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HOUSE BILL 2445

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Robinson, Cody, and Riccelli; by request of Insurance Commissioner

1 AN ACT Relating to third-party administrators and benefits  
2 managers; adding a new chapter to Title 48 RCW; repealing RCW  
3 19.340.010, 19.340.020, 19.340.030, 19.340.040, 19.340.050,  
4 19.340.060, 19.340.070, 19.340.080, 19.340.090, 19.340.100, and  
5 19.365.010; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires  
9 otherwise.

10 (1) "Affiliate" or "affiliated" means a person who directly or  
11 indirectly through one or more intermediaries, controls or is  
12 controlled by, or is under common control with, another specified  
13 person.

14 (2) "Benefit manager" means a person who performs one or more of  
15 the following functions on behalf of a carrier, third-party  
16 administrator, or self-insured company:

- 17 (a) Claims processing for services and procedures;  
18 (b) Utilization review;  
19 (c) Outcomes management;  
20 (d) Disease management; and

1 (e) Payment or authorization of payment to providers or  
2 facilities for services or procedures.

3 Benefit manager includes, but is not limited to, pharmacy benefit  
4 managers, radiology benefit managers, and mental health benefit  
5 managers.

6 (3) "Carrier" means an entity authorized in this state to provide  
7 disability, health, or stop-loss coverage as an insurance company,  
8 health maintenance organization, fraternal benefit society, health  
9 care service contractor, or self-funded multiple employer welfare  
10 arrangement.

11 (4) "Control" (including the terms "controlled by" and "under  
12 common control with") means the possession, direct or indirect, of  
13 the power to direct or cause the direction of the management and  
14 policies of a person, whether through the ownership of voting  
15 securities, by contract other than a commercial contract for goods or  
16 nonmanagement services, or otherwise, unless the power is the result  
17 of an official position with or corporate office held by the person.  
18 Control is presumed to exist if any person, directly or indirectly,  
19 owns, controls, holds with the power to vote, or holds proxies  
20 representing, ten percent or more of the voting securities of any  
21 other person. This presumption may be rebutted by a showing made in  
22 the manner provided by RCW 48.31B.025(11) that control does not exist  
23 in fact. The commissioner may determine, after furnishing all persons  
24 in interest notice and opportunity to be heard and making specific  
25 findings of fact to support the determination, that control exists in  
26 fact, notwithstanding the absence of a presumption to that effect.

27 (5) "Insurance producer" has the same meaning as in RCW  
28 48.17.010.

29 (6) "Stop-loss insurance" means insurance against the risk of  
30 economic loss assumed under a self-funded employee disability benefit  
31 plan.

32 (7) "Third-party administrator" or "TPA" means a person who  
33 performs one or more of the following functions on behalf of a  
34 carrier, either directly or indirectly, in connection with  
35 disability, health, or stop-loss coverage: Underwriting business;  
36 collecting charges or premiums; adjusting or settling claims;  
37 performing utilization reviews, credentialing providers, prior  
38 authorization of treatments or quality audits; acting as a benefit  
39 manager such as pharmacy benefit manager or radiology benefit

1 manager. A person is not a TPA if that person's only actions are  
2 among the following activities:

3 (a) An individual working for a TPA to the extent that the  
4 individual's activities are subject to the supervision and control of  
5 the TPA;

6 (b) An employer administering its employee benefit plan or the  
7 employee benefit plan of an affiliated employer under common  
8 management and control;

9 (c) The administration of a bona fide employee benefit plan  
10 established by an employer or an employee organization, or both, for  
11 which the insurance laws of this state are preempted pursuant to the  
12 employee retirement income security act of 1974, as the act existed  
13 on the effective date of this section;

14 (d) A union administering a benefit plan on behalf of its  
15 members;

16 (e) A carrier administering insurance coverage for its  
17 policyholders, subscribers, or certificate holders, or those of an  
18 affiliated carrier under common management and control;

19 (f) A carrier directly or indirectly underwriting, collecting  
20 charges, premiums, or adjusting or settling claims, provided that the  
21 carrier is authorized in this state to write that line of insurance  
22 coverage;

23 (g) An insurance producer selling insurance or engaged in related  
24 activities within the scope of the producer's license;

25 (h) A creditor acting on behalf of its debtors with respect to  
26 insurance covering a debt between the creditor and its debtors;

