



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

The Office of General Counsel issued the following opinion on April 15, 2008 representing the position of the New York State Insurance Department.

Re: Third Party Administrators

Question Presented:

Does a third party administrator (“TPA”) require a license from the Insurance Department?

Conclusion:

New York laws do not require a license for a TPA. However, if the TPA performs functions that require a license, such as acting as an independent adjuster, then the TPA would need to be so licensed.

Facts

According to the Insurance Department’s records, the inquirer is an affiliate of a domestic life insurer. According to the inquirer’s website, it administers employee benefit plans, including “Health, Dental Claims, and Disability Processing.”

The inquirer has applied to another jurisdiction for a license as a TPA and requires a letter from this Department that the inquirer does not require a license in New York.

Analysis:

Nowhere in the New York Insurance is any provision for a TPA License. However, Insurance Law § 2102(a) prohibits an entity from acting as an independent adjuster without a license. Insurance Law § 2101(g)(1) defines the term “independent adjuster” as follows:

The term "independent adjuster" means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts in this state on behalf of an insurer in the work of investigating and adjusting claims arising under

insurance contracts issued by such insurer and who performs such duties required by such insurer as are incidental to such claims and also includes any person who for compensation or anything of value investigates and adjusts claims on behalf of any independent adjuster

Thus, an entity that performs adjusting services for any insurer, including those that are exempt from licensure, such as self-funded welfare benefit plans under the federal Employee Retirement Income Security Act, must be licensed by the Department as an independent adjuster. Insurance Law § 2101(g)(1) sets forth several exceptions from the definition of independent adjuster, but none of them seem to be applicable to the inquirer.

Therefore, before the Insurance Department can issue the requested letter to the inquirer, the Department must evaluate the inquirer's activities. Accordingly, a full description of the inquirer's services should be sent to the Department's Consumer Services Bureau.

For further information you may contact Principal Attorney Alan Rachlin at the New York City Office.