothing in sections 1 to 15, inclusive, of this act shall prohibit the  
276 commissioner from releasing final, adjudicated actions, including for  
277 cause terminations of licenses issued to third-party administrators, to a  
278 database or other clearinghouse service maintained by the National  
279 Association of Insurance Commissioners or its affiliates or subsidiaries.

280 (h) Notwithstanding the provisions of subparagraph (B) of  
281 subdivision (1) of subsection (a) of this section, if a written agreement  
282 set forth in subsection (c) of this section is terminated, the third-party  
283 administrator may, by a separate written agreement with the insurer  
284 or other person utilizing the services of the third-party administrator,  
285 transfer all books and records to a new third-party administrator. Such  
286 new third-party administrator shall acknowledge to the insurer or  
287 other person utilizing the services of the new third-party  
288 administrator, in writing, that the new third-party administrator shall  
289 be responsible for retaining the books and records of the prior third-  
290 party administrator as required under subparagraph (B) of subdivision  
291 (1) of subsection (a) of this section.

292 Sec. 5. (NEW) (*Effective October 1, 2010*) A third-party administrator  
293 shall only use advertising pertaining to the business underwritten by  
294 an insurer that has been approved, in writing, by the insurer prior to  
295 its use. A third-party administrator that mentions any customer or

296 person utilizing the services of the third-party administrator in its  
297 advertising shall obtain such customer's or person's prior written  
298 consent.

299       Sec. 6. (NEW) (*Effective October 1, 2010*) (a) Each insurer or other  
300 person utilizing the services of a third-party administrator shall be  
301 responsible for determining the benefits, premium rates, underwriting  
302 criteria and claims payment procedures for the lines, classes or types of  
303 insurance such third-party administrator is authorized to administer,  
304 and for securing reinsurance, if any. The insurer or other person  
305 utilizing the services of a third-party administrator shall provide to  
306 such third-party administrator, in writing, procedures pertaining to  
307 such third-party administrator's administration of benefits, premium  
308 rates, underwriting criteria and claims payment. Each insurer or other  
309 person utilizing the services of a third-party administrator shall be  
310 responsible for the competent administration of such insurer's or other  
311 person's benefit and service programs.

312       (b) If a third-party administrator administers benefits for more than  
313 one hundred certificate holders on behalf of an insurer or other person  
314 utilizing the services of a third-party administrator, such insurer or  
315 other person shall, at least semiannually, conduct a review of the  
316 operations of the third-party administrator. At least one such review  
317 shall be an on-site audit of the operations of the third-party  
318 administrator.

319       Sec. 7. (NEW) (*Effective October 1, 2010*) (a) All premiums or charges  
320 collected by a third-party administrator on behalf of or for an insurer  
321 or other person utilizing the services of a third-party administrator,  
322 and the return of premiums received from such insurer or other  
323 person, shall be held by the third-party administrator in a fiduciary  
324 capacity. The funds shall be immediately remitted to the person  
325 entitled to them or deposited promptly in a fiduciary account  
326 established and maintained by the third-party administrator in a  
327 federal or state chartered, federally insured financial institution. The  
328 third-party administrator shall render an accounting to the insurer or

329 other person utilizing the services of a third-party administrator that  
330 details all transactions performed by the third-party administrator  
331 pertaining to the business underwritten by the insurer or the business  
332 of the person utilizing the services of a third-party administrator.

333 (b) Each third-party administrator that deposits in a fiduciary  
334 account charges or premiums collected on behalf of or for one or more  
335 insurers or other persons utilizing the services of the third-party  
336 administrator shall keep clear records of the deposits in and  
337 withdrawals from the account on behalf of each insurer or other  
338 person utilizing the services of the third-party administrator. The  
339 third-party administrator shall keep copies of all the records and, upon  
340 request by the insurer or other person utilizing the services of the  
341 third-party administrator, shall furnish such insurer or other person  
342 with a copy of the records of the deposits and withdrawals pertaining  
343 to such insurer or other person.

344 (c) A third-party administrator shall not pay any claim by making  
345 withdrawals from a fiduciary account in which premiums or charges  
346 are deposited. Withdrawals from the account shall be made as  
347 provided in the written agreement set forth in subsection (c) of section  
348 2 of this act.

349 (d) All claims paid by the third-party administrator from funds  
350 collected on behalf of or for an insurer or other person utilizing the  
351 services of the third-party administrator shall be paid only by drafts or  
352 checks of, and as authorized by, such insurer or other person.

353 Sec. 8. (NEW) (*Effective October 1, 2010*) (a) A third-party  
354 administrator shall not enter into any written or oral agreement or  
355 understanding with an insurer or other person utilizing the services of  
356 the third-party administrator that makes or has the effect of making  
357 the amount of the third-party administrator's commissions, fees, or  
358 charges contingent upon savings effected in the adjustment, settlement  
359 or payment of losses covered by the insurer's or other person utilizing  
360 the services of the third-party administrator's obligations. This  
361 provision shall not prohibit a third-party administrator from receiving

362 performance-based compensation for providing hospital auditing or  
363 other auditing services.

364 (b) This section shall not prevent the compensation of a third-party  
365 administrator from being based on premiums or charges collected or  
366 the number of claims paid or processed.

367 Sec. 9. (NEW) (*Effective October 1, 2010*) (a) When the services of a  
368 third-party administrator are utilized, such third-party administrator  
369 shall provide a written notice, approved by the insurer or other person  
370 utilizing the services of the third-party administrator, to insureds  
371 advising them of the identity of, and relationship among, the third-  
372 party administrator, the policyholder and the insurer or other person  
373 utilizing the services of the third-party administrator.

374 (b) When a third-party administrator collects premiums, charges or  
375 fees, the reason for collection of each item shall be identified to the  
376 insured and each item shall be shown separately. Additional charges  
377 shall not be made for services to the extent the services have been paid  
378 for by the insurer or other person utilizing the services of the third-  
379 party administrator.

