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	<b>SENATE:</b>	No
<b>FLOOR AMENDMENT STATEMENTS:</b>		No
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# SENATE, No. 375

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Co-Sponsored by:**

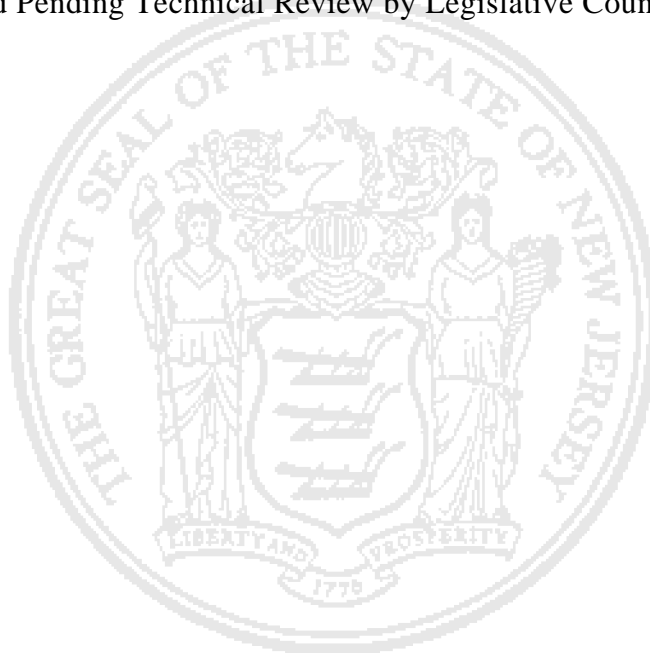
**Senators Gormley, McNamara, Cafiero, Bennett, Bark, Singer, Robertson,  
Kosco, Palaia, Kavanaugh, Bassano, Matheussen, Allen, Inverso and  
Bucco**

**SYNOPSIS**

Regulates third party administrators of health benefits insurance plans.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 10/24/2000)**

1 AN ACT regulating third party administrators of health benefits  
2 insurance plans.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. As used in this act:

8 "Administrator" or "third party administrator" or "TPA" means a  
9 person who directly or indirectly solicits or effects coverage of,  
10 underwrites, collects charges or premiums from, adjusts or settles  
11 claims on, or provides health care services to residents of this State,  
12 or residents of another state from offices in this State, in connection  
13 with health benefits insurance coverage, except any of the following:

14 (1) An employer on behalf of its employees or the employees of  
15 one or more subsidiaries or affiliated corporations of that employer;

16 (2) A union on behalf of its members;

17 (3) An insurer which is authorized to transact insurance in this  
18 State with respect to a policy lawfully issued and delivered in and  
19 pursuant to the laws of this State or another state;

20 (4) An agent or broker licensed to sell health benefits insurance  
21 coverage in this State, whose activities are limited exclusively to the  
22 sale of that insurance coverage;

23 (5) A creditor on behalf of its debtors with respect to insurance  
24 covering a debt between the creditor and its debtors;

25 (6) A trust and its trustees, agents and employees acting pursuant  
26 to that trust established in conformity with 29 U.S.C. s. 186;

27 (7) A trust exempt from taxation under section 501(a) of the  
28 Internal Revenue Code of 1986, 26 U.S.C. s. 501(a), its trustees and  
29 employees acting pursuant to that trust, or a custodian and the  
30 custodian's agents or employees acting pursuant to a custodian  
31 account which meets the requirements of section 401(f) of the Internal  
32 Revenue Code of 1986, 26 U.S.C.s. 401;

33 (8) A credit union or a financial institution which is subject to  
34 supervision or examination by federal or State banking authorities, or  
35 a mortgage lender, to the extent they collect and remit premiums to  
36 licensed insurance agents or authorized insurers in connection with  
37 loan payments;

38 (9) A credit card issuing company which advances for and collects  
39 premiums or charges from its credit card holders who have authorized  
40 collection if the company does not adjust or settle claims;

41 (10) A person who adjusts or settles claims in the normal course  
42 of that person's practice or employment as an attorney at law and who  
43 does not collect charges or premiums in connection with health  
44 benefits insurance coverage or annuities;

45 (11) An adjuster licensed by this State pursuant to the "Public  
46 Adjusters' Licensing Act," P.L.1993, c.66 (C.17:22B - 1 et seq.)

1 whose activities are limited to adjustment of claims;

2 (12) A person who acts solely as an administrator of one or more  
3 bona fide employee benefit plans established by an employer or an  
4 employee organization, or both, for which the insurance laws of this  
5 State are preempted pursuant to the federal Employee Retirement  
6 Income Security Act of 1974 (ERISA) 29 U.S.C. s. 1001 et seq.;

7 provided, however that such a person shall comply with the  
8 requirements of subsection g. of section 11 of this act; or

9 (13) A person licensed as a managing general agent in this State,  
10 whose activities are limited exclusively to the scope of activities  
11 conveyed under that license.

12 "Affiliate" or "affiliated" means an entity or person who, directly or  
13 indirectly through one or more intermediaries, controls or is controlled  
14 by, or is under common control with, a specified entity or person.

15 "Commissioner" means the Commission of Banking and Insurance.

16 "Control" shall be defined as in section 1 of P.L.1970, c.22  
17 (C.17:27A-1).

18 "Insurance" or "insurance coverage" means any coverage or health  
19 care services offered or provided by an insurer.

20 "Insurer" means a person undertaking to provide health benefits  
21 insurance coverage in this State. For the purposes of this act, insurer  
22 includes a licensed insurance company, a health service corporation,  
23 medical service corporation or hospital service corporation, a prepaid  
24 hospital or medical care plan, a health maintenance organization, a  
25 multiple employer welfare arrangement, or any other person providing  
26 a plan of insurance subject to State insurance regulation. "Insurer"  
27 does not include a bona fide employee benefit plan established by an  
28 employer or an employee organization, or both, for which the  
29 insurance laws of this State are preempted pursuant to the Employee  
30 Retirement Income Security Act of 1974.

31 "Underwrites" or "underwriting" means, but is not limited to, the  
32 acceptance of employer or individual applications for coverage of  
33 individuals in accordance with the written rules of the insurer; the  
34 overall planning and coordinating of an insurance program; and the  
35 ability to procure bonds and excess insurance.

36

37 2. a. No administrator shall act as such without a written  
38 agreement between the administrator and the insurer, and the written  
39 agreement shall be retained as part of the official records of both the  
40 insurer and the administrator for the duration of the agreement and for  
41 five years thereafter. The agreement shall contain all provisions  
42 required by this act, except insofar as those requirements do not apply  
43 to the functions performed by the administrator.

44 b. The written agreement shall include a statement of duties which  
45 the administrator is expected to perform on behalf of the insurer and  
46 the lines, classes or types of insurance for which the administrator is

1 to be authorized to administer. The agreement shall provide for the  
2 underwriting or other standards pertaining to the business  
3 underwritten by the insurer.

4 c. The insurer or administrator may, with written notice, terminate  
5 the written agreement for cause as provided in the agreement. The  
6 insurer may suspend the underwriting authority of the administrator  
7 during the pendency of any dispute regarding the cause for termination  
8 of the written agreement. The insurer shall fulfill any lawful  
9 obligations with respect to policies affected by the written agreement,  
10 regardless of any dispute between the insurer and the administrator.

11

12 3. If an insurer utilizes the services of an administrator, the  
13 payment to the administrator of any premiums or charges for insurance  
14 by or on behalf of the insured party shall be deemed to have been  
15 received by the insurer, and the payment of return premiums or claim  
16 payments forwarded by the insurer to the administrator, shall not be  
17 deemed to have been paid to the insured party or claimant until such  
18 payments are received by the insured party or claimant. Nothing in  
19 this section shall limit any right of the insurer against the administrator  
20 resulting from the failure of the administrator to make payments to the  
21 insurer, insured parties or claimants.

22

23 4. a. Every administrator shall maintain and make available to the  
24 insurer complete books and records of all transactions performed on  
25 behalf of the insurer. The books and records shall be maintained in  
26 accordance with prudent standards of insurance record keeping and  
27 shall be maintained for a period of not less than five years from the  
28 date of their creation.

29 b. The commissioner shall have access to books and records  
30 maintained by an administrator for the purposes of examination, audit  
31 and inspection. Any trade secrets contained in the books and records,  
32 including the identity and addresses of policy holders and certificate  
33 holders, shall be kept confidential, except that the commissioner may  
34 use the information in any proceeding instituted against the  
35 administrator.

36 c. The insurer shall own the records generated by the administrator  
37 pertaining to the insurer; however, the administrator shall retain the  
38 right to continuing access to books and records to permit the  
39 administrator to fulfill all of its contractual obligations to insured  
40 parties, claimants, and the insurer.

41 d. Notwithstanding the provisions of subsection a. of this section,  
42 if the insurer and the administrator cancel their agreement, the  
43 administrator may, by written agreement with the insurer, transfer all  
44 records to a new administrator rather than retain them for five years.  
45 In such cases, the new administrator shall acknowledge, in writing,  
46 that it is responsible for retaining the records of the prior administrator

1 as required in subsection a. of this section.

2

3 5. An administrator may use only advertising pertaining to the  
4 business underwritten by an insurer that has been approved in writing  
5 by the insurer in advance of its use.

6

7 6. a. If an insurer utilizes the services of an administrator, the  
8 insurer shall be responsible for determining the benefits or health care  
9 services, premium rates, underwriting criteria and claims payment  
10 procedures applicable to the coverage and for securing reinsurance,  
11 if any. The rules pertaining to these matters shall be provided, in  
12 writing, by the insurer to the administrator. The responsibilities of the  
13 administrator as to any of these matters shall be set forth in the written  
14 agreement between the administrator and the insurer.

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

17 c. In cases in which an administrator administers benefits for more  
18 than 100 certificate holders on behalf of an insurer, the insurer shall,  
19 at least semiannually, conduct a review of the operations of the  
20 administrator. At least one such review shall be an on-site audit of the  
21 operations of the administrator.

22

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

34 b. If charges or premiums deposited in a fiduciary account have  
35 been collected on behalf of or for one or more insurers, the  
36 administrator shall keep records clearly recording the deposits in and  
37 withdrawals from the account on behalf of each insurer. The  
38 administrator shall keep copies of all the records and, upon request of  
39 an insurer, shall furnish the insurer with copies of the records  
40 pertaining to the deposits and withdrawals.

41 c. The administrator shall not pay any claim by withdrawals from  
42 a fiduciary account in which premiums or charges are deposited.  
43 Withdrawals from the account shall be made as provided in the written  
44 agreement between the administrator and the insurer. The written  
45 agreement shall address, but not be limited to, the following:

46 (1) Remittance to an insurer entitled to remittance;

- 1 (2) Deposit in an account maintained in the name of the insurer;  
2 (3) Transfer to and deposit in a claims-paying account, with claims  
3 to be paid as provided for in subsection d. of this section;  
4 (4) Payment to a group policyholder for remittance to the insurer  
5 entitled to that remittance;  
6 (5) Payment to the administrator of its commissions, fees or  
7 charges; and  
8 (6) Remittance of return premium to the person or persons entitled  
9 to that return premium.

10 d. All claims paid by the administrator from funds collected on  
11 behalf of or for an insurer shall be paid only on drafts or checks of,  
12 and as authorized by, the insurer.

13

14 8. a. An administrator shall not enter into an agreement or  
15 understanding with an insurer in which the effect is to make the  
16 amount of the administrator's commissions, fees, or charges contingent  
17 upon savings effected in the adjustment, settlement and payment of  
18 losses covered by the insurer's obligations. This provision shall not  
19 prohibit an administrator from receiving performance-based  
20 compensation for providing hospital or other auditing services.

21 b. This section shall not prevent the compensation of an  
22 administrator from being based on premiums or charges collected or  
23 the number of claims paid or processed.

24

25 9. a. When the services of an administrator are utilized, the  
26 administrator shall provide a written notice approved by the insurer to  
27 covered individuals advising them of the identity of, and relationship  
28 among, the administrator, the policyholder and the insurer.

29 b. When an administrator collects funds, the reason for collection  
30 of each item shall be identified to the insured party and each item shall  
31 be shown separately from any premium. Additional charges may not  
32 be made for services to the extent the services have been paid for by  
33 the insurer.

34 c. The administrator shall disclose to the insurer all charges, fees  
35 and commissions received from all services in connection with the  
36 provision of administrative services for the insurer, including any fees  
37 or commissions paid by insurers providing reinsurance.

38

39 10. Any policies, certificates booklets, termination notices or other  
40 written communications delivered by the insurer to the administrator  
41 for delivery to insured parties or covered individuals shall be delivered  
42 by the administrator promptly after receipt of instructions from the  
43 insurer to deliver them.

44

45 11. a. No person shall act as, or offer to act as, or hold himself out  
46 to be an administrator in this State without a valid certificate of



1 authority as an administrator issued by the commissioner.  
2 b. Applicants to be an administrator shall make an application to  
3 the commissioner upon a form to be furnished by the commissioner.  
4 The application shall include or be accompanied by the following  
5 information and documents:  
6 (1) All basic organizational documents of the administrator,  
7 including any articles of incorporation, articles of association,  
8 partnership agreement, trade name certificate, trust agreement,  
9 shareholder agreement and other applicable documents and all  
10 amendments to such documents;  
11 (2) The bylaws, rules regulations or similar documents regulating  
12 the internal affairs of the administrator;  
13 (3) The names, addresses, official positions and professional  
14 qualifications of the individuals who are responsible for the conduct of  
15 affairs of the administrator, including: all members of the board of  
16 directors, board of trustees, executive committee or other governing  
17 board or committee; the principal officers in the case of a corporation  
18 or the partners or members in the case of a partnership or association;  
19 shareholders holding directly or indirectly ten percent or more of the  
20 voting securities of the administrator; and any other person who  
21 exercises control or influence over the affairs of the administrator;  
22 (4) Annual financial statements or reports for the two most recent  
23 years which prove that the applicant is solvent and any other  
24 information the commissioner requires in order to review the current  
25 financial condition of the applicant;  
26 (5) A statement describing the business plan, including information  
27 on staffing levels and activities proposed in this State and nationwide.  
28 The plan shall provide details setting forth the administrator's  
29 capability for providing a sufficient number of experienced and  
30 qualified personnel in the areas of claims processing, record keeping  
31 and underwriting;  
32 (6) If the applicant will be managing the solicitation of new or  
33 renewal business, proof that it employs or has contracted with an  
34 agent licensed by this State for solicitation and taking of applications.  
35 An applicant that intends to solicit insurance contracts directly or to  
36 otherwise act as an insurance agent shall provide proof that it has a  
37 license as an insurance agent in this State;  
38 (7) Any other pertinent information required by the commissioner.  
39 c. The applicant shall make available for inspection by the  
40 commissioner copies of all contracts with insurers or other persons  
41 utilizing the services of the administrator.  
42 d. The commissioner may refuse to issue a certificate of authority  
43 if the commissioner determines that the administrator, or any  
44 individual responsible for the conduct of affairs of the administrator as  
45 defined in paragraph (3) of subsection b. of this section, is not  
46 competent, trustworthy, financially responsible or of good personal

1 and business reputation, or has had an insurance or an administrator  
2 license denied or revoked for cause by any state.