27 (i) A trust and its trustees and agents acting under the trust  
28 established in conformity with 29 U.S.C. Sec. 186;

29 (j) A trust exempt from taxation under section 501(a) of the  
30 internal revenue code and its trustees acting under the trust, or a  
31 custodian and the custodian's agents acting under a custodian account  
32 which meets the requirements of section 401(f) of the internal  
33 revenue code;

34 (k) A credit union or a financial institution that is subject to  
35 supervision or examination by federal or state banking authorities,  
36 or a mortgage lender, when collecting or remitting premiums to  
37 licensed insurance producers or to limited lines producers or  
38 authorized carriers in connection with loan payments;

1 (l) A credit card issuing company advancing or collecting  
2 insurance premiums or charges from its credit card holders who have  
3 authorized collection;

4 (m) An individual adjusting or settling claims in the normal  
5 course of that individual's practice or employment as an attorney at  
6 law and who does not collect charges or premiums in connection with  
7 insurance coverage;

8 (n) A person authorized under chapter 48.98 RCW to act as a  
9 managing general agent in this state when acting within the scope of  
10 that authority; or

11 (o) A multiple employer welfare arrangement acting pursuant to 29  
12 U.S.C. Sec. 1002 or chapter 48.125 RCW, other than a self-funded  
13 multiple employer welfare arrangement regulated under chapter 48.125  
14 RCW.

15 (8) "Underwrites" or "underwriting" includes the acceptance of  
16 employer or individual applications for coverage of individuals and  
17 the overall planning and coordination of a benefits program.

18 NEW SECTION. **Sec. 2.** A person may not act as a TPA in this  
19 state unless that person is registered as a TPA under this chapter.  
20 This prohibition does not apply to an individual while employed by,  
21 or when operating under contract to, a TPA that is registered under  
22 this chapter.

23 NEW SECTION. **Sec. 3.** (1) To conduct business in this state, a  
24 TPA must register with the office of the insurance commissioner and  
25 annually renew the registration.

26 (2) To register under this section, a TPA must:

27 (a) Submit an application containing the following information:

28 (i) The identity of the TPA;

29 (ii) The name, business address, phone number, email address, and  
30 contact person for the TPA; and

31 (iii) The federal tax employer identification number for the  
32 entity; and

33 (b) Pay a registration fee. The registration fee must be set by  
34 the commissioner to allow the registration and oversight activities  
35 to be self-supporting.

36 (3) Annually, a renewal fee must be paid and any information  
37 required in subsection (2) of this section must be updated. The

1 renewal fee must be set by the commissioner to allow the renewal and  
2 oversight activities to be self-supporting.

3 (4) All receipts from registrations and renewals collected by the  
4 commissioner must be deposited into the insurance commissioner's  
5 regulatory account created in RCW 48.02.190.

6 (5) Any TPA that is transacting business to which this chapter  
7 applies on July 1, 2017, must register and pay the registration fee  
8 on or before January 1, 2018. If a TPA does not register on or before  
9 October 1, 2017, it must discontinue operations in this state after  
10 January 1, 2018, until it is registered with the office of the  
11 insurance commissioner.

12 NEW SECTION. **Sec. 4.** (1) Carriers must file all contracts  
13 executed between the carrier and TPAs and all contracts executed  
14 between those TPAs and other persons that directly or indirectly  
15 provide health care services with the commissioner thirty calendar  
16 days before use. A TPA that contracts with a carrier must provide to  
17 the carrier all contracts executed between the TPA and persons that  
18 directly or indirectly provide health care services.

19 (a) Any contracts filed with the commissioner under this section  
20 not affirmatively disapproved by the commissioner are deemed  
21 approved, except the commissioner may extend the approval date an  
22 additional fifteen calendar days upon giving notice before the  
23 expiration of the initial thirty-day period.

24 (b) Changes to previously filed and approved contracts must be  
25 filed and are deemed approved upon filing if no other changes are  
26 made to the previously approved contract.

27 (2) The commissioner may not base a disapproval of a contract  
28 filed under this section on the amount of compensation or other  
29 financial arrangements between the carrier and the TPA, unless that  
30 compensation amount causes the underlying health benefit plan to  
31 otherwise be in violation of state or federal law. This subsection  
32 does not grant the commissioner the authority to regulate provider  
33 reimbursement amounts.