380 (c) The third-party administrator shall disclose to the insurer or  
381 other person utilizing the services of the third-party administrator all  
382 charges, fees and commissions that the third-party administrator  
383 receives arising from services it provides for the insurer or other  
384 person utilizing the services of the third-party administrator, including  
385 any fees or commissions paid by insurers providing reinsurance or  
386 stop loss coverage.

387 Sec. 10. (NEW) (*Effective October 1, 2010*) Any policies, certificates,  
388 booklets, termination notices or other written communications  
389 delivered by an insurer or other person utilizing the services of a third-  
390 party administrator to such third-party administrator for delivery to  
391 such insurer's or other person's insureds shall be delivered by the  
392 third-party administrator promptly after receipt of instructions to  
393 deliver them from an insurer or other person utilizing the services of

394 the third-party administrator.

395 Sec. 11. (NEW) (*Effective October 1, 2010*) (a) A third-party  
396 administrator applying for licensure shall submit an application to the  
397 commissioner by using the uniform application and paying a fee  
398 pursuant to section 38a-11 of the general statutes, as amended by this  
399 act. The uniform application shall include or be accompanied by the  
400 following information and documents: (1) All basic organizational  
401 documents of the applicant, including any articles of incorporation,  
402 articles of association, partnership agreement, trade name certificate,  
403 trust agreement, shareholder agreement and other applicable  
404 documents and all amendments to such documents; (2) the bylaws,  
405 rules, regulations or similar documents regulating the internal affairs  
406 of the applicant; (3) a NAIC biographical affidavit for the individuals  
407 responsible for the conduct of affairs of the applicant, including (A) all  
408 members of the board of directors, board of trustees, executive  
409 committee or other governing board or committee, (B) the principal  
410 officers in the case of a corporation or the partners or members in the  
411 case of a partnership, association or limited liability company, (C) any  
412 shareholders or member holding directly or indirectly ten per cent or  
413 more of the voting stock, voting securities or voting interest of the  
414 applicant, and (D) any other person who exercises control or influence  
415 over the affairs of the applicant; (4) audited annual financial  
416 statements or reports for the two most recent fiscal years that prove the  
417 applicant has a positive net worth. If the applicant has been in  
418 existence for less than two fiscal years, the uniform application shall  
419 include financial statements or reports, certified by an officer of the  
420 applicant and prepared in accordance with generally accepted  
421 accounting principles, for any completed fiscal years and for any  
422 month during the current fiscal year for which such financial  
423 statements or reports have been completed. An audited annual  
424 financial statement or report prepared on a consolidated basis shall  
425 include a columnar consolidating or combining worksheet that shall be  
426 filed with the report and include the following: (A) Amounts shown on  
427 the consolidated audited financial report shall be shown on the  
428 worksheet, (B) amounts for each entity shall be stated separately, and

429 (C) explanations of consolidating and eliminating entries shall be  
430 included. The applicant shall include such other information as the  
431 commissioner may require to review the current financial condition of  
432 the applicant; (5) a statement describing the business plan including  
433 information on staffing levels and activities proposed in this state and  
434 nationwide. The plan shall provide details setting forth the applicant's  
435 capability for providing a sufficient number of experienced and  
436 qualified personnel in the areas of claims processing, recordkeeping  
437 and underwriting; and (6) such other pertinent information as may be  
438 required by the commissioner.

439 (b) A third-party administrator applying for licensure shall make  
440 available for inspection by the commissioner copies of all written  
441 agreements with insurers or other persons utilizing the services of the  
442 third-party administrator.

443 (c) A third-party administrator applying for licensure shall produce  
444 its accounts, records and files for examination and shall make its  
445 officers available to give information with respect to its affairs, as often  
446 as is reasonably required by the commissioner.

447 (d) The commissioner may refuse to issue a license if the  
448 commissioner determines that the third-party administrator or any  
449 individual responsible for the conduct of the affairs of the third-party  
450 administrator is not competent, trustworthy, financially responsible or  
451 of good personal and business reputation, or has had an insurance or a  
452 third-party administrator certificate of authority or license denied or  
453 revoked for cause by any jurisdiction, or if the commissioner  
454 determines that any of the grounds set forth in section 14 of this act  
455 exists with respect to the third-party administrator.

456 (e) Any license issued to a third-party administrator shall be in force  
457 until September thirtieth of each year, unless sooner revoked or  
458 suspended as provided in this section. The license may be renewed, at  
459 the discretion of the commissioner, upon payment of the fee specified  
460 in section 38a-11 of the general statutes, as amended by this act,  
461 without the resubmission of the detailed information required in the

462 original application.

463 (f) A third-party administrator licensed or applying for licensure  
464 under this section shall notify the commissioner immediately of any  
465 material change in its ownership, control or other fact or circumstance  
466 affecting its qualification for a license in this state.

467 (g) A third-party administrator licensed or applying for a license  
468 under this section that administers or will administer governmental or  
469 church self-insured plans in this state or any other state shall maintain  
470 a surety bond, for use by the commissioner and the insurance  
471 regulatory authority of any additional state in which the third-party  
472 administrator is authorized to conduct business, to cover individuals  
473 and persons who have remitted premiums, charges or fees to the third-  
474 party administrator in the course of the third-party administrator's  
475 business, in the greater of the following amounts: (1) One hundred  
476 thousand dollars; or (2) ten per cent of the aggregate total amount of  
477 self-funded coverage under governmental plans or church plans  
478 handled in this state and all additional states in which the third-party  
479 administrator is authorized to conduct business.

480 Sec. 12. (NEW) (*Effective October 1, 2010*) A person who is not  
481 required to be licensed as a third-party administrator under  
482 subdivision (11) of section 1 or section 2 of this act and who directly or  
483 indirectly underwrites, collects charges or premiums from, or adjusts  
484 or settles claims on residents of this state, only in connection with life,  
485 annuity or health coverage provided by a self-funded plan other than  
486 governmental or church plans, shall register annually with the  
487 commissioner not later than October first on a form designated by the  
488 commissioner.