3 e. A certificate of authority issued under this section shall remain  
4 valid, unless surrendered, suspended or revoked by the commissioner,  
5 for so long as the administrator continues in business in this State and  
6 remains in compliance with this act.

7 f. An administrator is not required to hold a certificate of authority  
8 as an administrator in this State if all of the following conditions are  
9 met:

10 (1) The administrator has its principal place of business in another  
11 state;

12 (2) The administrator is not soliciting business as an administrator  
13 in this State;

14 (3) In the case of any group policy or plan of insurance serviced by  
15 the administrator, the lesser of five percent or 100 certificate holders  
16 reside in this State.

17 g. A person is not required to hold a certificate of authority as an  
18 administrator in this State if the person exclusively provides services  
19 to one or more bona fide employee benefit plans, each of which is  
20 established by an employer or an employee organization, or both, and  
21 for which the insurance laws of this State are preempted pursuant to  
22 the Employee Retirement Income Security Act of 1974, 29 U.S.C. s.  
23 1001 et seq. These persons shall register with the commissioner  
24 annually, verifying their status as herein described.

25 h. An administrator shall immediately notify the commissioner of  
26 any material change in its ownership, control, or other fact or  
27 circumstance affecting its qualification for a certificate of authority in  
28 this State.

29 i. No bonding shall be required by the commissioner of any  
30 administrator whose business is restricted solely to benefit plans which  
31 are either fully insured by an authorized insurer or which are bona fide  
32 employee benefit plans established by an employer or any employee  
33 organization, or both, for which the insurance laws of this State are  
34 preempted pursuant to the Employee Retirement Income Security Act  
35 of 1974.

36  
37 12. Upon request from an administrator, the commissioner may  
38 waive the application requirements of subsection b. of section 11 if  
39 the administrator has a valid certificate of authority as an administrator  
40 issued in a state which has standards for administrators that are at least  
41 as stringent as those contained in the model statute for third party  
42 administrators of the National Association of Insurance  
43 Commissioners.

44  
45 13. a. Each administrator shall file an annual report for the  
46 preceding calendar year with the commissioner on or before March 1

1 of each year, or within such extension of time therefor as the  
2 commissioner for good cause may grant. The report shall be in the  
3 form and contain those matters the commissioner prescribes and shall  
4 be verified by at least two officers of the administrator.

5 b. The annual report shall include the complete names and  
6 addresses of all insurers with which the administrator had an  
7 agreement during the preceding fiscal year.

8 c. At the time of filing its annual report, the administrator shall pay  
9 a filing fee as required by the commissioner.

10  
11 14. a. The certificate of authority of an administrator shall be  
12 suspended or revoked if the commissioner finds that the administrator:

13 (1) Is in an unsound financial condition;

14 (2) Is using methods or practices in the conduct of its business  
15 which render its further transaction of business in this State hazardous  
16 or injurious to insured persons or the public; or

17 (3) Has failed to pay any judgment rendered against it in this State  
18 within 60 days after the judgment has become final.

19 b. The commissioner may, in his discretion, suspend or revoke the  
20 certificate of authority of an administrator if the commissioner finds  
21 that the administrator:

22 (1) Has violated any lawful rule or order of the commissioner or  
23 any provision of the insurance laws of this State;

24 (2) Has refused to be examined or to produce its accounts, records  
25 and files for examination, or if any of its officers has refused to give  
26 information with respect to its affairs or has refused to perform any  
27 other legal obligation as to an examination, when required by the  
28 commissioner;

29 (3) Has, without just cause, refused to pay proper claims or perform  
30 services arising under its contracts or has, without just cause, caused  
31 covered individuals to accept less than the amount due them or caused  
32 covered individuals to employ attorneys or bring suit against the  
33 administrator to secure full payment or settlement of those claims;

34 (4) Is affiliated with or under the same general management or  
35 interlocking directorate or ownership as another administrator or  
36 insurer which transacts business in this State without having a  
37 certificate of authority;

38 (5) At any time fails to meet any qualification for which issuance  
39 of the certificate could have been refused had that failure then existed  
40 and been known to the department;

41 (6) Has been convicted of, or has entered a plea of guilty or nolo  
42 contendere to a felony or a crime of the first, second or third degree  
43 in this State, without regard to whether adjudication was withheld; or

44 (7) Is under suspension or revocation in another state.

45 c. The commissioner may, in his discretion and without advance  
46 notice or hearing, immediately suspend the certificate of an

1 administrator if the commissioner finds that one or more of the  
2 following circumstances exist:

3 (1) The administrator is insolvent or impaired;

4 (2) A proceeding for receivership, conservatorship, rehabilitation  
5 or other delinquency proceeding regarding the administrator has been  
6 commenced in any state; or

7 (3) The financial condition or business practices of the  
8 administrator otherwise pose an imminent threat to the public health,  
9 safety or welfare of the residents of this State.

10 d. If the commissioner finds that one or more grounds exist for the  
11 suspension or revocation of a certificate of authority issued under this  
12 act, the commissioner may, in lieu of suspension or revocation, impose  
13 a fine upon the administrator.

14

15 15. This act shall take effect immediately.

16

17

18

#### STATEMENT

19

20 This bill regulates third party administrators of health benefits  
21 insurance plans and sets out certain standards by which the business of  
22 an administrator must be conducted. Third party administrators  
23 process claims, collect premiums and handle other administrative and  
24 service responsibilities on behalf of the insurer or other entity  
25 providing the health benefits plan. The utilization of third party  
26 administrators in connection with mass-marketed insurance programs  
27 has increased significantly over the years and there is thus an increased  
28 need to regulate their activities in the State.

29 The bill requires a written agreement between the administrator and  
30 the insurer for the operation of the insurer's health benefits plan and  
31 requires certain information to be included in that agreement. The bill  
32 also sets rules for the receipt of premiums and the payment of claims  
33 by the administrator on behalf of the insurer. It requires the  
34 administrator to maintain certain information and records and make  
35 them available to the insurer and the commissioner. The bill further  
36 requires notice of the relationship to covered individuals and regulates  
37 the method of compensation of the administrator by the insurer and the  
38 delivery of materials to covered individuals on behalf of the insurer.

39 Under the bill, no third party administrator may operate in the State  
40 without a certificate of authority issued by the Commissioner of  
41 Banking and Insurance. A process for certification, as well as  
42 grounds for suspension or revocation of the certification, are  
43 established by the bill.

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 375**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

ADOPTED NOVEMBER 9, 2000

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Co-Sponsored by:**

**Senators Gormley, McNamara, Cafiero, Bennett, Bark, Singer, Robertson,  
Kosco, Palaia, Kavanaugh, Bassano, Matheussen, Allen, Inverso and  
Bucco**

**SYNOPSIS**

Requires licensure of third party administrators of health and dental benefits plans and certification of third party billing services.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Health Committee.



1 AN ACT concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. As used in this act:

9 "Benefits payer" means a licensed insurer, health, hospital or  
10 medical service corporation, or health maintenance organization  
11 authorized to issue health or dental benefits plans in this State, or any  
12 other person who undertakes to provide health or dental benefits and  
13 is obligated to pay claims for health or dental benefits to providers or  
14 other claimants.

15 "Client" means a health care provider that contracts with a third  
16 party billing service to remit claims to benefits payers on behalf of the  
17 provider or other claimant.

18 "Commissioner" means the Commissioner of Banking and  
19 Insurance.

20 "Enrollee" means a person entitled to receive benefits under a  
21 health benefits plan.

22 "Health benefits plan" means a benefits plan which pays or  
23 provides hospital and medical expense or dental benefits for covered  
24 services.

25 "Health care provider" or "provider" means an individual or entity  
26 which provides a covered benefit or service.

27 "Third party administrator" means a person or entity that:  
28 processes claims and pays claims on behalf of a benefits payer. Third  
29 party administrator shall not include an employee or affiliate of a  
30 benefits payer, but it shall include an affiliate of a licensed insurer,  
31 health, hospital or medical service corporation, health maintenance  
32 organization, dental service corporation or dental plan organization  
33 formed for the purpose of processing claims or claims payments on  
34 behalf of a benefits payer. Third party administrator shall not include  
35 a collection agency or bureau or a pharmacy benefits manager.

36 "Third party billing service" means a person or entity that  
37 processes claims or claims payments on behalf of a health care  
38 provider.

39

40 2. On or after January 1, 2002, no person shall act as, offer to act  
41 as or hold himself out to be a third party administrator in this State  
42 unless licensed by the commissioner in accordance with this act.  
43 Application for licensure shall be made to the commissioner on a form  
44 provided by the commissioner. The commissioner shall establish by  
45 regulation the information that shall accompany the application, which  
46 shall include, but need not be limited to:

- 1 a. a copy of the applicant's basic organizational documents, which  
2 shall include articles of incorporation, articles of association,  
3 partnership agreement, management agreement, trust agreement or  
4 other documents governing the operation of the applicant that are  
5 applicable to the applicant's form of business organization;
- 6 b. a copy of the executed bylaws, rules and regulations, or other  
7 documents relating to the operation of the applicant's internal affairs;
- 8 c. the names, addresses and official positions of the persons  
9 responsible for the conduct of the affairs of the applicant, including,  
10 but not limited to, if applicable: the members of the board of directors,  
11 executive committee or other governing board or committee; the  
12 principal officers or partners; shareholders owning or having the right  
13 to acquire 10% or more of the voting securities of the corporation or  
14 partnership interest of a partnership, or equity interest, in the case of  
15 another form of business organization; each person who has loaned  
16 funds to the applicant for the operation of its business; a statement of  
17 any criminal convictions and civil, regulatory or enforcement action,  
18 including actions related to professional licensing, taken or pending  
19 against any principal officer or owner of the applicant; and the  
20 relationship with any other business entity, including a parent  
21 corporation;
- 22 d. a copy of the applicant's most recent financial statements  
23 audited by an independent certified public accountant. If the financial  
24 affairs of the applicant's parent company are audited by an  
25 independent certified public accountant, but those of the applicant are  
26 not, then a copy of the most recent audited financial statement of the  
27 applicant's parent company, audited by an independent certified public  
28 accountant, shall be submitted. A consolidated financial statement of  
29 the applicant and its parent company shall satisfy this requirement  
30 unless the commissioner determines that additional or more recent  
31 financial information is required for the proper administration of this  
32 act;
- 33 e. a copy of the applicant's business plan, including information on  
34 staffing levels and the activities undertaken or to be undertaken in this  
35 State. The plan shall include a statement of the administrator's  
36 capability for providing a sufficient number of experienced and  
37 qualified personnel in the areas of claims processing and record  
38 keeping and a three-year projection of anticipated operating results, a  
39 statement of the sources of working capital and any other sources of  
40 funding and provision for contingencies that enable the applicant to  
41 perform the work for which it has contracted;
- 42 f. a list of the benefits payers under contract with the applicant and  
43 a copy of the standard contract or contracts used by the applicant in  
44 the course of business; and
- 45 g. a power of attorney, duly executed by the applicant, if not  
46 domiciled in this State, appointing the commissioner and his

1 successors in office as the true and lawful attorney of the applicant in  
2 and for this State upon whom all lawful process in any legal action or  
3 proceeding against the organization on a cause of action arising in this  
4 State may be served.

5  
6 3. In addition to the information required by section 2 of this act,  
7 the applicant shall file with the commissioner:

8 a. a description of the applicant's proposed method of marketing  
9 its services;

10 b. a statement setting forth the means by which the applicant is to  
11 be compensated;

12 c. a description of the complaint and appeals procedures instituted  
13 by the applicant; and

14 d. a description of the quality assurance procedures established by  
15 the applicant.

16 An applicant shall make available for inspection by the  
17 commissioner copies of all contracts with benefits payers or other  
18 persons with whom it does business, including subcontractors and  
19 reinsurers.

20  
21 4. The commissioner may issue a license to an applicant for  
22 licensure as a third party administrator if he finds that the applicant  
23 meets the standards established by this act, including, but not limited  
24 to, the following:

25 a. all of the materials required by this act or by the commissioner  
26 have been filed;

27 b. the persons responsible for conducting the applicant's affairs are  
28 competent, trustworthy and possess good reputations, and have  
29 appropriate experience, training and education;

30 c. the applicant has demonstrated the ability to assure that its  
31 services will be performed in a manner which will ensure the efficient  
32 operation of its business, including appropriate financial controls;

33 d. the standard contract forms to be used by the applicant are  
34 acceptable;

35 e. the applicant has adequate financial arrangements with the  
36 benefits payers for which it will perform its services and adequate  
37 arrangements for complying with the provisions of P.L.1999, c.154  
38 (C.17B:30-23 et al.); and

39 f. the compensation arrangements made between the applicant and  
40 benefits payers do not result in the assumption of financial risk by the  
41 applicant.

42  
43 5. The commissioner may deny an application for licensure as a  
44 third party administrator if he finds that any of the standards  
45 established by this act have not been met or for any other reasonable  
46 grounds. If the application for licensure is denied, the commissioner



1 shall notify the applicant in writing by certified mail, return receipt  
2 requested, setting forth his reasons for denial. The applicant may  
3 request a hearing by notice to the commissioner no later than the 30th  
4 day following receipt of the notice of denial.

