

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 482*
Committee Substitute Favorable 4/26/91

Short Title: TPA Law Rewrite.

(Public)

Sponsors:

Referred to:

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAWS ON THIRD PARTY ADMINISTRATORS.
3 The General Assembly of North Carolina enacts:

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

6 **"§ 58-56-2. Definitions.**

7 The following definitions apply in this Article:

8 (1) Affiliate. Any person who, directly or indirectly, through one or more
9 intermediaries, controls, is controlled by, or is under common control
10 with a specified entity or person.

11 (2) Control. Defined in G.S. 58-19-5(2).

12 (3) Insurance. Any coverage offered or provided by an insurer.

13 (4) Insurer. A person who undertakes to provide life or health insurance
14 or workers' compensation insurance in this State that is subject to this
15 Chapter or Chapter 97 of the General Statutes. The term 'insurer' does
16 not include a bona fide employee benefit plan established by an
17 employer, an employee organization, or both, for which the insurance
18 laws of this State are preempted pursuant to the Employee Retirement
19 Income Security Act of 1974.

20 (5) Third party administrator. A person who directly or indirectly solicits
21 or effects coverage of, underwrites, collects charges or premiums
22 from, or adjusts or settles claims on residents of this State, or residents

1 of another state from offices in this State, in connection with life or
2 health insurance or annuities, except any of the following:

3 a. An employer on behalf of its employees or the employees of
4 one or more of its affiliates.

5 b. A union on behalf of its members.

6 c. An insurer that is authorized to transact insurance in this State
7 with respect to a policy lawfully issued and delivered in and
8 pursuant to the laws of this State or another state.

9 d. An agent or broker who is licensed by the Commissioner to sell
10 life or health insurance and whose activities are limited
11 exclusively to the sale of insurance.

12 e. A creditor on behalf of its debtors with respect to insurance
13 covering a debt between the creditor and its debtors.

14 f. A trust and its trustees, agents, and employees acting pursuant
15 to the trust established in conformity with 29 U.S.C. § 186.

16 g. A trust exempt from taxation under section 501(a) of the
17 Internal Revenue Code and its trustees and employees acting
18 pursuant to the trust, or a custodian and the custodian's agents
19 or employees acting pursuant to a custodian account that meets
20 the requirements of section 401(f) of the Internal Revenue
21 Code.

22 h. A financial institution subject to supervision or examination by
23 federal or state banking authorities, or a mortgage lender, to the
24 extent the financial institution or mortgage lender collects and
25 remits premiums to licensed insurance agents or authorized
26 insurers in connection with loan payments.

27 i. An attorney-at-law who adjusts or settles claims in the normal
28 course of business as an attorney-at-law and who does not
29 collect charges or premiums in connection with life or health
30 insurance or annuities.

31 j. An adjuster licensed by the Commissioner whose activities are
32 limited to adjustment of claims.

33 k. A person who acts solely as a TPA of one or more bona fide
34 employee benefit plans established by an employer, an
35 employee organization, or both, for which the insurance laws of
36 this State are preempted pursuant to the Employee Income
37 Security Act of 1974. The person shall comply with the
38 requirements of G.S. 58-56-51(f).

39 l. A person licensed as a managing general agent in this State,
40 whose activities are limited exclusively to the scope of activities
41 conveyed under the license.

42 (6) TPA. A third party administrator.

43 (7) Underwriting. This term includes the acceptance of employer or
44 individual applications for coverage of individuals in accordance with

1 the written rules of the insurer, the planning and coordination of an
2 insurance program, and the ability to procure bonds and excess
3 insurance.

4 **"§ 58-56-6. Written agreement necessary.**

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

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

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

20 **"§ 58-56-11. Payment to TPA.**

21 If an insurer uses the services of a TPA, the payment to the TPA of any premiums or
22 charges for insurance by or on behalf of the insured party is considered payment to the
23 insurer. The payment of return premiums or claim payments forwarded by the insurer
24 to the TPA is not considered payment to the insured party or claimant until the
25 payments are received by the insured party or claimant. This section does not limit any
26 right of the insurer against the TPA resulting from the failure of the TPA to make
27 payments to the insurer, insured parties, or claimants.