34 (3) The commissioner may withdraw approval of a contract at any  
35 time for cause.

36 (4) Third-party administrators' compensation contracts filed  
37 under this section are confidential and not subject to public  
38 inspection under RCW 48.02.120(2), or public disclosure under chapter  
39 42.56 RCW, if filed in accordance with the procedures for submitting

1 confidential filings through the system for electronic rate and form  
2 filings and the general filing instructions as set forth by the  
3 commissioner. In the event the referenced filing fails to comply with  
4 the filing instructions setting forth the process to withhold the  
5 contract from public inspection, and the carrier indicates that the  
6 contract is to be withheld from public inspection, the commissioner  
7 shall reject the filing and notify the carrier through the system for  
8 electronic rate and form filings to amend its filing to comply with  
9 the confidentiality filing instructions.

10 (5) In the event a contract is disapproved or withdrawn from use  
11 by the commissioner, the carrier has the right to demand and receive  
12 a hearing under chapters 48.04 and 34.05 RCW.

13 NEW SECTION. **Sec. 5.** Every TPA registered under this chapter  
14 must renew their registration annually by paying the renewal fee and  
15 updating the registration information on or before March 1st of each  
16 year, or within an extension of time as the commissioner for good  
17 cause may grant. A request for an extension must be received by the  
18 commissioner at least ten days before the renewal is due.

19 NEW SECTION. **Sec. 6.** If a carrier utilizes the services of a  
20 TPA, any premiums or charges for insurance paid to the TPA by or on  
21 behalf of the insured party are deemed to have been received by the  
22 carrier, and the return of the payment of return premiums or claim  
23 payments forwarded by the carrier to the TPA is not deemed to have  
24 been paid to the insured party or claimant until the payments are  
25 received by the insured party or claimant. This section does not  
26 limit any right of the carrier against the TPA resulting from the  
27 failure of the TPA to make payments to the carrier, insured parties,  
28 or claimants.

29 NEW SECTION. **Sec. 7.** A carrier must be able to produce any TPA  
30 records and books of all transactions performed on behalf of the  
31 carrier if requested by the commissioner. The books and records must  
32 be maintained in accordance with prudent standards of insurance  
33 recordkeeping and must be maintained for a period of not less than  
34 seven years from the date of their creation.

35 NEW SECTION. **Sec. 8.** (1) A TPA may not act as such without a  
36 written agreement between the TPA and the carrier. A copy of the

1 agreement must be retained by the TPA for the duration of the  
2 agreement and for seven years thereafter.

3 (2) A carrier that utilizes the services of a TPA must retain  
4 responsibility for the benefits, premium rates, and reimbursement  
5 procedures, underwriting criteria, and claims payment procedures  
6 applicable to the coverage and for securing reinsurance or stop-loss  
7 insurance, if any. The rules pertaining to these matters, to the  
8 extent that they are relevant to the duties of the TPA, must be  
9 agreed to in writing by the carrier and the TPA.

10 (3) A carrier utilizing the services of a TPA is responsible for  
11 the acts of the TPA and is responsible for providing the TPA's books  
12 and records relevant to the carrier to the commissioner upon request.

13 (4) The written agreement between the TPA and the carrier must  
14 provide that communications between the TPA and claimants must avoid  
15 deceptive statements with regard to the responsibilities of the TPA,  
16 carrier, and any carrier with regard to claims or premiums.

17 (5) In the event of a dispute between the carrier and the TPA  
18 regarding which of them is to fulfill a lawful obligation with  
19 respect to a policy, certificate, or claim subject to the written  
20 agreement, the carrier must fulfill the obligation.

21 (6) The carrier has the duty to provide for competent  
22 administration of its programs administered by a TPA and within the  
23 scope of this chapter.

24 (7) When a TPA administers benefits in connection with  
25 disability, health, and employee benefit stop-loss coverage for more  
26 than one hundred certificate holders, subscribers, claimants, or  
27 policyholders on behalf of a carrier, the carrier must, at least  
28 semiannually, conduct a review of the operations of the TPA. At least  
29 one review must include an on-site audit of the operations of the  
30 TPA. The cost of the reviews or audits must be borne by the carrier  
31 and not reimbursed by the TPA. The requirements of this subsection do  
32 not apply when the TPA and the carrier are affiliated.