489 Sec. 13. (NEW) (*Effective October 1, 2010*) (a) Each third-party  
490 administrator licensed under section 11 of this act shall file an annual  
491 report for the preceding calendar year with the commissioner on or  
492 before July first of each year or within such extension of time as the  
493 commissioner may grant for good cause. The annual report shall  
494 include an audited financial statement performed by an independent

495 certified public accountant. An audited annual financial statement or  
496 report prepared on a consolidated basis shall include a columnar  
497 consolidating or combining worksheet that shall be filed with the  
498 report and include the following: (1) Amounts shown on the  
499 consolidated audited financial report shall be shown on the worksheet;  
500 (2) amounts for each entity shall be stated separately; and (3)  
501 explanations of consolidating and eliminating entries shall be  
502 included. The report shall be in the form and contain such information  
503 as the commissioner prescribes and shall be verified by at least two  
504 officers of the third-party administrator.

505 (b) The annual report shall include the complete names and  
506 addresses of all insurers or other persons with which the third-party  
507 administrator had written agreements during the preceding fiscal year.

508 (c) At the time of filing the annual report, the third-party  
509 administrator shall pay a filing fee as specified in section 38a-11 of the  
510 general statutes, as amended by this act.

511 (d) The commissioner shall review the most recently filed annual  
512 report of each third-party administrator on or before September first of  
513 each year. Upon completion of its review, the commissioner shall: (1)  
514 Issue a certification to the third-party administrator that the annual  
515 report shows the third-party administrator has a positive net worth as  
516 evidenced by audited financial statements and is currently licensed  
517 and in good standing, or noting any deficiencies found in such annual  
518 report or financial statements; or (2) update any electronic database  
519 maintained by the National Association of Insurance Commissioners,  
520 its affiliates or subsidiaries, indicating that the annual report shows the  
521 third-party administrator has a positive net worth as evidenced by  
522 audited financial statements and complies with existing law, or noting  
523 any deficiencies found in such annual report or financial statements.

524 Sec. 14. (NEW) (*Effective October 1, 2010*) (a) The commissioner shall  
525 suspend or revoke the license of a third-party administrator, or shall  
526 issue a cease and desist order if the third-party administrator does not  
527 have a license if, after notice and hearing, the commissioner finds that

528 the third-party administrator: (1) Is in an unsound financial condition;  
529 (2) is using such methods or practices in the conduct of its business so  
530 as to render its further transaction of business in this state hazardous  
531 or injurious to insured persons or the public; or (3) has failed to pay  
532 any judgment rendered against it in this state within sixty days after  
533 the judgment has become final.

534 (b) The commissioner may suspend or revoke the license of a third-  
535 party administrator, or may issue a cease and desist order if the third-  
536 party administrator does not have a license if, after notice and hearing,  
537 the commissioner finds that the third-party administrator: (1) Has  
538 violated any lawful rule or order of the commissioner or any provision  
539 of the insurance laws of this state; (2) (A) has refused to be examined  
540 or to produce its accounts, records and files for examination, or (B) if  
541 any individual responsible for the conduct of the affairs of the third-  
542 party administrator, including (i) members of the board of directors,  
543 board of trustees, executive committee or other governing board or  
544 committee, (ii) the principal officers in the case of a corporation or the  
545 partners or members in the case of a partnership, association or limited  
546 liability company, (iii) any shareholder or member holding directly or  
547 indirectly ten per cent or more of the voting stock, voting securities or  
548 voting interest of the third-party administrator, and (iv) any other  
549 person who exercises control or influence over the affairs of the third-  
550 party administrator, has refused to provide information with respect to  
551 its affairs or to perform other legal obligations as to an examination,  
552 when required by the commissioner; (3) has, without just cause,  
553 refused to pay proper claims or perform services arising under its  
554 contracts or has, without just cause, caused insureds to accept less than  
555 the amount due or caused insureds to employ attorneys or bring suit  
556 against the third-party administrator to secure full payment or  
557 settlement of such claims; (4) fails at any time to meet any qualification  
558 for which issuance of a license could have been refused had the failure  
559 then existed and been known to the commissioner; (5) has any  
560 individual who is responsible for the conduct of its affairs, including  
561 (A) members of the board of directors, board of trustees, executive  
562 committee or other governing board or committee, (B) the principal

563 officers in the case of a corporation or the partners or members in the  
564 case of a partnership, association or limited liability company, (C) any  
565 shareholder or member holding directly or indirectly ten per cent or  
566 more of its voting stock, voting securities or voting interest, and (D)  
567 any other person who exercises control or influence over its affairs,  
568 who has been convicted of or has entered a plea of guilty or nolo  
569 contendere to a felony, without regard to whether adjudication was  
570 withheld; (6) is under suspension or revocation in another state; or (7)  
571 has failed to file a timely annual report pursuant to section 13 of this  
572 act.

573 (c) (1) The commissioner may, without advance notice and before a  
574 hearing, issue an order immediately suspending the license of a third-  
575 party administrator, or may issue a cease and desist order if the third-  
576 party administrator does not have a license, if the commissioner finds  
577 that one or more of the following circumstances exist: (A) The third-  
578 party administrator is insolvent or impaired, (B) a proceeding for  
579 receivership, conservatorship, rehabilitation or other delinquency  
580 proceeding regarding the third-party administrator has been  
581 commenced in any state, or (C) the financial condition or business  
582 practices of the third-party administrator otherwise pose an imminent  
583 threat to the public health, safety or welfare of the residents of this  
584 state.

585 (2) At the time the commissioner issues an order pursuant to  
586 subdivision (1) of this subsection, the commissioner shall serve notice  
587 to the third-party administrator that such third-party administrator  
588 may request a hearing not later than ten business days after the receipt  
589 of the order. If a hearing is requested, the commissioner shall schedule  
590 a hearing not later than ten business days after receipt of the request. If  
591 a hearing is not requested and the commissioner does not choose to  
592 hold one, the order shall remain in effect until modified or vacated by  
593 the commissioner.

594 Sec. 15. (NEW) (*Effective October 1, 2010*) The Insurance  
595 Commissioner may adopt regulations, in accordance with chapter 54

596 of the general statutes, to implement the provisions of sections 1 to 14,  
597 inclusive, of this act.