5  
6 6. A third party administrator shall not conduct any business with  
7 a benefits payer in the absence of a written agreement between the  
8 administrator and the benefits payer. The agreement shall be retained  
9 as part of the official records of the administrator for the duration of  
10 the agreement and for five years thereafter. The provisions of the  
11 agreement shall include, but shall not be limited to:

12 a. the services to be provided by the administrator and the means  
13 by which the administrator is to be compensated;

14 b. the responsibilities of the benefits payer to the administrator  
15 with respect to claims to be paid by the administrator on behalf of a  
16 benefits payer, including: the provision of enrollment and eligibility  
17 information; arrangement for a preliminary or escrowed deposit of  
18 funds by the benefits payer, if any; the method used for the transmittal  
19 of funds from the benefits payer to the administrator; notification by  
20 the benefits payer of modifications in the benefits payer's benefits plan;  
21 provisions setting forth the respective liability of the administrator and  
22 benefits payer for payment of ineligible claims; liability for claims  
23 payments that are overdue; and provisions regarding the procurement  
24 of reinsurance or stop-loss insurance; and

25 c. the responsibilities of the administrator to the benefits payer,  
26 including: the maintenance of appropriate back-up systems against the  
27 loss of records; establishment and maintenance of appropriate financial  
28 controls; provisions regarding the benefits payer's rights with respect  
29 to conducting claims audits by an outside auditor; the maintenance of  
30 appropriate insurance coverage, which may include, but not be limited  
31 to, general liability insurance, valuable papers insurance and errors and  
32 omissions coverage; appropriate access by the benefits payer to the  
33 administrator's records; and procedures for making available the  
34 claims experience or other information to the benefits payer at its  
35 request, including, but not limited to, monthly reports.

36  
37 7. a. The commissioner shall have access to all books and records  
38 of a third party administrator for the purposes of examination, audit  
39 and inspection. Any trade secrets, proprietary information or the  
40 identity and addresses of enrollees contained in the books and records  
41 shall be kept confidential, except that the commissioner may use the  
42 information in any proceeding instituted against the administrator.

43 b. The benefits payer shall own the records generated by the  
44 administrator pertaining to the benefits payer, except that the  
45 administrator shall retain the right to continuing access to books and  
46 records to permit the administrator to fulfill all of its contractual

1 obligations to the benefits payer.

2 c. In the event that an agreement between an administrator and a  
3 benefits payer is canceled, notwithstanding the provisions of section  
4 6 of this act to the contrary, the administrator may, with the written  
5 agreement of the benefits payer, transfer all records to a new  
6 administrator instead of retaining them for five years.

7

8 8. If a third party administrator adjusts or settles claims under a  
9 health benefits plan, the commissions, fees or charges that the benefits  
10 payer pays the administrator, shall not be based solely on the number  
11 or amount of claims denied by the administrator. This provision shall  
12 not prohibit an administrator from receiving performance-based  
13 compensation if that compensation is not predicated on denial of  
14 claims or coverage.

15

16 9. a. A third party administrator shall be deemed to act in a  
17 fiduciary capacity on behalf of the benefits payer in the receipt and  
18 transmittal of the benefits payer's funds, and shall have all  
19 responsibility attendant to a fiduciary as established by law. If an  
20 account is jointly held by the administrator and the benefits payer, it  
21 shall be deposited in a State or federally chartered insured depository  
22 institution, and the administrator shall provide a monthly accounting  
23 of all transactions in that account. If the administrator is paying claims  
24 on behalf of the benefits payer using the benefits payer's funds for that  
25 purpose, the benefits payer shall have the responsibility to make the  
26 funds available to the administrator in a timely manner, as provided in  
27 the contract. An administrator shall not be liable to any party for the  
28 failure of the benefits payer to make funds available to pay claims.

29 b. An administrator shall maintain in force a fidelity bond in its  
30 own name on its officers and employees, in an amount established by  
31 the commissioner by regulation.

32

33 10. All insurance charges or premiums collected by an  
34 administrator on behalf of or for a benefits payer licensed or  
35 authorized to do business in this State shall be held by the third party  
36 administrator in a separate account maintained in the name of the  
37 benefits payer and shall be remitted to the benefits payer in a manner  
38 provided for in the written contract. If charges or premiums have been  
39 collected by the administrator on behalf of more than one benefits  
40 payers, they shall be maintained in separate accounts. Copies of all  
41 records pertaining to the collection of charges or premiums shall be  
42 made available to the benefits payer as provided in the contract.

43 The administrator shall not pay any claim by withdrawals from a  
44 fiduciary account in which premiums or charges are deposited.

45

46 11. Any policies, certificates, booklets, termination notices or

1 other written communications delivered by the benefits payer to the  
2 third party administrator for delivery to covered persons shall be  
3 delivered by the administrator promptly, in accordance with the  
4 instructions of the benefits payer.

5  
6 12. A third party administrator shall immediately notify the  
7 commissioner of any material change in its ownership, control or other  
8 fact or circumstance affecting its qualification for a license.

9  
10 13. A third party administrator shall file an annual report for the  
11 preceding calendar year with the commissioner on or before March 1  
12 of each year, in a form and manner prescribed by the commissioner.  
13 The annual report shall contain the complete names and addresses of  
14 all benefits payers with which the administrator had a contract in effect  
15 during the preceding calendar year. The commissioner shall establish  
16 a filing fee for the report, by regulation.

17  
18 14. The commissioner may suspend or revoke a license issued  
19 pursuant to this act if he finds that the third party administrator:

- 20 a. is in an unsound financial condition;
- 21 b. is using methods or practices in the conduct of its business that  
22 render its further transaction of business in this State hazardous or  
23 injurious to the benefits payers with which it has contracted or the  
24 public;
- 25 c. has failed to pay any judgment rendered against it in this State  
26 within 60 days after the judgment has become final;
- 27 d. has violated any lawful rule or order of the commissioner or any  
28 provision of State law;
- 29 e. has refused to be examined or produce its accounts, records and  
30 files for examination, or if any of its officers has refused to give  
31 information with respect to its affairs or has refused to perform any  
32 other legal obligation as to an examination, when required by the  
33 commissioner;
- 34 f. has, without just cause, refused or failed to pay proper claims  
35 or perform services arising under its contracts;
- 36 g. at any time fails to meet any qualification for which issuance of  
37 the license could have been refused had that failure then existed and  
38 been known to the commissioner;
- 39 h. has been convicted of, or has entered a plea of guilty or nolo  
40 contendere to a felony or crime of the first, second or third degree in  
41 this State, without regard to whether adjudication was held;
- 42 i. is under suspension or revocation in another state; or
- 43 j. has willfully reimbursed enrollees for benefits not eligible under  
44 the benefits payer's benefits plan.

45 If the commissioner finds that one or more grounds exist for the  
46 suspension or revocation of a certificate of authority issued under this

1 act, the commissioner may, in lieu of suspension or revocation, impose  
2 a fine upon the administrator.

3

4 15. The commissioner may, without advance notice or hearing,  
5 immediately suspend the license of a third party administrator if he  
6 finds that one or more of the following circumstances exist:

7 a. the administrator is insolvent or impaired;

8 b. a proceeding for receivership, conservatorship, rehabilitation or  
9 other delinquency proceeding regarding the administrator has been  
10 commenced in another state; or

11 c. the financial condition or business practices of the administrator  
12 otherwise pose an imminent threat to the public health, safety or  
13 welfare of the residents of this State.

14

15 16. On or after January 1, 2002, no person shall act as, offer to act  
16 as or hold himself out to be a third party billing service in this State  
17 unless certified by the commissioner in accordance with this act.  
18 Application for certification shall be made to the commissioner on a  
19 form provided by the commissioner. The commissioner shall establish  
20 by regulation the information that shall accompany the application,  
21 which shall include, but need not be limited to:

22 a. a copy of the applicant's basic organizational documents, which  
23 shall include articles of incorporation, articles of association,  
24 partnership agreement, management agreement, trust agreement or  
25 other documents governing the operation of the applicant that are  
26 applicable to the applicant's form of business organization;

27 b. a copy of the executed bylaws, rules and regulations, or other  
28 documents relating to the operation of the applicant's internal affairs;

29 c. the names, addresses and official positions of the persons  
30 responsible for the conduct of the affairs of the applicant, including,  
31 but not limited to, if applicable: the members of the board of directors,  
32 executive committee or other governing board or committee, the  
33 principal officers or partners, shareholders owning or having the right  
34 to acquire 10% or more of the voting securities of the corporation or  
35 partnership interest of a partnership or equity interest, in the case of  
36 another form of business organization;

37 d. if the applicant accepts monies from benefits payers on behalf  
38 of clients, the application shall include a copy of the applicant's most  
39 recent financial statements audited by an independent certified public  
40 accountant.

41 e. a copy of the applicant's business plan, including information on  
42 staffing levels and the activities undertaken or to be undertaken in this  
43 State. The plan shall include a statement of the third party billing  
44 service's capability for providing a sufficient number of experienced

1 and qualified personnel in the areas of claims processing and record  
2 keeping.

3 f. a list of the applicant's clients and a copy of the standard  
4 contract or contracts used by the applicant in the course of business;  
5 and

6 g. if the applicant accepts monies from benefits payers on behalf  
7 of clients, the application shall be accompanied by a power of attorney,  
8 duly executed by the applicant, if not domiciled in this State,  
9 appointing the commissioner and his successors in office as the true  
10 and lawful attorney of the applicant in and for this State upon whom  
11 all lawful process in any legal action or proceeding against the  
12 organization on a cause of action arising in this State may be served.  
13

14 17. In addition to the information otherwise required by this act  
15 or by the commissioner, a third party billing service shall file with the  
16 commissioner:

17 a. a description of the applicant's proposed method of marketing  
18 its services;

19 b. a statement setting forth the means by which the applicant is to  
20 be compensated;

21 c. a description of the quality assurance procedures established by  
22 the applicant; and

23 d. a copy of the standard contract or contracts used by the  
24 applicant in contracting with providers.  
25

26 18. The commissioner may approve an application for certification  
27 as a third party billing service if he finds that the applicant meets the  
28 standards established by this act, including, but not limited to, the  
29 following:

30 a. all of the material required by this act or by the commissioner  
31 have been filed;

32 b. the persons responsible for conducting the applicant's affairs  
33 are competent, trustworthy and possess good reputations, and have  
34 appropriate experience, training and education;

35 c. the applicant has demonstrated the ability to ensure that its  
36 services will be performed in a manner which will result in the efficient  
37 operation of its business, including, if the applicant accepts payments  
38 from benefits payers on behalf of its clients, appropriate financial  
39 controls;

40 d. the standard contract forms to be used by the applicant are  
41 acceptable; and

42 e. the applicant has adequate arrangements for complying with the  
43 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).  
44

45 19. The commissioner may deny an application for certification as  
46 a third party billing service if he finds that any of the standards

1 established by this act have not been met or for any other reasonable  
2 grounds. If the application for certification is denied, the commissioner  
3 shall notify the applicant in writing by certified mail, return receipt  
4 requested, setting forth his reasons for denial. The applicant may  
5 request a hearing by notice to the commissioner no later than the 30th  
6 day following receipt of the notice of denial.

7

8 20. A third party billing service shall not conduct any business  
9 with a client in the absence of a written agreement between the billing  
10 service and the client. The agreement shall be retained as part of the  
11 official records of the third party billing service for the duration of the  
12 agreement.

13 The agreement shall include the services to be provided by the  
14 third party billing service on behalf of the client; financial  
15 arrangements to be used if the third party billing service accepts  
16 monies from benefits payers on behalf of a client; provisions setting  
17 forth the respective liability of the client and the third party billing  
18 service for the accuracy and eligibility of submitted claims, and for the  
19 prompt submission of claims pursuant to the provisions of P.L.1999,  
20 c.154 (C.17B:30-23 et al.); and the responsibilities of the third party  
21 billing service to the client with respect to the maintenance of  
22 appropriate back-up systems against the loss of records, and the  
23 maintenance of appropriate insurance coverage by the third party  
24 billing service against the risk of loss.

25

26 21. A third party billing service that accepts monies from health  
27 benefits payers on behalf of a client shall be deemed to act in a  
28 fiduciary capacity on behalf of the client in the receipt and transmittal  
29 of funds and shall have all responsibility attendant to a fiduciary as  
30 established by law.

31

32 22. a. A third party billing service shall immediately notify the  
33 commissioner of any material change in its ownership, control, or  
34 other fact or circumstance affecting its qualification for certification.

35 b. A third party billing service shall file such reports, at such times  
36 as may be required by the commissioner, including reports that will  
37 verify compliance with the provisions of P.L.1999, c.154  
38 (C.17B:30-23 et al.).

39

40 23. The commissioner may suspend or revoke a certification  
41 issued pursuant to this act if he finds that the third party billing  
42 service:

43 a. is using methods or practices in the conduct of its business that  
44 render its further transaction of business in this State hazardous or  
45 injurious to its clients or the public;

1       b. has failed to pay any judgment rendered against it within 60  
2 days after the judgment has become final;

3       c. has violated any lawful rule or order of the commissioner or any  
4 provision of the laws of this State;

5       d. has, without just cause, refused or failed to perform services  
6 arising under its contracts with clients;

7       e. has been convicted of, or has entered a plea of guilty or nolo  
8 contendere to a felony or crime of the first, second or third degree in  
9 this State, without regard to whether adjudication was held; or

10       f. is under suspension or revocation in another State.

11       If the commissioner finds that one or more grounds exist for the  
12 suspension or revocation of a certification issued under this act, the  
13 commissioner may, in lieu of suspension or revocation, impose a fine  
14 upon the third party billing service.

15

16       24. The commissioner may, upon notice and hearing, assess a civil  
17 administrative penalty in an amount not less than \$250 nor more than  
18 \$5,000 for each day that a third party administrator or third party  
19 billing service is in violation of this act. A penalty imposed by the  
20 commissioner pursuant to this section may be in lieu of, or in addition  
21 to, suspension or revocation of a license pursuant to this act. A  
22 penalty may be recovered in a summary proceeding pursuant to the  
23 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C. 2A:58-10 et  
24 seq.).

25

26       25. The commissioner shall adopt rules and regulations pursuant  
27 to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1  
28 et seq.) to carry out the purposes of this act.

29

30       26. This act shall take effect immediately.

# SENATE HEALTH COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 375**

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 9, 2000

The Senate Health Committee reports favorably a Senate Committee Substitute for Senate Bill No. 375.