33 NEW SECTION. **Sec. 9.** (1) All insurance charges, premiums, and  
34 loss reimbursements collected by a TPA on behalf of or for a carrier,  
35 the return of premiums received from a carrier, and any funds held by  
36 the TPA for the payment of claims, are held by the TPA in a fiduciary  
37 capacity. Funds must be immediately remitted to the person entitled  
38 to them or must be immediately deposited in a fiduciary account  
39 established and maintained by the TPA in a federally insured

1 financial institution. The TPA must render a periodic accounting to  
2 the carrier detailing all transactions performed by the TPA  
3 pertaining to the business of the carrier, and the written agreement  
4 between the carrier and the TPA must include the specifications of  
5 this reporting.

6 (2) The TPA must keep copies of all records of any fiduciary  
7 account maintained or controlled by the TPA, and, upon request of a  
8 carrier, must furnish the carrier with copies of the records  
9 pertaining to the deposits and withdrawals made on behalf of the  
10 carrier. If funds deposited in a fiduciary account have been  
11 collected on behalf of or for more than one carrier, or for the  
12 payment of claims associated with more than one policy, the TPA must  
13 keep records clearly recording the deposits in and withdrawals from  
14 the account on behalf of each carrier and relating to each  
15 policyholder.

16 (3) The TPA must not pay any claim by withdrawals from a  
17 fiduciary account in which premiums or charges are deposited.  
18 Withdrawals from a fiduciary account must be made as provided in the  
19 written agreement between the TPA and the carrier, and only for the  
20 following purposes:

- 21 (a) Remittance to a carrier entitled to remittance;
- 22 (b) Deposit in an account maintained in the name of the carrier;
- 23 (c) Transfer to and deposit in a claims-paying account, with  
24 claims to be paid as provided in subsection (4) of this section;
- 25 (d) Payment to a group policyholder for remittance to the carrier  
26 entitled to the remittance;
- 27 (e) Payment to the TPA of its earned commissions, fees, or  
28 charges;
- 29 (f) Remittance of return premium to the person or persons  
30 entitled to the return premium; and
- 31 (g) Payment to other service providers as authorized by the  
32 carrier.

33 (4) All claims paid by the TPA from funds collected on behalf of  
34 or for a carrier must be paid only as authorized by the carrier.  
35 Payments from an account maintained or controlled by the TPA for  
36 purposes including the payment of claims may be made only for the  
37 following purposes:

- 38 (a) Payment of valid claims;
- 39 (b) Payment of expenses associated with claims handling to the  
40 TPA or to other service providers approved by the carrier;



1 (c) Remittance to the carrier, or transfer to a successor TPA as  
2 directed by the carrier, for the purpose of paying claims and  
3 associated expenses; and

4 (d) Return of funds held as prepayment, to the person entitled to  
5 those funds, upon a determination by the carrier that those funds are  
6 no longer necessary to secure or facilitate the payment of claims and  
7 associated expenses.

8 NEW SECTION. **Sec. 10.** (1) A TPA must not enter into an  
9 agreement or understanding with a carrier in which the effect is to  
10 make the amount of the TPA's commissions, fees, or charges contingent  
11 upon savings effected in the payment of losses covered by the  
12 carrier's obligations. This subsection does not prohibit a TPA from  
13 receiving performance-based compensation for providing hospital or  
14 other auditing services, from providing managed care or related  
15 services, or from being compensated for subrogation expenses.

16 (2) A carrier must not enter into an agreement with a TPA in  
17 violation of this section.

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

21 NEW SECTION. **Sec. 11.** (1) When a TPA collects funds, the reason  
22 for collection of each item must be identified to the insured party  
23 and each item must be shown separately from any premium. A TPA cannot  
24 charge and collect any funds from an insured for the TPA's fees.

25 (2) The TPA must disclose to the carrier all charges, fees, and  
26 commissions that the TPA receives arising from services it provides  
27 for the carrier, including any fees or commissions paid by a carrier  
28 providing reinsurance or stop-loss insurance.

29 NEW SECTION. **Sec. 12.** Any policies, certificates, booklets,  
30 termination notices, or other written communications delivered by the  
31 carrier to the TPA for delivery to insured parties or covered  
32 individuals must be delivered by the TPA promptly after receipt of  
33 instructions from the carrier to deliver them.