598 Sec. 16. Subsection (a) of section 38a-15 of the general statutes is  
599 repealed and the following is substituted in lieu thereof (*Effective*  
600 *October 1, 2010*):

601 (a) The commissioner shall, as often as [he] the commissioner deems  
602 it expedient, undertake a market conduct examination of the affairs of  
603 any insurance company, health care center, third-party administrator,  
604 as defined in section 1 of this act, or fraternal benefit society doing  
605 business in this state.

606 Sec. 17. Subsection (a) of section 38a-11 of the 2010 supplement to  
607 the general statutes is repealed and the following is substituted in lieu  
608 thereof (*Effective October 1, 2010*):

609 (a) The commissioner shall demand and receive the following fees:  
610 (1) For the annual fee for each license issued to a domestic insurance  
611 company, two hundred dollars; (2) for receiving and filing annual  
612 reports of domestic insurance companies, fifty dollars; (3) for filing all  
613 documents prerequisite to the issuance of a license to an insurance  
614 company, two hundred twenty dollars, except that the fee for such  
615 filings by any health care center, as defined in section 38a-175, shall be  
616 one thousand three hundred fifty dollars; (4) for filing any additional  
617 paper required by law, thirty dollars; (5) for each certificate of  
618 valuation, organization, reciprocity or compliance, forty dollars; (6) for  
619 each certified copy of a license to a company, forty dollars; (7) for each  
620 certified copy of a report or certificate of condition of a company to be  
621 filed in any other state, forty dollars; (8) for amending a certificate of  
622 authority, two hundred dollars; (9) for each license issued to a rating  
623 organization, two hundred dollars. In addition, insurance companies  
624 shall pay any fees imposed under section 12-211; (10) a filing fee of  
625 fifty dollars for each initial application for a license made pursuant to  
626 section 38a-769; (11) with respect to insurance agents' appointments:  
627 (A) A filing fee of fifty dollars for each request for any agent  
628 appointment, except that no filing fee shall be payable for a request for

629 agent appointment by an insurance company domiciled in a state or  
630 foreign country which does not require any filing fee for a request for  
631 agent appointment for a Connecticut insurance company; (B) a fee of  
632 one hundred dollars for each appointment issued to an agent of a  
633 domestic insurance company or for each appointment continued; and  
634 (C) a fee of eighty dollars for each appointment issued to an agent of  
635 any other insurance company or for each appointment continued,  
636 except that (i) no fee shall be payable for an appointment issued to an  
637 agent of an insurance company domiciled in a state or foreign country  
638 which does not require any fee for an appointment issued to an agent  
639 of a Connecticut insurance company, and (ii) the fee shall be twenty  
640 dollars for each appointment issued or continued to an agent of an  
641 insurance company domiciled in a state or foreign country with a  
642 premium tax rate below Connecticut's premium tax rate; (12) with  
643 respect to insurance producers: (A) An examination fee of fifteen  
644 dollars for each examination taken, except when a testing service is  
645 used, the testing service shall pay a fee of fifteen dollars to the  
646 commissioner for each examination taken by an applicant; (B) a fee of  
647 eighty dollars for each license issued; (C) a fee of eighty dollars per  
648 year, or any portion thereof, for each license renewed; and (D) a fee of  
649 eighty dollars for any license renewed under the transitional process  
650 established in section 38a-784; (13) with respect to public adjusters: (A)  
651 An examination fee of fifteen dollars for each examination taken,  
652 except when a testing service is used, the testing service shall pay a fee  
653 of fifteen dollars to the commissioner for each examination taken by an  
654 applicant; and (B) a fee of two hundred fifty dollars for each license  
655 issued or renewed; (14) with respect to casualty adjusters: (A) An  
656 examination fee of twenty dollars for each examination taken, except  
657 when a testing service is used, the testing service shall pay a fee of  
658 twenty dollars to the commissioner for each examination taken by an  
659 applicant; (B) a fee of eighty dollars for each license issued or renewed;  
660 and (C) the expense of any examination administered outside the state  
661 shall be the responsibility of the entity making the request and such  
662 entity shall pay to the commissioner two hundred dollars for such  
663 examination and the actual traveling expenses of the examination

664 administrator to administer such examination; (15) with respect to  
665 motor vehicle physical damage appraisers: (A) An examination fee of  
666 eighty dollars for each examination taken, except when a testing  
667 service is used, the testing service shall pay a fee of eighty dollars to  
668 the commissioner for each examination taken by an applicant; (B) a fee  
669 of eighty dollars for each license issued or renewed; and (C) the  
670 expense of any examination administered outside the state shall be the  
671 responsibility of the entity making the request and such entity shall  
672 pay to the commissioner two hundred dollars for such examination  
673 and the actual traveling expenses of the examination administrator to  
674 administer such examination; (16) with respect to certified insurance  
675 consultants: (A) An examination fee of twenty-six dollars for each  
676 examination taken, except when a testing service is used, the testing  
677 service shall pay a fee of twenty-six dollars to the commissioner for  
678 each examination taken by an applicant; (B) a fee of two hundred fifty  
679 dollars for each license issued; and (C) a fee of two hundred fifty  
680 dollars for each license renewed; (17) with respect to surplus lines  
681 brokers: (A) An examination fee of twenty dollars for each  
682 examination taken, except when a testing service is used, the testing  
683 service shall pay a fee of twenty dollars to the commissioner for each  
684 examination taken by an applicant; and (B) a fee of six hundred  
685 twenty-five dollars for each license issued or renewed; (18) with  
686 respect to fraternal agents, a fee of eighty dollars for each license  
687 issued or renewed; (19) a fee of twenty-six dollars for each license  
688 certificate requested, whether or not a license has been issued; (20)  
689 with respect to domestic and foreign benefit societies shall pay: (A) For  
690 service of process, fifty dollars for each person or insurer to be served;  
691 (B) for filing a certified copy of its charter or articles of association,  
692 fifteen dollars; (C) for filing the annual report, twenty dollars; and (D)  
693 for filing any additional paper required by law, fifteen dollars; (21)  
694 with respect to foreign benefit societies: (A) For each certificate of  
695 organization or compliance, fifteen dollars; (B) for each certified copy  
696 of permit, fifteen dollars; and (C) for each copy of a report or certificate  
697 of condition of a society to be filed in any other state, fifteen dollars;  
698 (22) with respect to reinsurance intermediaries: A fee of six hundred