This substitute requires third party administrators of health benefits plans to be licensed by the Department of Banking and Insurance, effective January 1, 2002. The substitute also requires that third party billing services shall be certified by the department, effective January 1, 2002.

A "third party administrator" is defined as a person or entity that processes claims and pays claims on behalf of a benefits payer. Third party administrator shall not include an employee or affiliate of a benefits payer, but it shall include an affiliate of a licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization formed for the purpose of processing claims or claims payments on behalf of a benefits payer. Third party administrator shall not include a collection agency or bureau or a pharmacy benefits manager.

"Benefits payer" is defined as a licensed insurer, health, hospital or medical service corporation, or health maintenance organization authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.

"Third party billing service" is defined as a person or entity that processes claims or claims payments on behalf of a health care provider.

The substitute establishes the procedures for applying for licensure as a third party administrator and requires an applicant to provide the following to the department:

- a. a copy of the applicant's basic organizational documents;
- b. a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;
- c. the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, a statement of any criminal convictions and civil, regulatory or enforcement action, including actions related to professional licensing, taken or pending



against any principal officer or owner of the applicant, and the relationship with any other business entity, including a parent corporation;

d. a copy of the applicant's most recent financial statements audited by an independent certified public accountant;

e. a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State;

f. a list of the benefits payers under contract with the applicant, and a copy of the standard contract or contracts used by the applicant in the course of business;

g. a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the Commissioner of Banking and Insurance and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served; and

h. a description of the applicant's proposed method of marketing its services, a statement setting forth the means by which the applicant is to be compensated, a description of the complaint and appeals procedures instituted by the applicant and a description of the quality assurance procedures established by the applicant.

The substitute provides that if a third party administrator adjusts or settles claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator, shall not be based solely on the number or amount of claims denied by the administrator. However, an administrator would be permitted to receive performance-based compensation if that compensation is not predicated on denial of claims or coverage. Also, a third party administrator shall be deemed to act in a fiduciary capacity on behalf of the benefits payer in the receipt and transmittal of the benefits payer's funds and shall have all responsibility attendant to a fiduciary as established by law.

An applicant for certification as a third party billing service shall provide the following to the department:

a. a copy of the applicant's basic organizational documents;

b. a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

c. the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant;

d. if the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statements audited by an independent certified public accountant;

e. a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State;

f. a list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business;

g. if the applicant accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served; and

h. a description of the applicant's proposed method of marketing its services, a statement setting forth the means by which the applicant is to be compensated, a description of the quality assurance procedures established by the applicant and a copy of the standard contract or contracts used by the applicant in contracting with health care providers.

The substitute provides that a third party administrator and a third party billing service shall not conduct any business with a benefits payer or client, as applicable, in the absence of a written agreement between the administrator or billing service and the benefits payer or client. The substitute specifies the responsibilities of the each entity and the benefits payer or client, as applicable, that shall be included in the agreement. Also, the substitute specifies the conditions under which the commissioner may suspend or revoke a license or certification.

An administrator is required to submit an annual report to the commissioner and a billing service shall file such reports as are required by the commissioner. Both entities are required to immediately notify the commissioner of any material change in their ownership, control or other fact or circumstance affecting their qualification for a license or certification.

Finally, the substitute provides the grounds for suspension or revocation of a license or certification by the commissioner, and authorizes the commissioner to assess an administrator or billing service who is in violation of this substitute a civil administrative penalty of between \$250 and \$5,000 for each day the administrator or billing service is in violation.

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 375**

with Senate Floor Amendments  
(Proposed By Senator SINAGRA)

ADOPTED: DECEMBER 4, 2000

This committee substitute requires third party administrators of health benefits plans to be licensed by the Department of Banking and Insurance, effective January 1, 2002.

These amendments correct terminology in the substitute to provide that benefits payer funds, rather than premiums or charges, that are collected by the administrator shall be kept in a separate account. The terms premiums and charges are deleted since an administrator would not collect carrier premiums or charges.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 375**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED NOVEMBER 9, 2000

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Co-Sponsored by:**

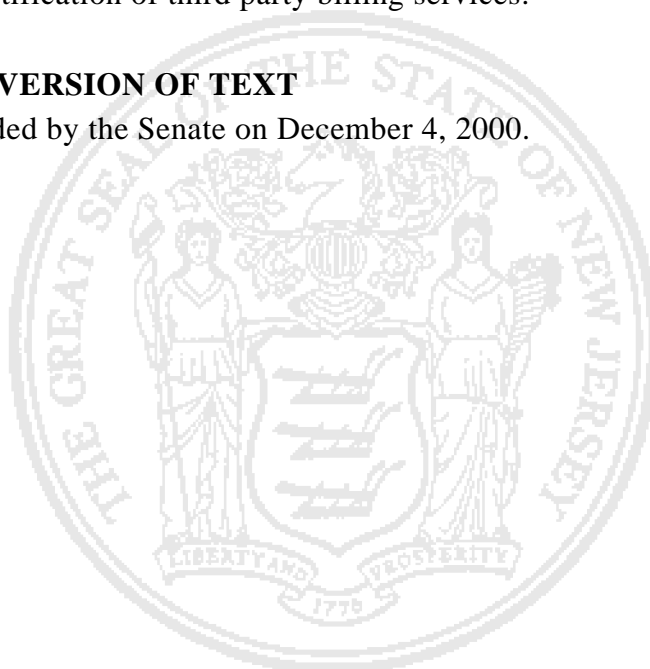
**Senators Gormley, McNamara, Cafiero, Bennett, Bark, Singer, Robertson,  
Kosco, Palaia, Kavanaugh, Bassano, Matheussen, Allen, Inverso, Bucco  
and Turner**

**SYNOPSIS**

Requires licensure of third party administrators of health and dental benefits plans and certification of third party billing services.

**CURRENT VERSION OF TEXT**

As amended by the Senate on December 4, 2000.



(Sponsorship Updated As Of: 12/19/2000)

1 **AN ACT** concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. As used in this act:

9 "Benefits payer" means a licensed insurer, health, hospital or  
10 medical service corporation, or health maintenance organization  
11 authorized to issue health or dental benefits plans in this State, or any  
12 other person who undertakes to provide health or dental benefits and  
13 is obligated to pay claims for health or dental benefits to providers or  
14 other claimants.

15 "Client" means a health care provider that contracts with a third  
16 party billing service to remit claims to benefits payers on behalf of the  
17 provider or other claimant.

18 "Commissioner" means the Commissioner of Banking and  
19 Insurance.

20 "Enrollee" means a person entitled to receive benefits under a  
21 health benefits plan.

22 "Health benefits plan" means a benefits plan which pays or  
23 provides hospital and medical expense or dental benefits for covered  
24 services.

25 "Health care provider" or "provider" means an individual or entity  
26 which provides a covered benefit or service.

27 "Third party administrator" means a person or entity that:  
28 processes claims and pays claims on behalf of a benefits payer. Third  
29 party administrator shall not include an employee or affiliate of a  
30 benefits payer, but it shall include an affiliate of a licensed insurer,  
31 health, hospital or medical service corporation, health maintenance  
32 organization, dental service corporation or dental plan organization  
33 formed for the purpose of processing claims or claims payments on  
34 behalf of a benefits payer. Third party administrator shall not include  
35 a collection agency or bureau or a pharmacy benefits manager.

36 "Third party billing service" means a person or entity that  
37 processes claims or claims payments on behalf of a health care  
38 provider.

39

40 2. On or after January 1, 2002, no person shall act as, offer to act  
41 as or hold himself out to be a third party administrator in this State  
42 unless licensed by the commissioner in accordance with this act.

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

- 1 Application for licensure shall be made to the commissioner on a form  
2 provided by the commissioner. The commissioner shall establish by  
3 regulation the information that shall accompany the application, which  
4 shall include, but need not be limited to:
- 5 a. a copy of the applicant's basic organizational documents, which  
6 shall include articles of incorporation, articles of association,  
7 partnership agreement, management agreement, trust agreement or  
8 other documents governing the operation of the applicant that are  
9 applicable to the applicant's form of business organization;
  - 10 b. a copy of the executed bylaws, rules and regulations, or other  
11 documents relating to the operation of the applicant's internal affairs;
  - 12 c. the names, addresses and official positions of the persons  
13 responsible for the conduct of the affairs of the applicant, including,  
14 but not limited to, if applicable: the members of the board of directors,  
15 executive committee or other governing board or committee; the  
16 principal officers or partners; shareholders owning or having the right  
17 to acquire 10% or more of the voting securities of the corporation or  
18 partnership interest of a partnership, or equity interest, in the case of  
19 another form of business organization; each person who has loaned  
20 funds to the applicant for the operation of its business; a statement of  
21 any criminal convictions and civil, regulatory or enforcement action,  
22 including actions related to professional licensing, taken or pending  
23 against any principal officer or owner of the applicant; and the  
24 relationship with any other business entity, including a parent  
25 corporation;
  - 26 d. a copy of the applicant's most recent financial statements  
27 audited by an independent certified public accountant. If the financial  
28 affairs of the applicant's parent company are audited by an  
29 independent certified public accountant, but those of the applicant are  
30 not, then a copy of the most recent audited financial statement of the  
31 applicant's parent company, audited by an independent certified public  
32 accountant, shall be submitted. A consolidated financial statement of  
33 the applicant and its parent company shall satisfy this requirement  
34 unless the commissioner determines that additional or more recent  
35 financial information is required for the proper administration of this  
36 act;
  - 37 e. a copy of the applicant's business plan, including information on  
38 staffing levels and the activities undertaken or to be undertaken in this  
39 State. The plan shall include a statement of the administrator's  
40 capability for providing a sufficient number of experienced and  
41 qualified personnel in the areas of claims processing and record  
42 keeping and a three-year projection of anticipated operating results, a  
43 statement of the sources of working capital and any other sources of  
44 funding and provision for contingencies that enable the applicant to  
45 perform the work for which it has contracted;
  - 46 f. a list of the benefits payers under contract with the applicant and

1 a copy of the standard contract or contracts used by the applicant in  
2 the course of business; and

3 g. a power of attorney, duly executed by the applicant, if not  
4 domiciled in this State, appointing the commissioner and his  
5 successors in office as the true and lawful attorney of the applicant in  
6 and for this State upon whom all lawful process in any legal action or  
7 proceeding against the organization on a cause of action arising in this  
8 State may be served.

9

10 3. In addition to the information required by section 2 of this act,  
11 the applicant shall file with the commissioner:

12 a. a description of the applicant's proposed method of marketing  
13 its services;

14 b. a statement setting forth the means by which the applicant is to  
15 be compensated;

16 c. a description of the complaint and appeals procedures instituted  
17 by the applicant; and

18 d. a description of the quality assurance procedures established by  
19 the applicant.

20 An applicant shall make available for inspection by the  
21 commissioner copies of all contracts with benefits payers or other  
22 persons with whom it does business, including subcontractors and  
23 reinsurers.

24

25 4. The commissioner may issue a license to an applicant for  
26 licensure as a third party administrator if he finds that the applicant  
27 meets the standards established by this act, including, but not limited  
28 to, the following:

29 a. all of the materials required by this act or by the commissioner  
30 have been filed;

31 b. the persons responsible for conducting the applicant's affairs are  
32 competent, trustworthy and possess good reputations, and have  
33 appropriate experience, training and education;

34 c. the applicant has demonstrated the ability to assure that its  
35 services will be performed in a manner which will ensure the efficient  
36 operation of its business, including appropriate financial controls;

37 d. the standard contract forms to be used by the applicant are  
38 acceptable;

39 e. the applicant has adequate financial arrangements with the  
40 benefits payers for which it will perform its services and adequate  
41 arrangements for complying with the provisions of P.L.1999, c.154  
42 (C.17B:30-23 et al.); and

43 f. the compensation arrangements made between the applicant and  
44 benefits payers do not result in the assumption of financial risk by the  
45 applicant.

1       5. The commissioner may deny an application for licensure as a  
2 third party administrator if he finds that any of the standards  
3 established by this act have not been met or for any other reasonable  
4 grounds. If the application for licensure is denied, the commissioner  
5 shall notify the applicant in writing by certified mail, return receipt  
6 requested, setting forth his reasons for denial. The applicant may  
7 request a hearing by notice to the commissioner no later than the 30th  
8 day following receipt of the notice of denial.

9  
10       6. A third party administrator shall not conduct any business with  
11 a benefits payer in the absence of a written agreement between the  
12 administrator and the benefits payer. The agreement shall be retained  
13 as part of the official records of the administrator for the duration of  
14 the agreement and for five years thereafter. The provisions of the  
15 agreement shall include, but shall not be limited to:

16       a. the services to be provided by the administrator and the means  
17 by which the administrator is to be compensated;

18       b. the responsibilities of the benefits payer to the administrator  
19 with respect to claims to be paid by the administrator on behalf of a  
20 benefits payer, including: the provision of enrollment and eligibility  
21 information; arrangement for a preliminary or escrowed deposit of  
22 funds by the benefits payer, if any; the method used for the transmittal  
23 of funds from the benefits payer to the administrator; notification by  
24 the benefits payer of modifications in the benefits payer's benefits plan;  
25 provisions setting forth the respective liability of the administrator and  
26 benefits payer for payment of ineligible claims; liability for claims  
27 payments that are overdue; and provisions regarding the procurement  
28 of reinsurance or stop-loss insurance; and

29       c. the responsibilities of the administrator to the benefits payer,  
30 including: the maintenance of appropriate back-up systems against the  
31 loss of records; establishment and maintenance of appropriate financial  
32 controls; provisions regarding the benefits payer's rights with respect  
33 to conducting claims audits by an outside auditor; the maintenance of  
34 appropriate insurance coverage, which may include, but not be limited  
35 to, general liability insurance, valuable papers insurance and errors and  
36 omissions coverage; appropriate access by the benefits payer to the  
37 administrator's records; and procedures for making available the  
38 claims experience or other information to the benefits payer at its  
39 request, including, but not limited to, monthly reports.

40  
41       7. a. The commissioner shall have access to all books and records  
42 of a third party administrator for the purposes of examination, audit  
43 and inspection. Any trade secrets, proprietary information or the  
44 identity and addresses of enrollees contained in the books and records  
45 shall be kept confidential, except that the commissioner may use the  
46 information in any proceeding instituted against the administrator.