28 **"§ 58-56-16. Records to be kept.**

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

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

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

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

6 **"§ 58-56-21. Approval of advertising.**

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

9 **"§ 58-56-26. Responsibilities of the insurer.**

10 (a) If an insurer uses the services of a TPA, the insurer is responsible for
11 determining the benefits, premium rates, underwriting criteria, and claims payment
12 procedures applicable to the coverage and for securing reinsurance, if any. The rules
13 pertaining to these matters must be provided, in writing, by the insurer to the TPA. The
14 responsibilities of the TPA as to any of these matters shall be set forth in the agreement
15 between the TPA and the insurer.

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

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

22 **"§ 58-56-31. Premium collection and payment of claims.**

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

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

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

40 (1) Remittance to an insurer entitled to remittance.

41 (2) Deposit in an account maintained in the name of the insurer.

42 (3) Transfer to and deposit in a claims-paying account, with claims to be
43 paid as provided in subsection (d) of this section.

1 (4) Payment to a group policyholder for remittance to the insurer entitled
2 to the remittance.

3 (5) Payment to the TPA of its commissions, fees, or charges.

4 (6) Remittance of a return premium to the person entitled to the return
5 premium.

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

8 **"§ 58-56-36. Compensation to the TPA.**

9 A TPA shall not enter into any agreement or understanding with an insurer that
10 makes the amount of the TPA's commissions, fees, or charges contingent upon savings
11 effected in the adjustment, settlement, and payment of losses covered by the insurer's
12 obligations. This section does not prohibit a TPA from receiving performance-based
13 compensation for providing hospital or other auditing services and does not prevent the
14 compensation of a TPA from being based on premiums or charges collected or the
15 number of claims paid or processed.

16 **"§ 58-56-41. Notice to covered individuals; disclosure of charges and fees.**

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

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

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

27 **"§ 58-56-46. Delivery of materials to covered individuals.**

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

32 **"§ 58-56-51. License required.**

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

36 (b) Each application for the issuance or renewal of a license shall be made upon a
37 form prescribed by the Commissioner and shall be accompanied by a nonrefundable
38 filing fee of one hundred dollars (\$100.00) and evidence of maintenance of a surety
39 bond in an amount to be determined by the Commission. Applications for issuance of
40 licenses shall include or be accompanied by the following information and documents:

41 (1) All organizational documents of the TPA, including any articles of
42 incorporation, articles of association, partnership agreement, trade
43 name certificate, trust agreement, or shareholder agreement, any other
44 applicable documents, and all amendments to these documents.

- 1 (2) The bylaws, rules, regulations, or similar documents regulating the
2 internal affairs of the TPA.
- 3 (3) The names, addresses, official positions, and professional
4 qualifications of the individuals who are responsible for the conduct of
5 affairs of the TPA, including all (i) members of the board of directors,
6 board of trustees, executive committee, or other governing board or
7 committee, (ii) the principal officers in the case of a corporation or the
8 partners or members in the case of a partnership or association, (iii) all
9 shareholders holding directly or indirectly ten percent (10%) or more
10 of the voting securities of the TPA, and (iv) any other person who
11 exercises control or influence over the affairs of the TPA.
- 12 (4) Annual financial statements or reports for the two most recent years
13 that prove that the applicant is solvent and any other information the
14 Commissioner may require in order to review the current financial
15 condition of the applicant.
- 16 (5) A statement describing the business plan, including information on
17 staffing levels and activities proposed in this State and nationwide.
18 The plan must provide details setting forth the TPA's capability for
19 providing a sufficient number of experienced and qualified personnel
20 in the areas of claims processing, record keeping, and underwriting.
- 21 (6) If the applicant will be managing the solicitation of new or renewal
22 business, proof that it employs or has contracted with an agent licensed
23 by this State for soliciting and taking applications. Any applicant that
24 intends to directly solicit insurance contracts or to otherwise act as an
25 insurance agent must provide proof of having a license as an insurance
26 agent in this State.
- 27 (7) Any other pertinent information required by the Commissioner.
- 28 Applications for renewals of licenses shall include or be accompanied by any
29 changes in the information required by subdivisions (1) through (7) of this
30 subsection.
- 31 (c) Each applicant shall make available for inspection by the Commissioner
32 copies of all contracts with insurers or other persons using the services of the TPA.
- 33 (d) The Commissioner may refuse to issue a license if the Commissioner
34 determines that the TPA, or any individual responsible for the conduct of affairs of the
35 TPA as defined in subdivision (b)(3) of this section, is not competent, trustworthy,
36 financially responsible, or of good personal and business reputation, or has had an
37 insurance or a TPA license denied, suspended, or revoked for cause by any state.
- 38 (e) A TPA is not required to be licensed as a TPA in this State if all of the
39 following conditions are met:
- 40 (1) The TPA's principal place of business is in another state.
- 41 (2) The TPA is not soliciting business as a TPA in this State.
- 42 (3) In the case of any group policy or plan of insurance serviced by the
43 TPA, no more than either five percent (5%) or 100 certificate holders,
44 whichever is fewer, reside in this State.