34 NEW SECTION. **Sec. 13.** (1) A TPA is in violation of this chapter  
35 if the commissioner finds that the TPA or any person responsible for  
36 the conduct of the TPA's affairs, including but not limited to

1 employees, independent contractors, board members, and principal  
2 officers:

3 (a) Violated any insurance law, or violated any rule, subpoena,  
4 or order of the commissioner or of another insurance regulator;

5 (b) Provided incorrect, misleading, incomplete, or materially  
6 untrue information to the commissioner, a carrier, or an insured;

7 (c) Was convicted of, or entered a plea of guilty or nocontest  
8 to, a felony without regard to whether adjudication was withheld.

9 (2) If a TPA is in violation of this chapter, the commissioner  
10 may, subject to chapter 48.04 RCW:

11 (a) Place on probation, suspend, revoke, or refuse to issue or  
12 renew the TPA's registration;

13 (b) Issue a cease and desist order against the TPA;

14 (c) Fine the TPA up to five thousand dollars per violation;

15 (d) Issue an order against the TPA, or a carrier affiliated with  
16 the TPA, or both, requiring corrective action;

17 (e) Charge the TPA for the costs, fees, and other expenses  
18 incurred by the commissioner in the conduct of any investigation,  
19 hearing, or court proceeding involving the TPA;

20 (f) Temporarily suspend a TPA's registration that is not subject  
21 to a stay of action until proceedings for revocation are concluded if  
22 the commissioner finds that the public safety or welfare requires  
23 emergency action; or

24 (g) Issue an order with any combination of the actions described  
25 in this subsection.

26 (3) The commissioner may take an action authorized in this  
27 section:

28 (a) By cease and desist order that has immediate effect;

29 (b) By an order that becomes effective not less than fifteen days  
30 after the date of its service;

31 (c) By an order on hearing that becomes effective not less than  
32 ten days after the date of its service; or

33 (d) By an order for temporary registration suspension that  
34 becomes effective not less than three days after the date of its  
35 service.

36 (4) A stay of action is not available for actions the  
37 commissioner takes by cease and desist order, by order on hearing, or  
38 by order for temporary registration suspension.

1        NEW SECTION.    **Sec. 14.**    Upon receipt of any inquiry from the  
2 commissioner, every TPA must furnish the commissioner with an  
3 adequate response to the inquiry, including but not limited to  
4 providing a statement or testimony, producing its accounts, records  
5 and files, response to complaints, or responses to surveys and  
6 general requests within the time and in the form required by the  
7 commissioner.

8        NEW SECTION.    **Sec. 15.**    The commissioner may adopt rules to  
9 implement and administer this chapter.

10       NEW SECTION.    **Sec. 16.**    This act takes effect July 1, 2017.

11       NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15       NEW SECTION.    **Sec. 18.**    Sections 1 through 16 of this act  
16 constitute a new chapter in Title 48 RCW.

17       NEW SECTION.    **Sec. 19.**    The following acts or parts of acts are  
18 each repealed:

- 19        (1) RCW 19.340.010 (Definitions) and 2014 c 213 s 1;
- 20        (2) RCW 19.340.020 (Definitions applicable to RCW 19.340.040  
21 through 19.340.090) and 2014 c 213 s 3;
- 22        (3) RCW 19.340.030 (Pharmacy benefit managers—Registration—  
23 Renewal) and 2014 c 213 s 2;
- 24        (4) RCW 19.340.040 (Auditing of claims—Requirements—Prohibited  
25 practices) and 2014 c 213 s 4;
- 26        (5) RCW 19.340.050 (Basis of finding of claim) and 2014 c 213 s  
27 5;
- 28        (6) RCW 19.340.060 (Contract with third party—Prohibited  
29 practices) and 2014 c 213 s 6;
- 30        (7) RCW 19.340.070 (Evidence of validation of claim) and 2014 c  
31 213 s 7;
- 32        (8) RCW 19.340.080 (Preliminary audit report—Dispute or denial of  
33 claim—Final audit report—Recoupment of disputed funds) and 2014 c  
34 213 s 8;

1           (9) RCW 19.340.090 (Application) and 2014 c 213 s 9;  
2           (10) RCW 19.340.100 (Pharmacy benefit managers—Maximum allowable  
3 cost of drugs—Appeals) and 2014 c 213 s 10; and  
4           (11) RCW 19.365.010 (Registration required—Requirements) and 2015  
5 c 166 s 1.

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