1 b. The benefits payer shall own the records generated by the  
2 administrator pertaining to the benefits payer, except that the  
3 administrator shall retain the right to continuing access to books and  
4 records to permit the administrator to fulfill all of its contractual  
5 obligations to the benefits payer.

6 c. In the event that an agreement between an administrator and a  
7 benefits payer is canceled, notwithstanding the provisions of section  
8 6 of this act to the contrary, the administrator may, with the written  
9 agreement of the benefits payer, transfer all records to a new  
10 administrator instead of retaining them for five years.

11  
12 8. If a third party administrator adjusts or settles claims under a  
13 health benefits plan, the commissions, fees or charges that the benefits  
14 payer pays the administrator, shall not be based solely on the number  
15 or amount of claims denied by the administrator. This provision shall  
16 not prohibit an administrator from receiving performance-based  
17 compensation if that compensation is not predicated on denial of  
18 claims or coverage.

19  
20 9. a. A third party administrator shall be deemed to act in a  
21 fiduciary capacity on behalf of the benefits payer in the receipt and  
22 transmittal of the benefits payer's funds, and shall have all  
23 responsibility attendant to a fiduciary as established by law. If an  
24 account is jointly held by the administrator and the benefits payer, it  
25 shall be deposited in a State or federally chartered insured depository  
26 institution, and the administrator shall provide a monthly accounting  
27 of all transactions in that account. If the administrator is paying claims  
28 on behalf of the benefits payer using the benefits payer's funds for that  
29 purpose, the benefits payer shall have the responsibility to make the  
30 funds available to the administrator in a timely manner, as provided in  
31 the contract. An administrator shall not be liable to any party for the  
32 failure of the benefits payer to make funds available to pay claims.

33 b. An administrator shall maintain in force a fidelity bond in its  
34 own name on its officers and employees, in an amount established by  
35 the commissioner by regulation.

36  
37 10. All <sup>1</sup>[insurance charges or premiums] funds<sup>1</sup> collected by an  
38 administrator on behalf of or for a benefits payer licensed or  
39 authorized to do business in this State shall be held by the third party  
40 administrator in a separate account maintained in the name of the  
41 benefits payer and shall be remitted to the benefits payer in a manner  
42 provided for in the written contract. If <sup>1</sup>[charges or premiums] funds<sup>1</sup>  
43 have been collected by the administrator on behalf of more than one  
44 benefits payers, they shall be maintained in separate accounts. Copies  
45 of all records pertaining to the collection of <sup>1</sup>[charges or  
46 premiums] funds<sup>1</sup> shall be made available to the benefits payer as

1 provided in the contract.

2 <sup>1</sup>[The administrator shall not pay any claim by withdrawals from  
3 a fiduciary account in which premiums or charges are deposited.]<sup>1</sup>

4

5 11. Any policies, certificates, booklets, termination notices or  
6 other written communications delivered by the benefits payer to the  
7 third party administrator for delivery to covered persons shall be  
8 delivered by the administrator promptly, in accordance with the  
9 instructions of the benefits payer.

10

11 12. A third party administrator shall immediately notify the  
12 commissioner of any material change in its ownership, control or other  
13 fact or circumstance affecting its qualification for a license.

14

15 13. A third party administrator shall file an annual report for the  
16 preceding calendar year with the commissioner on or before March 1  
17 of each year, in a form and manner prescribed by the commissioner.  
18 The annual report shall contain the complete names and addresses of  
19 all benefits payers with which the administrator had a contract in effect  
20 during the preceding calendar year. The commissioner shall establish  
21 a filing fee for the report, by regulation.

22

23 14. The commissioner may suspend or revoke a license issued  
24 pursuant to this act if he finds that the third party administrator:

25 a. is in an unsound financial condition;

26 b. is using methods or practices in the conduct of its business that  
27 render its further transaction of business in this State hazardous or  
28 injurious to the benefits payers with which it has contracted or the  
29 public;

30 c. has failed to pay any judgment rendered against it in this State  
31 within 60 days after the judgment has become final;

32 d. has violated any lawful rule or order of the commissioner or any  
33 provision of State law;

34 e. has refused to be examined or produce its accounts, records and  
35 files for examination, or if any of its officers has refused to give  
36 information with respect to its affairs or has refused to perform any  
37 other legal obligation as to an examination, when required by the  
38 commissioner;

39 f. has, without just cause, refused or failed to pay proper claims  
40 or perform services arising under its contracts;

41 g. at any time fails to meet any qualification for which issuance of  
42 the license could have been refused had that failure then existed and  
43 been known to the commissioner;

44 h. has been convicted of, or has entered a plea of guilty or nolo  
45 contendere to a felony or crime of the first, second or third degree in  
46 this State, without regard to whether adjudication was held;

- 1 i. is under suspension or revocation in another state; or  
2 j. has willfully reimbursed enrollees for benefits not eligible under  
3 the benefits payer's benefits plan.

4 If the commissioner finds that one or more grounds exist for the  
5 suspension or revocation of a certificate of authority issued under this  
6 act, the commissioner may, in lieu of suspension or revocation, impose  
7 a fine upon the administrator.

8

9 15. The commissioner may, without advance notice or hearing,  
10 immediately suspend the license of a third party administrator if he  
11 finds that one or more of the following circumstances exist:

- 12 a. the administrator is insolvent or impaired;  
13 b. a proceeding for receivership, conservatorship, rehabilitation or  
14 other delinquency proceeding regarding the administrator has been  
15 commenced in another state; or  
16 c. the financial condition or business practices of the administrator  
17 otherwise pose an imminent threat to the public health, safety or  
18 welfare of the residents of this State.

19

20 16. On or after January 1, 2002, no person shall act as, offer to act  
21 as or hold himself out to be a third party billing service in this State  
22 unless certified by the commissioner in accordance with this act.  
23 Application for certification shall be made to the commissioner on a  
24 form provided by the commissioner. The commissioner shall establish  
25 by regulation the information that shall accompany the application,  
26 which shall include, but need not be limited to:

- 27 a. a copy of the applicant's basic organizational documents, which  
28 shall include articles of incorporation, articles of association,  
29 partnership agreement, management agreement, trust agreement or  
30 other documents governing the operation of the applicant that are  
31 applicable to the applicant's form of business organization;  
32 b. a copy of the executed bylaws, rules and regulations, or other  
33 documents relating to the operation of the applicant's internal affairs;  
34 c. the names, addresses and official positions of the persons  
35 responsible for the conduct of the affairs of the applicant, including,  
36 but not limited to, if applicable: the members of the board of directors,  
37 executive committee or other governing board or committee, the  
38 principal officers or partners, shareholders owning or having the right  
39 to acquire 10% or more of the voting securities of the corporation or  
40 partnership interest of a partnership or equity interest, in the case of  
41 another form of business organization;  
42 d. if the applicant accepts monies from benefits payers on behalf  
43 of clients, the application shall include a copy of the applicant's most  
44 recent financial statements audited by an independent certified public  
45 accountant.  
46 e. a copy of the applicant's business plan, including information on

1 staffing levels and the activities undertaken or to be undertaken in this  
2 State. The plan shall include a statement of the third party billing  
3 service's capability for providing a sufficient number of experienced  
4 and qualified personnel in the areas of claims processing and record  
5 keeping.

6 f. a list of the applicant's clients and a copy of the standard  
7 contract or contracts used by the applicant in the course of business;  
8 and

9 g. if the applicant accepts monies from benefits payers on behalf  
10 of clients, the application shall be accompanied by a power of attorney,  
11 duly executed by the applicant, if not domiciled in this State,  
12 appointing the commissioner and his successors in office as the true  
13 and lawful attorney of the applicant in and for this State upon whom  
14 all lawful process in any legal action or proceeding against the  
15 organization on a cause of action arising in this State may be served.

16

17 17. In addition to the information otherwise required by this act  
18 or by the commissioner, a third party billing service shall file with the  
19 commissioner:

20 a. a description of the applicant's proposed method of marketing  
21 its services;

22 b. a statement setting forth the means by which the applicant is to  
23 be compensated;

24 c. a description of the quality assurance procedures established by  
25 the applicant; and

26 d. a copy of the standard contract or contracts used by the  
27 applicant in contracting with providers.

28

29 18. The commissioner may approve an application for certification  
30 as a third party billing service if he finds that the applicant meets the  
31 standards established by this act, including, but not limited to, the  
32 following:

33 a. all of the material required by this act or by the commissioner  
34 have been filed;

35 b. the persons responsible for conducting the applicant's affairs  
36 are competent, trustworthy and possess good reputations, and have  
37 appropriate experience, training and education;

38 c. the applicant has demonstrated the ability to ensure that its  
39 services will be performed in a manner which will result in the efficient  
40 operation of its business, including, if the applicant accepts payments  
41 from benefits payers on behalf of its clients, appropriate financial  
42 controls;

43 d. the standard contract forms to be used by the applicant are  
44 acceptable; and

45 e. the applicant has adequate arrangements for complying with the  
46 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

1       19. The commissioner may deny an application for certification as  
2 a third party billing service if he finds that any of the standards  
3 established by this act have not been met or for any other reasonable  
4 grounds. If the application for certification is denied, the commissioner  
5 shall notify the applicant in writing by certified mail, return receipt  
6 requested, setting forth his reasons for denial. The applicant may  
7 request a hearing by notice to the commissioner no later than the 30th  
8 day following receipt of the notice of denial.

9  
10       20. A third party billing service shall not conduct any business  
11 with a client in the absence of a written agreement between the billing  
12 service and the client. The agreement shall be retained as part of the  
13 official records of the third party billing service for the duration of the  
14 agreement.

15       The agreement shall include the services to be provided by the  
16 third party billing service on behalf of the client; financial  
17 arrangements to be used if the third party billing service accepts  
18 monies from benefits payers on behalf of a client; provisions setting  
19 forth the respective liability of the client and the third party billing  
20 service for the accuracy and eligibility of submitted claims, and for the  
21 prompt submission of claims pursuant to the provisions of P.L.1999,  
22 c.154 (C.17B:30-23 et al.); and the responsibilities of the third party  
23 billing service to the client with respect to the maintenance of  
24 appropriate back-up systems against the loss of records, and the  
25 maintenance of appropriate insurance coverage by the third party  
26 billing service against the risk of loss.

27  
28       21. A third party billing service that accepts monies from health  
29 benefits payers on behalf of a client shall be deemed to act in a  
30 fiduciary capacity on behalf of the client in the receipt and transmittal  
31 of funds and shall have all responsibility attendant to a fiduciary as  
32 established by law.

33  
34       22. a. A third party billing service shall immediately notify the  
35 commissioner of any material change in its ownership, control, or  
36 other fact or circumstance affecting its qualification for certification.

37       b. A third party billing service shall file such reports, at such times  
38 as may be required by the commissioner, including reports that will  
39 verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-  
40 23 et al.).

41  
42       23. The commissioner may suspend or revoke a certification  
43 issued pursuant to this act if he finds that the third party billing  
44 service:

45       a. is using methods or practices in the conduct of its business that  
46 render its further transaction of business in this State hazardous or

1 injurious to its clients or the public;

2 b. has failed to pay any judgment rendered against it within 60  
3 days after the judgment has become final;

4 c. has violated any lawful rule or order of the commissioner or any  
5 provision of the laws of this State;

6 d. has, without just cause, refused or failed to perform services  
7 arising under its contracts with clients;

8 e. has been convicted of, or has entered a plea of guilty or nolo  
9 contendere to a felony or crime of the first, second or third degree in  
10 this State, without regard to whether adjudication was held; or

11 f. is under suspension or revocation in another State.

12 If the commissioner finds that one or more grounds exist for the  
13 suspension or revocation of a certification issued under this act, the  
14 commissioner may, in lieu of suspension or revocation, impose a fine  
15 upon the third party billing service.

16

17 24. The commissioner may, upon notice and hearing, assess a civil  
18 administrative penalty in an amount not less than \$250 nor more than  
19 \$5,000 for each day that a third party administrator or third party  
20 billing service is in violation of this act. A penalty imposed by the  
21 commissioner pursuant to this section may be in lieu of, or in addition  
22 to, suspension or revocation of a license pursuant to this act. A  
23 penalty may be recovered in a summary proceeding pursuant to the  
24 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
25 seq.).

26

27 25. The commissioner shall adopt rules and regulations pursuant  
28 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
29 et seq.) to carry out the purposes of this act.

30

31 26. This act shall take effect immediately.

# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

[First Reprint]

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 375**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 1, 2001

The Assembly Banking and Insurance Committee reports favorably and with committee amendments, Senate Bill No. 375 (SCS) (1R).

This bill, as amended by the committee, requires third party administrators of health benefits plans to be licensed and third party billing services of health care providers to be certified by the Department of Banking and Insurance, effective January 1, 2002. A "third party administrator" is defined as a person or entity that processes claims and pays claims on behalf of a benefits payer without the assumption of financial risk for the payment of health or dental benefits. A "benefits payer" is defined as a licensed insurer, health, hospital or medical service corporation, or health maintenance organization authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.

A third party administrator does not include an employee or affiliate of a benefits payer, but does include an affiliate of a licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization formed for the purpose of processing claims or claims payments on behalf of a benefits payer other than the licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization. A third party administrator does not include a collection agency or bureau or a pharmacy benefits manager.

"Third party billing service" is defined as a person or entity that is paid by a health care provider to process claims or claims payments on behalf of the provider.

The bill requires an applicant for licensure as a third party administrator that is not a licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service

corporation or dental plan organization to provide copies of the following information to the department:

- C the applicant's basic organizational documents;
- C the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;
- C the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, a statement of any criminal convictions and civil, regulatory or enforcement action, including actions related to professional licensing, taken or pending against any principal officer or owner of the applicant, and the relationship with any other business entity, including a parent corporation;
- C the applicant's most recent financial statements audited by an independent certified public accountant;
- C the business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State;
- C a list of the benefits payers under contract with the applicant, and a copy of the standard contract or contracts used by the applicant in the course of business;
- C a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the Commissioner of Banking and Insurance and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served; and
- C a description of the applicant's proposed method of marketing its services, a statement setting forth the means by which the applicant is to be compensated, a description of the complaint and appeals procedures instituted by the applicant and a description of the quality assurance procedures established by the applicant.