699 twenty-five dollars for each license issued or renewed; (23) with  
 700 respect to life settlement providers: (A) A filing fee of twenty-six  
 701 dollars for each initial application for a license made pursuant to  
 702 section 38a-465a; and (B) a fee of forty dollars for each license issued or  
 703 renewed; (24) with respect to life settlement brokers: (A) A filing fee of  
 704 twenty-six dollars for each initial application for a license made  
 705 pursuant to section 38a-465a; and (B) a fee of forty dollars for each  
 706 license issued or renewed; (25) with respect to preferred provider  
 707 networks, a fee of two thousand seven hundred fifty dollars for each  
 708 license issued or renewed; (26) with respect to rental companies, as  
 709 defined in section 38a-799, a fee of eighty dollars for each permit  
 710 issued or renewed; (27) with respect to medical discount plan  
 711 organizations licensed under section 38a-479rr, a fee of six hundred  
 712 twenty-five dollars for each license issued or renewed; (28) with  
 713 respect to pharmacy benefits managers, an application fee of one  
 714 hundred dollars for each registration issued or renewed; (29) with  
 715 respect to captive insurance companies, as defined in section 38a-91aa,  
 716 a fee of three hundred seventy-five dollars for each license issued or  
 717 renewed; [and] (30) with respect to each duplicate license issued a fee  
 718 of fifty dollars for each license issued; and (31) with respect to third-  
 719 party administrators, as defined in section 1 of this act, (A) a fee of five  
 720 hundred dollars for each license issued, (B) a fee of three hundred fifty  
 721 dollars for each license renewed, and (C) a fee of one hundred dollars  
 722 for each annual report filed pursuant to section 13 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	New section
Sec. 2	October 1, 2010	New section
Sec. 3	October 1, 2010	New section
Sec. 4	October 1, 2010	New section
Sec. 5	October 1, 2010	New section
Sec. 6	October 1, 2010	New section
Sec. 7	October 1, 2010	New section
Sec. 8	October 1, 2010	New section
Sec. 9	October 1, 2010	New section

Sec. 10	<i>October 1, 2010</i>	New section
Sec. 11	<i>October 1, 2010</i>	New section
Sec. 12	<i>October 1, 2010</i>	New section
Sec. 13	<i>October 1, 2010</i>	New section
Sec. 14	<i>October 1, 2010</i>	New section
Sec. 15	<i>October 1, 2010</i>	New section
Sec. 16	<i>October 1, 2010</i>	38a-15(a)
Sec. 17	<i>October 1, 2010</i>	38a-11(a)

**INS**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 11 \$</b>	<b>FY 12 \$</b>
Insurance Dept.	GF - Revenue Gain	60,000	66,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill results in a General Fund revenue gain of \$60,000 in FY 11 and \$66,000 in FY 12 through the Department of Insurance's (DOI's) collection of fees related to the licensing of third-party administrators (TPAs). Under the bill, the initial license fee for TPAs would be \$500, the renewal fee would be \$350, and there would be an annual report filing fee of \$100. It is estimated that 100 TPAs would seek initial licenses and file annual reports in FY 11. In FY 12, it is estimated that 35 TPAs would seek initial licensing (\$17,500), along with 100 renewals (\$35,000), for a total of 135 TPAs licensed in the state and filing annual reports (\$13,500).

There is no fiscal impact to DOI for the licensing of TPAs as this task will be undertaken by DOI's Consumer Services Division. Likewise, it is anticipated that there would be no fiscal impact to that division for the handling of complaints related to TPAs, nor to the Market Conduct Division.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of TPAs licensed in the state.

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**OLR Bill Analysis****HB 5090*****AN ACT REGULATING THIRD-PARTY ADMINISTRATORS.*****SUMMARY:**

This bill requires third-party administrators (TPA) to be licensed by the Insurance Department, file audited financial statements, submit to examination by the department, and pay application and annual fees. With certain exceptions, a TPA is one who, for insured or self-insured programs, directly or indirectly (1) underwrites, (2) collects charges or premiums, or (3) adjusts or settles claims on Connecticut residents.

The bill requires a TPA to enter a written agreement with an insurer before performing duties on the insurer's behalf and hold certain funds in a fiduciary capacity. It requires a TPA to maintain books and records of transactions made on the insurer's behalf and make them available to the insurer for inspection for at least five years after creation. The insurer owns any record the TPA generates pertaining to the insurer.

The bill authorizes the insurance commissioner to suspend or revoke a TPA's license, or issue a cease and desist order if the TPA does not have a license, after notice and hearing. It also authorizes him to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2010

**§ 1 — THIRD-PARTY ADMINISTRATOR**

The bill excludes from the definition of TPA:

1. an employer administering its employee benefit plan or that of an affiliated employer under common management and control;
2. a union administering a benefit plan on its members' behalf;

3. an insurer licensed in Connecticut or acting as an authorized insurer with respect to insurance lawfully issued to cover a Connecticut resident, and its sales representatives;
4. an insurance producer licensed to sell life, annuity, or health coverage in Connecticut, whose activities are limited exclusively to selling insurance;
5. a creditor acting on its debtors' behalf with respect to insurance covering a debt between the creditor and its debtors;
6. a trust and its trustees and agents acting pursuant to a trust established under federal law that restricts financial transactions with labor organizations;
7. A tax-exempt trust (see BACKGROUND) and its trustees, or a custodian and the custodian's agents acting pursuant to an account meeting federal requirements for custodial accounts and contracts treated as qualified trusts;
8. A mortgage lender, credit union, or financial institution subject to supervision or examination by federal or state banking authorities, when collecting or remitting premiums to licensed insurance producers, limited lines producers, or authorized insurers in connection with loan payments;
9. a credit card company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;
10. an attorney adjusting or settling claims in the normal course of his or her practice or employment who does not collect charges or premiums in connection with life, annuity, or health coverage;
11. an adjuster licensed in Connecticut or not subject to state license requirements whose activities are limited to adjusting claims;

12. an insurance producer licensed in Connecticut and acting as a managing general agent whose activities are limited exclusively to those specified in law;
13. a business entity that is affiliated with an insurer licensed in Connecticut and that undertakes activities as a TPA only for the direct and assumed insurance business of the affiliated insurer;
14. a consortium of state-funded federally qualified health centers funded that provide services only to recipients of programs administered by the Department of Social Services;
15. a pharmacy benefits manager registered with the insurance commissioner;
16. an entity providing administrative services to the Health Reinsurance Association; and
17. a nonprofit association or one of its direct subsidiaries that provides access to insurance as part of the benefits or services the association or subsidiary makes available to its members.

