

§ 58-56-51. License required.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually. Failure to submit a complete renewal application shall result in the expiration of the license of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause.

(b) Each application for the issuance or renewal of a license shall be made upon a form prescribed by the Commissioner and shall be accompanied by a nonrefundable filing fee of three hundred dollars (\$300.00) and evidence of maintenance of a fidelity bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules of the Commissioner. Applications for issuance of licenses shall include or be accompanied by the following information and documents:

- (1) All organizational documents of the TPA, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, or trust agreement, any other applicable documents, and all amendments to these documents.
- (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the TPA.
- (3) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of affairs of the TPA, including all (i) members of the board of directors, board of trustees, executive committee, or other governing board or committee, (ii) the principal officers in the case of a corporation or the partners or members in the case of a partnership or association, (iii) all shareholders holding directly or indirectly ten percent (10%) or more of the voting securities of the TPA, and (iv) any other person who exercises control or influence over the affairs of the TPA.
- (4) Annual financial statements or reports for the two most recent years that prove that the applicant is solvent and any other information the Commissioner may require in order to review the current financial condition of the applicant.
- (5) A general description of the business operations, including information on staffing levels and activities proposed in this State and nationwide. The description must provide details setting forth the TPA's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.
- (6) If the applicant will be managing the solicitation of new or renewal business, evidence that it employs or has contracted with an agent licensed by this State for soliciting and taking applications. Any applicant that intends to directly solicit insurance contracts or to otherwise act as an insurance agent must provide proof of having a license as an insurance agent in this State.
- (7) Any other pertinent information required by rules of the Commissioner.

The information required by subdivisions (1) through (7) of this subsection, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA. Applications for renewals of licenses shall include or be accompanied by any changes in the information required by subdivisions (1) through (7) of this subsection.

(c) Each applicant shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons using the services of the TPA.

(d) The Commissioner may refuse to issue a license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA as defined in subdivision (b)(3) of this section, is not competent, trustworthy, financially responsible in accordance with subsection (b) of this section, or of good personal and business reputation, or has had an insurance or a TPA license denied, suspended, or revoked for cause by any state.

(e) A TPA is not required to be licensed as a TPA in this state if all of the following conditions are met:

- (1) The TPA's principal place of business is in another state.
- (2) The TPA is not soliciting business as a TPA in this State.
- (3) In the case of any group policy or plan of insurance serviced by the TPA, no more than either five percent (5%) or 100 certificate holders, whichever is fewer, reside in this State.

(f) A person is not required to be licensed as a TPA in this State if the person provides services exclusively to one or more bona fide employee benefit plans each of which is established by an employer, an employee organization, or both, and for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974. Persons who are not required to be licensed shall register with the Commissioner annually, verifying their status as described in this subsection. Failure to submit an annual verification shall result in the expiration of the registration of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause.

(g) A TPA shall notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a license in this State, within 10 business days after the change.

(h) No bonding shall be required by the Commissioner of any TPA whose business is restricted solely to benefit plans that are either fully insured by an authorized insurer or that are bona fide employee benefit plans established by an employer, any employee organization, or both, for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974. (1991, c. 627, s. 1; 2007-298, ss. 7.4, 7.5; 2007-484, s. 43.5; 2009-451, s. 21.16(a).)