With respect to an applicant for licensure as a third party administrator that is an affiliate of a licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization, the commissioner shall require such information as is deemed necessary and appropriate for licensure.

The bill establishes that an application for licensure as a third party administrator shall be deemed approved, if not disapproved, by the commissioner within 60 days of receipt of a completed application.

The bill provides that if a third party administrator adjusts or settles claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator shall not be based solely on the number or amount of claims denied by the administrator. However, an administrator would be permitted to receive performance-based compensation if that compensation is not predicated on denial of claims or coverage. Also, a third party administrator shall be deemed to act in a fiduciary capacity on behalf



of the benefits payer in the receipt and transmittal of the benefits payer's funds and shall have all responsibility attendant to a fiduciary as established by law. All monies transmitted shall be kept in a separate account and shall not be commingled with any other funds.

An applicant for certification as a third party billing service shall provide copies of the following to the department:

- C the applicant's basic organizational documents;
- C the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;
- C the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant;
- C if the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statements audited by an independent certified public accountant;
- C the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State;
- C a list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business;
- C if the applicant accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served; and
- C a description of the applicant's proposed method of marketing its services, a statement setting forth the means by which the applicant is to be compensated, a description of the quality assurance procedures established by the applicant and a copy of the standard contract or contracts used by the applicant in contracting with health care providers.

Also, a third party billing service that accepts monies from health benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law. All monies transmitted by benefits payers or on behalf of clients shall be kept in a separate account and shall not be commingled with any other funds.

The bill provides that a third party administrator and a third party billing service shall not conduct any business with a benefits payer or client, as applicable, in the absence of a written agreement between the administrator or billing service and the benefits payer or client. The bill specifies the responsibilities of the each entity and the benefits payer or client, as applicable, that shall be included in the agreement.

An administrator is required to submit an annual report to the commissioner and a billing service shall file such reports as are required by the commissioner. Both entities are required to immediately notify the commissioner of any material change in their ownership, control or other fact or circumstance affecting their qualification for a license or certification.

Finally, the bill provides the grounds for suspension or revocation of a license or certification by the commissioner, and authorizes the commissioner to assess an administrator or billing service who is in violation of this bill a civil administrative penalty of between \$250 and \$5,000 for each day the administrator or billing service is in violation.

As reported by the committee, this bill is identical to Assembly Bill No. 609 (ACS).

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 375**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED NOVEMBER 9, 2000

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Co-Sponsored by:**

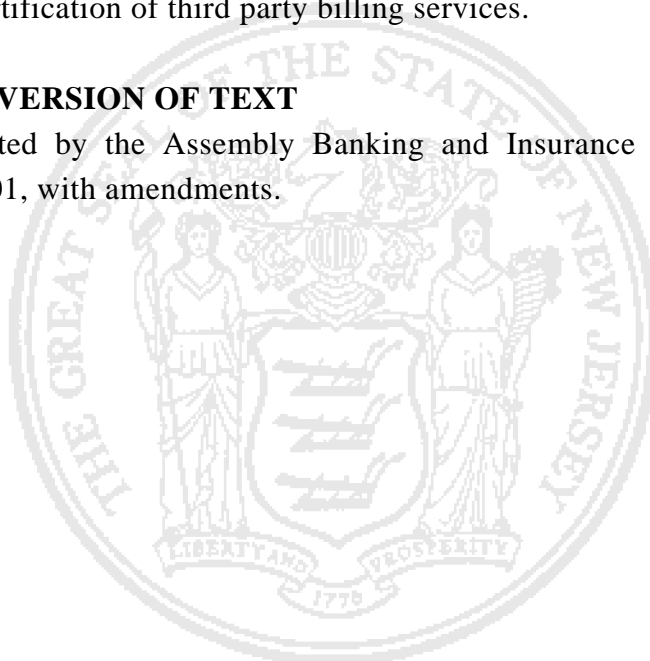
**Senators Gormley, McNamara, Cafiero, Bennett, Bark, Singer, Robertson,  
Kosco, Palaia, Kavanaugh, Bassano, Matheussen, Allen, Inverso, Bucco,  
Turner and Assemblyman Kelly**

**SYNOPSIS**

Requires licensure of third party administrators of health and dental benefits plans and certification of third party billing services.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Banking and Insurance Committee on March 1, 2001, with amendments.



**(Sponsorship Updated As Of: 6/29/2001)**

1 **AN ACT** concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Benefits payer" means a licensed insurer, health, hospital or  
10 medical service corporation, or health maintenance organization  
11 authorized to issue health or dental benefits plans in this State, or any  
12 other person who undertakes to provide <sup>2</sup>and assumes financial risk  
13 for the payment of<sup>2</sup> health or dental benefits and is obligated to pay  
14 claims for health or dental benefits to providers or other claimants.

15 "Client" means a health care provider that contracts with a third  
16 party billing service to remit claims to benefits payers on behalf of the  
17 provider or other claimant.

18 "Commissioner" means the Commissioner of Banking and  
19 Insurance.

20 "Enrollee" means a person entitled to receive benefits under a  
21 health benefits plan.

22 "Health benefits plan" means a benefits plan which pays or  
23 provides hospital and medical expense or dental benefits for covered  
24 services.

25 "Health care provider" or "provider" means an individual or entity  
26 which provides a covered benefit or service.

27 "Third party administrator" means a person or entity that:  
28 processes claims and pays claims on behalf of a benefits payer <sup>2</sup>without  
29 the assumption of financial risk for the payment of health or dental  
30 benefits<sup>2</sup>. Third party administrator shall not include an employee or  
31 affiliate of a benefits payer, but it shall include an affiliate of a licensed  
32 insurer, health, hospital or medical service corporation, health  
33 maintenance organization, dental service corporation or dental plan  
34 organization formed for the purpose of processing claims or claims  
35 payments on behalf of a benefits payer<sup>2</sup>, other than the licensed  
36 insurer, health, hospital or medical service corporation, health  
37 maintenance organization, dental service corporation or dental plan  
38 organization<sup>2</sup>. Third party administrator shall not include a collection  
39 agency or bureau or a pharmacy benefits manager.

40 "Third party billing service" means a person or entity that  
41 <sup>2</sup>**[processes]** is paid by a health care provider to process<sup>2</sup> claims or  
42 claims payments on behalf of <sup>2</sup>**[a]** the<sup>2</sup> health care provider.

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

<sup>2</sup> Assembly ABI committee amendments adopted March 1, 2001.

1       2. On or after January 1, 2002, no person shall act as, offer to act  
2 as or hold himself out to be a third party administrator in this State  
3 unless licensed by the commissioner in accordance with this act.

4       <sup>2</sup>a. <sup>2</sup>Application for licensure <sup>2</sup>for third party administrators that  
5 are not licensed insurers, health, hospital or medical service  
6 corporations, health maintenance organizations, dental service  
7 corporations or dental plan organizations<sup>2</sup> shall be made to the  
8 commissioner on a form provided by the commissioner. The  
9 commissioner shall establish by regulation the information that shall  
10 accompany the application, which <sup>2</sup>[shall] may<sup>2</sup> include, but need not  
11 be limited to:

12       <sup>2</sup>[a.] (1)<sup>2</sup> a copy of the applicant's basic organizational  
13 documents, which shall include articles of incorporation, articles of  
14 association, partnership agreement, management agreement, trust  
15 agreement or other documents governing the operation of the  
16 applicant that are applicable to the applicant's form of business  
17 organization;

18       <sup>2</sup>[b.] (2)<sup>2</sup> a copy of the executed bylaws, rules and regulations,  
19 or other documents relating to the operation of the applicant's internal  
20 affairs;

21       <sup>2</sup>[c.] (3)<sup>2</sup> the names, addresses and official positions of the  
22 persons responsible for the conduct of the affairs of the applicant,  
23 including, but not limited to, if applicable: the members of the board  
24 of directors, executive committee or other governing board or  
25 committee; the principal officers or partners; shareholders owning or  
26 having the right to acquire 10% or more of the voting securities of the  
27 corporation or partnership interest of a partnership, or equity interest,  
28 in the case of another form of business organization; each person who  
29 has loaned funds to the applicant for the operation of its business; a  
30 statement of any criminal convictions and civil, regulatory or  
31 enforcement action, including actions related to professional licensing,  
32 taken or pending against any principal officer or owner of the  
33 applicant; and the relationship with any other business entity, including  
34 a parent corporation;

35       <sup>2</sup>[d.] (4)<sup>2</sup> a copy of the applicant's most recent financial  
36 statements audited by an independent certified public accountant. If  
37 the financial affairs of the applicant's parent company are audited by  
38 an independent certified public accountant, but those of the applicant  
39 are not, then a copy of the most recent audited financial statement of  
40 the applicant's parent company, audited by an independent certified  
41 public accountant, shall be submitted. A consolidated financial  
42 statement of the applicant and its parent company shall satisfy this  
43 requirement unless the commissioner determines that additional or  
44 more recent financial information is required for the proper  
45 administration of this act;

46       <sup>2</sup>[e.] (5)<sup>2</sup> a copy of the applicant's business plan, including

1 information on staffing levels and the activities undertaken or to be  
2 undertaken in this State. The plan shall include a statement of the  
3 administrator's capability for providing a sufficient number of  
4 experienced and qualified personnel in the areas of claims processing  
5 and record keeping and a three-year projection of anticipated  
6 operating results, a statement of the sources of working capital and  
7 any other sources of funding and provision for contingencies that  
8 enable the applicant to perform the work for which it has contracted;

9 <sup>2</sup>[f.] (6)<sup>2</sup> a list of the benefits payers under contract with the  
10 applicant and a copy of the standard contract or contracts used by the  
11 applicant in the course of business; and

12 <sup>2</sup>[g.] (7)<sup>2</sup> a power of attorney, duly executed by the applicant, if  
13 not domiciled in this State, appointing the commissioner and his  
14 successors in office as the true and lawful attorney of the applicant in  
15 and for this State upon whom all lawful process in any legal action or  
16 proceeding against the organization on a cause of action arising in this  
17 State may be served.

18 <sup>2</sup>b. With respect to an applicant that is an affiliate of a licensed  
19 insurer, health, hospital or medical service corporation, health  
20 maintenance organization, dental service corporation or dental plan  
21 organization, the commissioner shall require that information  
22 necessary and appropriate for licensure.

23 c. An application for licensure shall be approved if not  
24 disapproved by the commissioner within 60 days of receipt of a  
25 completed application. For the purposes of this section, an application  
26 shall be complete if all of the information required to be submitted to  
27 the commissioner by regulation has been submitted by the applicant.<sup>2</sup>

28

29 3. In addition to the information required by section 2 of this act,  
30 the applicant shall file with the commissioner:

31 a. a description of the applicant's proposed method of marketing  
32 its services;

33 b. a statement setting forth the means by which the applicant is to  
34 be compensated;

35 c. a description of the complaint and appeals procedures instituted  
36 by the applicant; and

37 d. a description of the quality assurance procedures established by  
38 the applicant.

39 An applicant shall make available for inspection by the  
40 commissioner copies of all contracts with benefits payers or other  
41 persons with whom it does business, including subcontractors and  
42 reinsurers.

43

44 4. The commissioner may issue a license to an applicant for  
45 licensure as a third party administrator if he finds that the applicant  
46 meets the standards established by this act, including, but not limited

1 to, the following:

2 a. all of the materials required by this act or by the commissioner  
3 have been filed;

4 b. the persons responsible for conducting the applicant's affairs are  
5 competent, trustworthy and possess good reputations, and have  
6 appropriate experience, training and education;

7 c. the applicant has demonstrated the ability to assure that its  
8 services will be performed in a manner which will ensure the efficient  
9 operation of its business, including appropriate financial controls;

10 d. the standard contract forms to be used by the applicant are  
11 acceptable;

12 e. the applicant has adequate financial arrangements with the  
13 benefits payers for which it will perform its services and adequate  
14 arrangements for complying with the provisions of P.L.1999, c.154  
15 (C.17B:30-23 et al.); and

16 f. the compensation arrangements made between the applicant and  
17 benefits payers do not result in the assumption of financial risk by the  
18 applicant.

19

20 5. The commissioner may deny an application for licensure as a  
21 third party administrator if he finds that any of the standards  
22 established by this act have not been met or for any other reasonable  
23 grounds. If the application for licensure is denied, the commissioner  
24 shall notify the applicant in writing by certified mail, return receipt  
25 requested, setting forth his reasons for denial. The applicant may  
26 request a hearing by notice to the commissioner no later than the 30th  
27 day following receipt of the notice of denial.

28

29 6. A third party administrator shall not conduct any business with  
30 a benefits payer in the absence of a written agreement between the  
31 administrator and the benefits payer. The agreement shall be retained  
32 as part of the official records of the administrator for the duration of  
33 the agreement and for five years thereafter. The provisions of the  
34 agreement shall include, but shall not be limited to:

35 a. the services to be provided by the administrator and the means  
36 by which the administrator is to be compensated;

37 b. the responsibilities of the benefits payer to the administrator  
38 with respect to claims to be paid by the administrator on behalf of a  
39 benefits payer, including: the provision of enrollment and eligibility  
40 information; arrangement for a preliminary or escrowed deposit of  
41 funds by the benefits payer, if any; the method used for the transmittal  
42 of funds from the benefits payer to the administrator; notification by  
43 the benefits payer of modifications in the benefits payer's benefits plan;  
44 provisions setting forth the respective liability of the administrator and  
45 benefits payer for payment of ineligible claims; liability for claims  
46 payments that are overdue; and provisions regarding the procurement

1 of reinsurance or stop-loss insurance; and

2 c. the responsibilities of the administrator to the benefits payer,  
3 including: the maintenance of appropriate back-up systems against the  
4 loss of records; establishment and maintenance of appropriate financial  
5 controls; provisions regarding the benefits payer's rights with respect  
6 to conducting claims audits by an outside auditor; the maintenance of  
7 appropriate insurance coverage, which may include, but not be limited  
8 to, general liability insurance, valuable papers insurance and errors and  
9 omissions coverage; appropriate access by the benefits payer to the  
10 administrator's records; and procedures for making available the  
11 claims experience or other information to the benefits payer at its  
12 request, including, but not limited to, monthly reports.

13

14 7. a. The commissioner shall have access to all books and records  
15 of a third party administrator for the purposes of examination, audit  
16 and inspection. Any trade secrets, proprietary information or the  
17 identity and addresses of enrollees contained in the books and records  
18 shall be kept confidential, except that the commissioner may use the  
19 information in any proceeding instituted against the administrator.