### ***Underwriting***

The bill defines “underwriting” as (1) accepting applications from employers or individuals for coverage in accordance with the written rules of the insurer or self-funded plan and (2) the overall planning and coordination of a benefits program.

### ***Adjuster***

The bill defines “adjuster” as an independent or contracted person who investigates or settles claims, but it excludes an insurer's employee who investigates or settles claims incurred under insurance contracts the insurer or an affiliated insurer writes.

### ***Insurer***

The bill defines an “insurer” as a person or people doing insurance business, including a captive insurer, a licensed insurance company, a medical or hospital service corporation, an HMO, or a consumer dental

plan, that provides employee welfare benefits on a self-funded basis. It excludes a fraternal benefit society.

## **§ 2 — LICENSE REQUIREMENT**

The bill prohibits a person from offering to act as, or holding himself out to be, a TPA in Connecticut unless he or she is licensed or exempt from licensure under the bill. This requirement does not apply to a TPA's employee to the extent that his or her activities are under the TPA's supervision and control. The bill does not exempt a TPA's employees from the licensing requirements regarding public adjusters, casualty adjusters, motor vehicle physical damage appraisers, certified insurance consultants, surplus lines brokers, or any other insurance-related occupation for which the commissioner deems a license necessary.

### ***License Exemption***

A licensed insurer that underwrites, collects premiums or charges, or adjusts or settles claims, except for its policyholders, subscribers, and certificate holders, is exempt from the bill's requirements. These insurers must (1) be subject to the Connecticut Unfair Insurance Practices Act, (2) respond to all complaint inquiries received from the Insurance Department within 10 days of receiving them, and (3) obtain a customer's prior written consent for advertising mentioning the customer.

### ***ERISA Plans***

The bill specifies that it does not authorize the commissioner to regulate a self-insured plan subject to the federal Employee Retirement Income Security Act (ERISA). The commissioner is authorized to regulate activities an insurer undertakes for such plans that do not relate to the benefit plan and that comport with his authority under ERISA to regulate the business of insurance.

### ***Written Agreement***

Under the bill, no TPA may act as one without a written agreement with the insurer (or other person using the TPA's services). The

agreement must be kept as part of the official records of both the TPA and the insurer until five years after the contract ends. The agreement must contain all of the following provisions, except to the extent they do not apply to the functions the TPA performs:

1. a statement of activities that the TPA must perform on the insurer's behalf;
2. the lines, classes, or types of insurance the TPA is authorized to administer;
3. a provision requiring the TPA to render an accounting, on an agreed frequency, detailing all transactions it performs pertaining to the insurer's underwritten businesses;
4. the procedures for any withdrawals to be made, including remittance, deposits, transfers to and deposits in a claims-paying account, payment to a group policyholder, payment to the TPA for commissions, fees, or charges, and remittance of return premiums;
5. procedures and requirements for required disclosures; and
6. termination provisions and dispute resolution procedure.

### ***Termination and Disputes Regarding Lawful Obligations***

A TPA or insurer may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may also suspend the TPA's underwriting authority while any dispute regarding the cause for termination of the agreement is pending. In a dispute between the TPA and the insurer regarding the fulfillment of a lawful obligation with respect to a policy or plan subject to the written agreement, the insurer must fulfill the obligation.

### **§ 3 — PAYMENTS TO INSURERS**

The bill specifies that insurance premiums or charges paid to a TPA by an insured party or on its behalf are deemed to have been received by the insurer. "Return premium" or claim payments the insurer

forwards to the TPA are not deemed to have been paid to the insured party or claimant until the insured party or claimant receives them. The bill specifies that it does not limit an insurer's rights to bring suit against the TPA resulting from the TPA's failure to pay the insurer, insured parties, or claimants.

#### **§ 4 — BOOKS AND RECORDS OF TRANSACTIONS PERFORMED ON PAYOR'S BEHALF**

The bill requires a TPA to maintain and make available to an insurer with which it contracts complete books and records of all transactions performed on the insurer's behalf. The TPA must maintain the books and records (1) in accordance with prudent standards of insurance recordkeeping and (2) for at least five years after they were created.

Under the bill, the insurer owns any records the TPA generates pertaining to the insurer. But the TPA retains the right to access the books and records to fulfill its contractual obligations to insured parties, claimants, and the insurer.

If the insurer or TPA cancels the agreement, the TPA may, by written agreement with the insurer, transfer all records to a new TPA instead of retaining them for five years. The new TPA must acknowledge, in writing, that it is responsible for retaining these records.

If a written agreement is terminated, the TPA may, by a separate written agreement with the insurer, transfer all books and records to a new TPA. The new TPA must acknowledge to the insurer, in writing, that it is responsible for retaining the books and records of the prior TPA.

#### ***Insurers Affiliated with Certain Business Entities***

An insurer that is affiliated with a business entity (i.e., a for-profit or nonprofit corporation, a limited liability company, or similar form of business organization) is responsible for the acts of that business entity to the extent of the entity's activities as a TPA for such insurer. The insurer is responsible for furnishing the books and records of all

transactions performed on behalf of the insurer to the commissioner upon the commissioner's request.