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

7 (g) A TPA shall immediately notify the Commissioner of any material change in
8 its ownership, control, or other fact or circumstance affecting its qualification for a
9 license in this State.

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

15 **"§ 58-56-56. Waiver of application for license.**

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

20 **"§ 58-56-61. Annual report and filing fee.**

21 Each TPA shall file an annual report for the preceding calendar year with the
22 Commissioner on or before March 1 of each year, or within any extension of time the
23 Commissioner for good cause may grant. The report shall be in the form and contain
24 any matters the Commissioner prescribes and shall be verified by at least two officers of
25 the TPA. The annual report shall include the complete names and addresses of all
26 insurers with which the TPA had an agreement during the preceding fiscal year. At the
27 time of filing its annual report, the TPA shall pay a filing fee in the amount set by the
28 Commissioner.

29 **"§ 58-56-66. Grounds for suspension or revocation of license**

30 (a) The Commissioner shall suspend or revoke the license of a TPA if the
31 Commissioner finds that any of the following apply to the TPA:

32 (1) The TPA is in an unsound financial condition.

33 (2) The TPA is using methods or practices in the conduct of its business
34 that render its further transaction of business in this State hazardous or
35 injurious to insured persons or the public.

36 (3) The TPA has failed to pay any judgment rendered against it in this
37 State within 60 days after the judgment has become final.

38 (b) The Commissioner may suspend or revoke the license of a TPA if the
39 Commissioner finds that any of the following apply to the TPA:

40 (1) The TPA has violated a rule or an order of the Commissioner or any
41 provision of this Chapter.

42 (2) The TPA has refused to be examined or to produce its accounts,
43 records, and files for examination, or any of its officers has refused to
44 give information with respect to its affairs or has refused to perform

- 1 any other legal obligation as to that examination, when required by the
2 Commissioner.
- 3 (3) The TPA has, without just cause, refused to pay proper claims or
4 perform services arising under its contracts or has, without just cause,
5 caused covered individuals to accept less than the amount due them or
6 caused covered individuals to employ attorneys or bring suit against
7 the TPA to secure full payment or settlement of the claims.
- 8 (4) The TPA is an affiliate of or under the same general management,
9 interlocking directorate, or ownership as another TPA or insurer that
10 unlawfully transacts business in this State without having a license.
- 11 (5) The TPA at any time fails to meet any qualification for which issuance
12 of the license could have been refused had the failure then existed and
13 been known to the Commissioner at the time of the application.
- 14 (6) The TPA has been convicted of, or has entered a plea of guilty or **nolo**
15 **contendere** to, a felony without regard to whether judgment was
16 withheld.
- 17 (7) The TPA is under suspension or revocation in another state.
- 18 (c) The Commissioner may without advance notice or hearing immediately
19 suspend the license of any TPA if the Commissioner finds that any of the following
20 apply to the TPA:
- 21 (1) The TPA is insolvent or financially impaired.
- 22 (2) A proceeding for receivership, conservatorship, rehabilitation, or other
23 delinquency proceeding regarding the TPA has been commenced in
24 any state.
- 25 (3) The financial condition or business practices of the TPA otherwise
26 pose an imminent threat to the public health, safety, or welfare of the
27 residents of this State."
- 28 Sec. 2. G.S. 58-56-1, 58-56-10, 58-56-15, 58-56-20, 58-56-25, 58-56-30, 58-
29 56-35, 58-56-40, 58-56-45, 58-56-50, 58-56-55, and 58-56-60 are repealed.
- 30 Sec. 3. This act becomes effective October 1, 1991.