20 b. The benefits payer shall own the records generated by the  
21 administrator pertaining to the benefits payer, except that the  
22 administrator shall retain the right to continuing access to books and  
23 records to permit the administrator to fulfill all of its contractual  
24 obligations to the benefits payer.

25 c. In the event that an agreement between an administrator and a  
26 benefits payer is canceled, notwithstanding the provisions of section  
27 6 of this act to the contrary, the administrator may, with the written  
28 agreement of the benefits payer, transfer all records to a new  
29 administrator instead of retaining them for five years.

30

31 8. If a third party administrator <sup>2</sup>[adjusts or settles] adjudicates<sup>2</sup>  
32 claims under a health benefits plan, the commissions, fees or charges  
33 that the benefits payer pays the administrator, shall not be based solely  
34 on the number or amount of claims denied by the administrator. This  
35 provision shall not prohibit an administrator from receiving  
36 performance-based compensation if that compensation is not  
37 predicated on denial of claims or coverage.

38

39 9. a. A third party administrator shall be deemed to act in a  
40 fiduciary capacity on behalf of the benefits payer in the receipt and  
41 transmittal of the benefits payer's funds, and shall have all  
42 responsibility attendant to a fiduciary as established by law. <sup>2</sup>Funds  
43 transmitted shall be kept in a separate account and shall not be  
44 commingled with any other funds.<sup>2</sup> If an account is jointly held by the  
45 administrator and the benefits payer, it shall be deposited in a State or  
46 federally chartered insured depository institution, and the



1 administrator shall provide a monthly accounting of all transactions in  
2 that account. <sup>2</sup>[If the administrator is paying claims on behalf of the  
3 benefits payer using the benefits payer's funds for that purpose, the]  
4 A<sup>2</sup> benefits payer shall have the responsibility to make <sup>2</sup>[the]<sup>2</sup> funds  
5 necessary to pay the claims<sup>2</sup> available to the administrator in a timely  
6 manner, as provided in the contract. An administrator shall not be  
7 liable to any party for the failure of the benefits payer to make funds  
8 available to pay claims.

9 b. An administrator shall maintain in force a fidelity bond in its  
10 own name on its officers and employees, in an amount established by  
11 the commissioner by regulation.

12

13 10. All <sup>1</sup>[insurance charges or premiums] funds<sup>1</sup> <sup>2</sup>[collected by]  
14 remitted to<sup>2</sup> an administrator <sup>2</sup>[on behalf of or for] by<sup>2</sup> a benefits  
15 payer licensed or authorized to do business in this State shall be held  
16 by the third party administrator in a separate account maintained in the  
17 name of the benefits payer <sup>2</sup>[and shall be remitted to the benefits payer  
18 in a manner provided for in the written contract]<sup>2</sup>. If <sup>1</sup>[charges or  
19 premiums] funds<sup>1</sup> have been collected by the administrator <sup>2</sup>from a  
20 provider or enrollee<sup>2</sup> on behalf of <sup>2</sup>[more than one] a<sup>2</sup> benefits  
21 <sup>2</sup>[payers] payer<sup>2</sup>, they shall be maintained in <sup>2</sup>[separate accounts] a  
22 separate account in trust for the benefits payer or remitted to the  
23 benefits payer, as provided in the contract<sup>2</sup>. Copies of all records  
24 pertaining to the collection of <sup>1</sup>[charges or premiums] funds<sup>1</sup> shall be  
25 made available to the benefits payer as provided in the contract.

26 <sup>1</sup>[The administrator shall not pay any claim by withdrawals from  
27 a fiduciary account in which premiums or charges are deposited.]<sup>1</sup>

28

29 11. Any policies, certificates, booklets, termination notices or  
30 other written communications delivered by the benefits payer to the  
31 third party administrator for delivery to <sup>2</sup>[covered persons] enrollees<sup>2</sup>  
32 shall be delivered by the administrator promptly, in accordance with  
33 the instructions of the benefits payer.

34

35 12. A third party administrator shall immediately notify the  
36 commissioner of any material change in its ownership, control or other  
37 fact or circumstance affecting its qualification for a license.

38

39 13. A third party administrator shall file an annual report for the  
40 preceding calendar year with the commissioner on or before March 1  
41 of each year, in a form and manner prescribed by the commissioner.  
42 The annual report shall contain the complete names and addresses of  
43 all benefits payers with which the administrator had a contract in effect  
44 during the preceding calendar year. The commissioner shall establish  
45 a filing fee for the report, by regulation.

1       14. The commissioner may suspend or revoke a license issued  
2 pursuant to this act if he finds that the third party administrator:

3       a. is in an unsound financial condition;

4       b. is using methods or practices in the conduct of its business that  
5 render its further transaction of business in this State hazardous or  
6 injurious to the benefits payers with which it has contracted or the  
7 public;

8       c. has failed to pay any judgment rendered against it in this State  
9 within 60 days after the judgment has become final;

10       d. has violated any lawful rule or order of the commissioner or any  
11 provision of State law;

12       e. has refused to be examined or produce its accounts, records and  
13 files for examination, or if any of its officers has refused to give  
14 information with respect to its affairs or has refused to perform any  
15 other legal obligation as to an examination, when required by the  
16 commissioner;

17       f. has, without just cause, refused or failed to pay proper claims  
18 or perform services arising under its contracts;

19       g. at any time fails to meet any qualification for which issuance of  
20 the license could have been refused had that failure then existed and  
21 been known to the commissioner;

22       h. has been convicted of, or has entered a plea of guilty or nolo  
23 contendere to a felony or crime of the first, second or third degree in  
24 this State, without regard to whether adjudication was held;

25       i. is under suspension or revocation in another state; or

26       j. has willfully reimbursed enrollees for benefits not eligible under  
27 the benefits payer's benefits plan.

28       If the commissioner finds that one or more grounds exist for the  
29 suspension or revocation of a certificate of authority issued under this  
30 act, the commissioner may, in lieu of suspension or revocation, impose  
31 a fine upon the administrator.  
32

33       15. The commissioner may, without advance notice or hearing,  
34 immediately suspend the license of a third party administrator if he  
35 finds that one or more of the following circumstances exist:

36       a. the administrator is insolvent or impaired;

37       b. a proceeding for receivership, conservatorship, rehabilitation or  
38 other delinquency proceeding regarding the administrator has been  
39 commenced in another state; or

40       c. the financial condition or business practices of the administrator  
41 otherwise pose an imminent threat to the public health, safety or  
42 welfare of the residents of this State.  
43

44       16. On or after January 1, 2002, no person shall act as, offer to act  
45 as or hold himself out to be a third party billing service in this State  
46 unless certified by the commissioner in accordance with this act.

1 Application for certification shall be made to the commissioner on a  
2 form provided by the commissioner. The commissioner shall establish  
3 by regulation the information that shall accompany the application,  
4 which shall include, but need not be limited to:

5 a. a copy of the applicant's basic organizational documents, which  
6 shall include articles of incorporation, articles of association,  
7 partnership agreement, management agreement, trust agreement or  
8 other documents governing the operation of the applicant that are  
9 applicable to the applicant's form of business organization;

10 b. a copy of the executed bylaws, rules and regulations, or other  
11 documents relating to the operation of the applicant's internal affairs;

12 c. the names, addresses and official positions of the persons  
13 responsible for the conduct of the affairs of the applicant, including,  
14 but not limited to, if applicable: the members of the board of directors,  
15 executive committee or other governing board or committee, the  
16 principal officers or partners, shareholders owning or having the right  
17 to acquire 10% or more of the voting securities of the corporation or  
18 partnership interest of a partnership or equity interest, in the case of  
19 another form of business organization;

20 d. if the applicant accepts monies from benefits payers on behalf  
21 of clients, the application shall include a copy of the applicant's most  
22 recent financial statements audited by an independent certified public  
23 accountant.

24 e. a copy of the applicant's business plan, including information on  
25 staffing levels and the activities undertaken or to be undertaken in this  
26 State. The plan shall include a statement of the third party billing  
27 service's capability for providing a sufficient number of experienced  
28 and qualified personnel in the areas of claims processing and record  
29 keeping.

30 f. a list of the applicant's clients and a copy of the standard  
31 contract or contracts used by the applicant in the course of business;  
32 and

33 g. if the applicant accepts monies from benefits payers on behalf  
34 of clients, the application shall be accompanied by a power of attorney,  
35 duly executed by the applicant, if not domiciled in this State,  
36 appointing the commissioner and his successors in office as the true  
37 and lawful attorney of the applicant in and for this State upon whom  
38 all lawful process in any legal action or proceeding against the  
39 organization on a cause of action arising in this State may be served.  
40

41 17. In addition to the information otherwise required by this act  
42 or by the commissioner, a third party billing service shall file with the  
43 commissioner:

44 a. a description of the applicant's proposed method of marketing  
45 its services;

46 b. a statement setting forth the means by which the applicant is to

1 be compensated;

2 c. a description of the quality assurance procedures established by  
3 the applicant; and

4 d. a copy of the standard contract or contracts used by the  
5 applicant in contracting with providers.

6

7 18. The commissioner may approve an application for certification  
8 as a third party billing service if he finds that the applicant meets the  
9 standards established by this act, including, but not limited to, the  
10 following:

11 a. all of the material required by this act or by the commissioner  
12 have been filed;

13 b. the persons responsible for conducting the applicant's affairs  
14 are competent, trustworthy and possess good reputations, and have  
15 appropriate experience, training and education;

16 c. the applicant has demonstrated the ability to ensure that its  
17 services will be performed in a manner which will result in the efficient  
18 operation of its business, including, if the applicant accepts payments  
19 from benefits payers on behalf of its clients, appropriate financial  
20 controls;

21 d. the standard contract forms to be used by the applicant are  
22 acceptable; and

23 e. the applicant has adequate arrangements for complying with the  
24 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

25

26 19. The commissioner may deny an application for certification as  
27 a third party billing service if he finds that any of the standards  
28 established by this act have not been met or for any other reasonable  
29 grounds. If the application for certification is denied, the commissioner  
30 shall notify the applicant in writing by certified mail, return receipt  
31 requested, setting forth his reasons for denial. The applicant may  
32 request a hearing by notice to the commissioner no later than the 30th  
33 day following receipt of the notice of denial.

34

35 20. A third party billing service shall not conduct any business  
36 with a client in the absence of a written agreement between the billing  
37 service and the client. The agreement shall be retained as part of the  
38 official records of the third party billing service for the duration of the  
39 agreement.

40 The agreement shall include the services to be provided by the  
41 third party billing service on behalf of the client; financial  
42 arrangements to be used if the third party billing service accepts  
43 monies from benefits payers on behalf of a client; provisions setting  
44 forth the respective liability of the client and the third party billing  
45 service for the accuracy and eligibility of submitted claims, and for the  
46 prompt submission of claims pursuant to the provisions of P.L.1999,

1 c.154 (C.17B:30-23 et al.); and the responsibilities of the third party  
2 billing service to the client with respect to the maintenance of  
3 appropriate back-up systems against the loss of records, and the  
4 maintenance of appropriate insurance coverage by the third party  
5 billing service against the risk of loss.

6  
7 21. A third party billing service that accepts monies from health  
8 benefits payers on behalf of a client shall be deemed to act in a  
9 fiduciary capacity on behalf of the client in the receipt and transmittal  
10 of funds and shall have all responsibility attendant to a fiduciary as  
11 established by law. <sup>2</sup>Monies transmitted by benefits payers or on  
12 behalf of clients shall be kept in a separate account and shall not be  
13 commingled with any other funds.<sup>2</sup>

14  
15 22. a. A third party billing service shall immediately notify the  
16 commissioner of any material change in its ownership, control, or  
17 other fact or circumstance affecting its qualification for certification.

18 b. A third party billing service shall file such reports, at such times  
19 as may be required by the commissioner, including reports that will  
20 verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-  
21 23 et al.).

22  
23 23. The commissioner may suspend or revoke a certification  
24 issued pursuant to this act if he finds that the third party billing  
25 service:

26 a. is using methods or practices in the conduct of its business that  
27 render its further transaction of business in this State hazardous or  
28 injurious to its clients or the public;

29 b. has failed to pay any judgment rendered against it within 60  
30 days after the judgment has become final;

31 c. has violated any lawful rule or order of the commissioner or any  
32 provision of the laws of this State;

33 d. has, without just cause, refused or failed to perform services  
34 arising under its contracts with clients;

35 e. has been convicted of, or has entered a plea of guilty or nolo  
36 contendere to a felony or crime of the first, second or third degree in  
37 this State, without regard to whether adjudication was held; or

38 f. is under suspension or revocation in another State.

39 If the commissioner finds that one or more grounds exist for the  
40 suspension or revocation of a certification issued under this act, the  
41 commissioner may, in lieu of suspension or revocation, impose a fine  
42 upon the third party billing service.

43  
44 24. The commissioner may, upon notice and hearing, assess a civil  
45 administrative penalty in an amount not less than \$250 nor more than  
46 \$5,000 for each day that a third party administrator or third party

1 billing service is in violation of this act. A penalty imposed by the  
2 commissioner pursuant to this section may be in lieu of, or in addition  
3 to, suspension or revocation of a license pursuant to this act. A  
4 penalty may be recovered in a summary proceeding pursuant to the  
5 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
6 seq.).

7  
8 25. The commissioner shall adopt rules and regulations pursuant  
9 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
10 et seq.) to carry out the purposes of this act.

11  
12 26. This act shall take effect immediately.

# ASSEMBLY, No. 3702

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 25, 2001

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Requires licensure or registration of third party administrators of health and dental benefits plans and certification of third party billing services.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Benefits payer" means an insurer authorized to issue health or  
10 dental benefits plans in this State, or any other person who undertakes  
11 to provide and assumes financial risk for the payment of health or  
12 dental benefits and is obligated to pay claims for health or dental  
13 benefits to providers or other claimants.

14 "Client" means a health care provider that contracts with a third  
15 party billing service to remit claims to benefits payers on behalf of the  
16 provider or other claimant.

17 "Commissioner" means the Commissioner of Banking and  
18 Insurance.

19 "Enrollee" means a person entitled to receive benefits under a health  
20 benefits plan.