### **Access to Books and Records**

The commissioner must have access to examine, audit, and inspect books and records maintained by a TPA. Any documents, materials, or other information in the possession or control of the commissioner that are furnished by a TPA, insurer, insurance producer, or employee or agent acting on behalf of any of them, or obtained by the commissioner in an investigation are (1) confidential by law and privileged, (2) not subject to disclosure under the Freedom of Information Act, (3) not subject to subpoena, and (4) not subject to discovery or admissible in evidence in any private civil action. The commissioner may use these documents, materials, or other information in any regulatory or legal action brought as a part of the commissioner's official duties.

Neither the commissioner nor anyone who receives documents, materials, or other information may testify or be required to testify in any private civil action concerning them.

The commissioner may share and receive documents, materials, or other information deemed confidential and privileged with other state, federal, and international regulatory agencies; the National Association of Insurance Commissioners (NAIC) or its affiliates or subsidiaries; and state, federal, and international law enforcement authorities, provided the recipient of such documents, materials, or other information agrees to maintain their confidentiality and privileged status. He may also enter into agreements governing the sharing and use of information.

Disclosure to the commissioner or sharing documents, material, or other information is not a waiver of any applicable privilege or claim of confidentiality. The bill does not prohibit the commissioner from releasing final, adjudicated actions, including for cause terminations of licenses issued to TPAs, to a database or other clearinghouse service

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maintained by the NAIC or its affiliates or subsidiaries.

### **§ 5 — ADVERTISING BY A TPA**

The bill requires a TPA who advertises on an insurer's behalf to use only advertising that the insurer approved, in writing, before its use. A TPA that mentions any customer or person in its advertising must obtain the customer's or person's prior written consent.

### **§ 6 — ADMINISTRATION OF BENEFITS**

Each insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures for the lines, classes, or types of insurance the TPA is authorized to administer, and for securing reinsurance. The insurer must provide to the TPA, in writing, procedures pertaining to administration of benefits, premium rates, underwriting criteria, and claims payment. Each insurer is responsible for the competent administration of its benefit and service programs.

If the TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer must, at least semiannually, conduct a review of the TPA's operations. At least one such review must be an on-site audit.

### **§ 7 — FIDUCIARY CAPACITY**

The bill requires the TPA to hold in a fiduciary capacity (1) all insurance charges and premiums it collects on behalf of or for an insurer and (2) return premiums received from an insurer.

The bill requires that funds be (1) immediately returned to the person entitled to them or (2) deposited promptly in a fiduciary account the TPA establishes and maintains in a federally insured financial institution. The TPA must provide a periodic accounting to the insurer, detailing all transactions it performed pertaining to the insurer's business.

### ***Record Maintenance***

The bill requires the TPA to keep clear records of deposits and

withdrawals and copies of all records of any fiduciary account it maintained or controlled on an insurer's behalf and, at an insurer's request, give the insurer copies of the deposit and withdrawal records.

### ***Paying Claims***

The bill prohibits a TPA from paying any claim by withdrawing funds from a fiduciary account in which premiums or charges are deposited. It requires that withdrawals from such an account be made as provided in the TPA's written agreement.

The bill requires that all claims a TPA pays from funds collected on behalf of or for an insurer must be paid only by drafts or checks of, and as authorized by, the insurer.

### **§ 8 — COMPENSATION**

The bill prohibits a TPA from entering into an agreement or understanding with an insurer that makes or has the effect of making the TPA's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, or payment of losses covered by the insurer's obligations.

The bill specifies that this prohibition does not prevent a TPA from receiving performance-based compensation for providing hospital or other auditing services. It also does not prevent a TPA's compensation from being based on premiums or charges collected or the number of claims paid or processed.

### **§ 9 — NOTICE AND DISCLOSURE**

The bill requires that when a TPA's services are used, the TPA must provide a written, insurer-approved notice to covered individuals advising them of its identity and the relationship among the TPA, policyholder, and insurer.

The bill requires a TPA, when it collects premiums, charges, or fees, to inform the insured person of the reasons for each. Additional charges are prohibited to the extent the insurer has paid for the services.

The bill requires the TPA to disclose to the insurer all charges, fees, and commissions that it receives for services it provides the insurer, including any fees or commissions paid by insurers providing reinsurance or stop loss coverage.

#### **§ 10 — PROMPTLY DELIVER WRITTEN COMMUNICATIONS**

The bill requires a TPA to promptly deliver written communications on the insurer's behalf. The TPA must deliver, promptly after receiving instructions from the insurer, any policies, certificates, booklets, termination notices, or other written communications the insurer delivers to the TPA for delivery to insured parties or covered individuals.

#### **§ 11 — TPA LICENSING PROCESS**

The bill requires a TPA applying for a license to (1) submit a completed application to the commissioner (by using the current version of the “NAIC’s Uniform Application for Third Party Administrators”) and (2) pay the required fee.

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

1. the applicant’s basic organizational documents, including any articles of incorporation or association; partnership, trust, or shareholder agreement; trade name certificate; and other applicable documents;
2. the bylaws, rules, regulations, or similar documents regulating the applicant's internal affairs;
3. an NAIC biographical affidavit for the people responsible for the applicant's affairs, including (a) all members of the board of directors, board of trustees, executive committee, or other governing board or committee; (b) 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; (c) any shareholder or member directly or indirectly holding 10% or

more of its stock, securities, or interest; and (d) any other person who exercises control or influence over the applicant's affairs;

4. audited annual financial statements or reports for the two most recent fiscal years that prove the applicant has a positive net worth (see below);
5. a statement describing the business plan, including (a) information on staffing levels and activities proposed in Connecticut and nationwide and (b) details of the applicant's capability for providing a sufficient number of experienced and qualified personnel for claims processing, recordkeeping, and underwriting; and
6. other pertinent information the commissioner may require.

#### ***Applicants in Existence for Less than Two Fiscal Years***

If the applicant has been in existence for less than two fiscal years, the uniform application must include financial statements or reports for any completed fiscal years and for any month during the current fiscal year for which these have been completed. The statements or reports must be certified by an officer of the applicant and prepared according to generally accepted accounting principles. An audited statement or report prepared on a consolidated basis must include a "columnar consolidating or combining worksheet" that includes the following:

1. amounts shown on the consolidated audited financial report;
2. amounts for each entity, stated separately;
3. explanations of consolidating and eliminating entries; and
4. other information the commissioner may require to review the applicant's current financial condition.

#### ***Make Records Available***

The bill requires a TPA applying for a license to make available for

the commissioner's inspection copies of all contracts with insurers or others using the TPA's services. The TPA must produce its accounts, records, and files for examination and make its officers available to give information concerning its affairs, as often as the commissioner reasonably requires.

***License Refusal***

The commissioner may refuse to issue a license if he determines that:

1. the TPA or any individual responsible for conducting its affairs is not competent, trustworthy, financially responsible, or of good personal and business reputation;
2. the TPA has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction; or
3. any of the grounds the bill sets forth relating to the enforcement requirements exist with respect to the TPA (see § 14).

***Miscellaneous Requirements***

A license issued to a TPA is in force until September 30<sup>th</sup> in each year, unless revoked or suspended before that date. The commissioner, at his discretion, may renew a TPA license on payment of the required fee without having the TPA reapply.

A TPA licensed or applying for a license must immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license.

A TPA licensed or applying for a license that administers or will administer self-insured government or church plans must maintain a surety bond, for use by the commissioner and the insurance regulatory authority of any other state in which the TPA is authorized to conduct business, to cover people who have remitted premiums, insurance charges, or other money to the TPA in the course of the TPA's business. The bond must be equal to the greater of: (1) \$100,000 or (2)

10% of the aggregate total amount of self-funded coverage under government or church plans handled in Connecticut and all additional states in which the TPA is authorized to conduct business.

### **§ 12 — REGISTRATION REQUIREMENT**

A person who is not required to be licensed as a TPA but who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims for Connecticut residents in connection with a self-insured life, annuity, or health coverage plan must annually register with the commissioner by October 1 on a form he designates. This does not apply if the self-insured plan is a government or church plan.

### **§ 13 — ANNUAL REPORT**

The bill requires each licensed TPA to file an annual report with the commissioner for the preceding calendar year by July 1 each year or within an extension of time the commissioner grants for good cause. The annual report must include a financial statement audited by an independent certified public accountant. The bill requires that an audited annual financial statement or 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;
2. amounts for each entity, stated separately; and
3. explanations of consolidating and eliminating entries.

The report must be in the form, and contain the information, the commissioner prescribes. At least two officers of the TPA must verify it.

The annual report must include the complete names and addresses of all insurers with which the TPA had agreements during the preceding fiscal year. The TPA must pay the required filing fee when it

files the annual report.

The bill requires the commissioner to review each TPA's most recently filed annual report by September 1. After its review, the commissioner must issue a certification to the TPA or update the NAIC's electronic database, indicating (1) that the annual report shows it has a positive net worth as evidenced by audited financial statements and that it is currently licensed and in good standing or (2) any deficiencies found in the annual report or financial statements.

#### **§ 14 — ENFORCEMENT**

The bill requires the commissioner to suspend or revoke a TPA's license, or issue a cease and desist order if the TPA does not have a license, after notice and hearing, if he finds that the TPA:

1. is financially unsound;
2. is using methods or business practices that render its further business in Connecticut hazardous or injurious to insured persons or the public; or
3. failed to pay any judgment rendered against it in Connecticut within 60 days after the judgment became final.

The bill authorizes the commissioner to suspend or revoke a TPA's license, or issue a cease and desist order if the TPA does not have a license, after notice and hearing, if he finds that the TPA:

1. has violated any (a) lawful rule or order of the commissioner or (b) provision of applicable Connecticut insurance laws;
2. has refused to be examined or produce its accounts, records, and files, or any individual responsible for its affairs for examination, including (a) members of the board of directors, board of trustees, executive committee, or other governing board or committee; (b) 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; (c) any

- 10% shareholder or member; and (d) any other person who exercises control or influence over its affairs;
3. has, without just cause, (a) refused to pay proper claims or perform services arising under its contracts or (b) caused covered individuals to accept less than the amount due or employ attorneys or bring suit against the TPA to secure full payment or settlement of the claims;
  4. fails at any time to meet any license qualification that would have been grounds for the commissioner to refuse license issuance;
  5. has a person responsible for its affairs who has been convicted of or pled guilty or no contest to a felony, without regard to whether adjudication was withheld;
  6. is under suspension or revocation in another state; or
  7. has failed to file an annual report in a timely manner.

The commissioner may, without advance notice and before a hearing, issue an order immediately suspending a TPA's license, or a cease and desist order if the TPA does not have a license, if he finds that:

1. the TPA is insolvent or impaired;
2. another state has started a proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA; or
3. the TPA's financial condition or business practices pose an imminent threat to the public health, safety, or welfare of Connecticut residents.

When the commissioner issues an order suspending a license, or issues a cease and desist order, he must notify the TPA that it may request a hearing within 10 business days of receiving the order. If a

hearing is requested, the commissioner must schedule it within 10 business days of receiving the request. If a hearing is not requested and the commissioner does not choose to hold one, the order remains in effect until the commissioner modifies or vacates it.

### **§ 15 — ADOPTION OF REGULATIONS**

The bill authorizes the insurance commissioner to adopt regulations implementing the bill.

### **§ 16 — MARKET CONDUCT EXAMINATION**

The bill authorizes the commissioner, as often as he deems it expedient, to examine the market conduct of any TPA doing business in Connecticut. He already has this authority with respect to insurance companies, HMOs, and fraternal benefit societies.

### **§ 17 — FEES**

The bill authorizes the commissioner to collect the following fees from a TPA:

1. \$500 for each license issued,
2. \$350 for each license renewal, and
3. \$100 for each annual report filed.

## **BACKGROUND**

### ***Internal Revenue Code § 501***

Section 501 of the Internal Revenue Code establishes categories of tax-exempt entities, including charities; fraternal benevolent societies; certain retirement funds; recreational clubs; state-sponsored health coverage organizations; civic leagues; religious and apostolic organizations; and qualified pension, profit-sharing, and stock bonus plans.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/18/2010)