21 "Health benefits plan" means a benefits plan which pays or provides  
22 hospital and medical expense or dental benefits for covered services.

23 "Health care provider" or "provider" means an individual or entity  
24 which provides a covered benefit or service.

25 "Insurer" means a licensed health insurer, health, hospital or  
26 medical service corporation, health maintenance organization, dental  
27 service corporation, or dental plan organization.

28 "Third party administrator" means a person or entity that:  
29 processes claims and pays claims on behalf of a benefits payer without  
30 the assumption of financial risk for the payment of health or dental  
31 benefits. "Third party administrator" shall include:

32 (1) An entity not licensed as an insurer that is not an affiliate or  
33 subsidiary of an insurer, that processes claims on behalf of a benefits  
34 payer;

35 (2) An entity that is a subsidiary or affiliate of an insurer that  
36 processes claims on behalf of the insurer and benefits payers other than  
37 an insurer; and

38 (3) An entity that is a subsidiary or affiliate of an insurer that only  
39 processes claims on behalf of benefits payers other than insurers.

40 "Third party administrator" shall not include an employee, affiliate  
41 or subsidiary of a benefits payer formed for the purpose of processing  
42 and paying claims solely on behalf of the benefits payer, nor shall it  
43 include a collection agency or bureau or pharmacy benefits manager.

44 "Third party billing service" means a person or entity that is paid by  
45 a health care provider to process claims or claims payments on behalf  
46 of the health care provider.



1       2. a. On or after January 1, 2002, no person shall act as, offer to  
2 act as, or hold himself out to be, a third party administrator in this  
3 State unless licensed or registered by the commissioner in accordance  
4 with this act. Every third party administrator that is either (1) an  
5 entity that is not licensed as an insurer and is not an affiliate or  
6 subsidiary of an insurer; or (2) an entity that is an affiliate or a  
7 subsidiary of an insurer that only processes or pays claims on behalf of  
8 benefits payers other than insurers shall be licensed under the  
9 provisions of this act. Every third party administrator that is an entity  
10 that is a subsidiary or affiliate of an insurer that processes claims on  
11 behalf of both the insurer and benefits payers other than the insurer  
12 shall be registered with the commissioner pursuant to the provisions  
13 of this act.

14       b. Application for licensure shall be made to the commissioner on  
15 a form provided by the commissioner. The commissioner shall  
16 establish by regulation the information that shall accompany the  
17 application, which may include, but need not be limited to:

18       (1) a copy of the applicant's basic organizational documents, which  
19 shall include articles of incorporation, articles of association,  
20 partnership agreement, management agreement, trust agreement or  
21 other documents governing the operation of the applicant that are  
22 applicable to the applicant's form of business organization;

23       (2) a copy of the executed bylaws, rules and regulations, or other  
24 documents relating to the operation of the applicant's internal affairs;

25       (3) the names, addresses and official positions of the persons  
26 responsible for the conduct of the affairs of the applicant, including,  
27 but not limited to, if applicable: the members of the board of directors,  
28 executive committee or other governing board or committee; the  
29 principal officers or partners; shareholders owning or having the right  
30 to acquire 10% or more of the voting securities of the corporation or  
31 partnership interest of a partnership, or equity interest, in the case of  
32 another form of business organization; each person who has loaned  
33 funds to the applicant for the operation of its business; a statement of  
34 any criminal convictions and civil, regulatory or enforcement action,  
35 including actions related to professional licensing, taken or pending  
36 against any principal officer or owner of the applicant; and the  
37 relationship with any other business entity, including a parent  
38 corporation;

39       (4) a copy of the applicant's most recent financial statements  
40 audited by an independent certified public accountant. If the financial  
41 affairs of the applicant's parent company are audited by an  
42 independent certified public accountant, but those of the applicant are  
43 not, then a copy of the most recent audited financial statement of the  
44 applicant's parent company, audited by an independent certified public  
45 accountant, shall be submitted. A consolidated financial statement of  
46 the applicant and its parent company shall satisfy this requirement

1 unless the commissioner determines that additional or more recent  
2 financial information is required for the proper administration of this  
3 act;

4 (5) a copy of the applicant's business plan, including information on  
5 staffing levels and the activities undertaken or to be undertaken in this  
6 State. The plan shall include a statement of the administrator's  
7 capability for providing a sufficient number of experienced and  
8 qualified personnel in the areas of claims processing and record  
9 keeping and a three-year projection of anticipated operating results, a  
10 statement of the sources of working capital and any other sources of  
11 funding and provision for contingencies that enable the applicant to  
12 perform the work for which it has contracted;

13 (6) a list of the benefits payers under contract with the applicant  
14 and a copy of the standard contract or contracts used by the applicant  
15 in the course of business; and

16 (7) a power of attorney, duly executed by the applicant, if not  
17 domiciled in this State, appointing the commissioner and his  
18 successors in office as the true and lawful attorney of the applicant in  
19 and for this State upon whom all lawful process in any legal action or  
20 proceeding against the organization on a cause of action arising in this  
21 State may be served.

22 With respect to an applicant for licensure that is an affiliate or  
23 subsidiary of an insurer, the commissioner shall establish by regulation  
24 the information necessary to be filed, which shall not be unnecessarily  
25 duplicative of any information already on file with the Department of  
26 Banking and Insurance.

27 An application for licensure shall be approved if not disapproved by  
28 the commissioner within 60 days of receipt of a completed application.  
29 An application shall be deemed to be complete if all of the information  
30 required to be submitted to the commissioner by regulation has been  
31 submitted by the applicant.

32 c. Registration shall be on a form prescribed by the commissioner,  
33 which shall include:

34 (1) a copy of the applicant's basic organizational documents, as  
35 required by the commissioner;

36 (2) the names and official positions of the persons responsible for  
37 the conduct of the affairs of the applicant;

38 (3) a copy of the applicant's most recent financial statements, or a  
39 consolidated financial statement of the applicant and its parent  
40 company;

41 (4) such other information as the commissioner may require.

42 An application for registration shall be approved if not disapproved  
43 by the commissioner within 60 days of receipt of a completed  
44 application. For the purposes of this subsection, an application shall  
45 be complete if all of the information required to be submitted to the  
46 commissioner by regulation has been submitted by the applicant.

1 Information required pursuant to this subsection shall not be  
2 unnecessarily duplicative of any information already on file with the  
3 Department of Banking and Insurance.

4

5 3. In addition to the information required by section 2 of this act,  
6 the applicant for licensure or registration shall file with the  
7 commissioner:

8 a. a description of the applicant's proposed method of marketing  
9 its services;

10 b. a statement setting forth the means by which the applicant is to  
11 be compensated;

12 c. a description of the complaint and appeals procedures instituted  
13 by the applicant; and

14 d. a description of the quality assurance procedures established by  
15 the applicant.

16 An applicant shall make available for inspection by the  
17 commissioner copies of all standard contracts with benefits payers or  
18 other persons with whom it does business, including subcontractors  
19 and reinsurers. In the case of an applicant for registration, the  
20 information required to be filed with the commissioner shall apply only  
21 to services provided to benefits payers other than an insurer.

22

23 4. The commissioner may issue a license to an applicant or approve  
24 an application for registration as a third party administrator if he finds  
25 that the applicant meets the standards established by this act,  
26 including, but not limited to, the following:

27 a. all of the materials required by this act or by the commissioner  
28 have been filed;

29 b. the persons responsible for conducting the applicant's affairs are  
30 competent, trustworthy and possess good reputations, and have  
31 appropriate experience, training and education;

32 c. the applicant has demonstrated the ability to assure that its  
33 services will be performed in a manner which will ensure the efficient  
34 operation of its business, including appropriate financial controls;

35 d. the standard contract forms to be used by the applicant are  
36 acceptable;

37 e. the applicant has adequate financial arrangements with the  
38 benefits payers for which it will perform its services and adequate  
39 arrangements for complying with the provisions of P.L.1999, c.154  
40 (C.17B:30-23 et al.); and

41 f. the compensation arrangements made between the applicant and  
42 benefits payers do not result in the assumption of financial risk by the  
43 applicant.

44 In the case of an applicant for registration, the provisions of  
45 subsections d., e., and f. of this section shall apply only to services  
46 provided by the applicant to benefits payers other than an insurer.

1       5. The commissioner may deny an application for licensure or  
2 registration as a third party administrator if he finds that any of the  
3 standards established by this act have not been met or for any other  
4 reasonable grounds. If the application for licensure or registration is  
5 denied, the commissioner shall notify the applicant in writing by  
6 certified mail, return receipt requested, setting forth his reasons for  
7 denial. The applicant may request a hearing by notice to the  
8 commissioner no later than the 30th day following receipt of the notice  
9 of denial.

10  
11       6. A third party administrator shall not conduct any business with  
12 a benefits payer in the absence of a written agreement between the  
13 administrator and the benefits payer , except that this shall not apply  
14 to a third party administrator registered under the provisions of section  
15 2 of this act with respect to services performed for an insurer. The  
16 agreement shall be retained as part of the official records of the  
17 administrator for the duration of the agreement and for five years  
18 thereafter. The provisions of the agreement shall include, but shall not  
19 be limited to:

20       a. the services to be provided by the administrator and the means  
21 by which the administrator is to be compensated;

22       b. the responsibilities of the benefits payer to the administrator  
23 with respect to claims to be paid by the administrator on behalf of a  
24 benefits payer, including: the provision of enrollment and eligibility  
25 information; arrangement for a preliminary or escrowed deposit of  
26 funds by the benefits payer, if any; the method used for the transmittal  
27 of funds from the benefits payer to the administrator; notification by  
28 the benefits payer of modifications in the benefits payer's benefits plan;  
29 provisions setting forth the respective liability of the administrator and  
30 benefits payer for payment of ineligible claims; liability for claims  
31 payments that are overdue; and provisions regarding the procurement  
32 of reinsurance or stop-loss insurance; and

33       c. the responsibilities of the administrator to the benefits payer,  
34 including: the maintenance of appropriate back-up systems against the  
35 loss of records; establishment and maintenance of appropriate financial  
36 controls; provisions regarding the benefits payer's rights with respect  
37 to conducting claims audits by an outside auditor; the maintenance of  
38 appropriate insurance coverage, which may include, but not be limited  
39 to, general liability insurance, valuable papers insurance and errors and  
40 omissions coverage; appropriate access by the benefits payer to the  
41 administrator's records; and procedures for making available the  
42 claims experience or other information to the benefits payer at its  
43 request, including, but not limited to, monthly reports.

44  
45       7. a. The commissioner shall have access to all books and records  
46 of a third party administrator for the purposes of examination, audit

1 and inspection. Any trade secrets, proprietary information or the  
2 identity and addresses of enrollees contained in the books and records  
3 shall be kept confidential, except that the commissioner may use the  
4 information in any proceeding instituted against the administrator.

5 b. The benefits payer shall own the records generated by the  
6 administrator pertaining to the benefits payer, except that the  
7 administrator shall retain the right to continuing access to books and  
8 records to permit the administrator to fulfill all of its contractual  
9 obligations to the benefits payer.

10 c. In the event that an agreement between an administrator and a  
11 benefits payer is canceled, notwithstanding the provisions of section  
12 6 of this act to the contrary, the administrator may, with the written  
13 agreement of the benefits payer, transfer all records to a new  
14 administrator instead of retaining them for five years.

15  
16 8. If a third party administrator adjudicates claims under a health  
17 benefits plan, the commissions, fees or charges that the benefits payer  
18 pays the administrator shall not be based solely on the number or  
19 amount of claims denied by the administrator. This provision shall not  
20 prohibit an administrator from receiving performance-based  
21 compensation if that compensation is not predicated on denial of  
22 claims or coverage.

23  
24 9. a. A third party administrator shall be deemed to act in a  
25 fiduciary capacity on behalf of the benefits payer in the receipt and  
26 transmittal of the benefits payer's funds, and shall have all  
27 responsibility attendant to a fiduciary as established by law. Funds  
28 transmitted shall be kept in a separate account and shall not be  
29 commingled with any other funds. If an account is jointly held by the  
30 administrator and the benefits payer, it shall be deposited in a State or  
31 federally chartered insured depository institution, and the  
32 administrator shall provide a monthly accounting of all transactions in  
33 that account. A benefits payer shall have the responsibility to make  
34 funds necessary to pay the claims available to the administrator in a  
35 timely manner, as provided in the contract. An administrator shall not  
36 be liable to any party for the failure of the benefits payer to make  
37 funds available to pay claims.

38 b. An administrator shall maintain in force a fidelity bond in its own  
39 name on its officers and employees, in an amount established by the  
40 commissioner by regulation.

41  
42 10. All funds remitted to an administrator by a benefits payer  
43 licensed or authorized to do business in this State shall be held by the  
44 third party administrator in a separate account maintained in the name  
45 of the benefits payer or in a separate account maintained jointly in the  
46 names of the benefits payer and the administrator. If funds have been

1 collected by the administrator from a provider or enrollee on behalf of  
2 a benefits payer, they shall be maintained in a separate account  
3 maintained in the name of the benefits payer, maintained jointly in the  
4 names of the benefits payer and the administrator or remitted to the  
5 benefits payer, as provided in the contract. Copies of all records  
6 pertaining to the collection of funds shall be made available to the  
7 benefits payer as provided in the contract.

8  
9 11. Any policies, certificates, booklets, termination notices or other  
10 written communications delivered by the benefits payer to the third  
11 party administrator for delivery to enrollees shall be delivered by the  
12 administrator promptly, in accordance with the instructions of the  
13 benefits payer.

14  
15 12. A third party administrator shall immediately notify the  
16 commissioner of any material change in its ownership, control or other  
17 fact or circumstance affecting its qualification for a license.

18  
19 13. A third party administrator shall file an annual report for the  
20 preceding calendar year with the commissioner on or before March 1  
21 of each year, in a form and manner prescribed by the commissioner.  
22 The annual report shall contain the complete names and addresses of  
23 all benefits payers with which the administrator had a contract in effect  
24 during the preceding calendar year. The commissioner shall establish  
25 a filing fee for the report, by regulation.

26  
27 14. The commissioner may suspend or revoke a license or  
28 registration issued pursuant to this act if he finds that the third party  
29 administrator:

- 30 a. is in an unsound financial condition;  
31 b. is using methods or practices in the conduct of its business that  
32 render its further transaction of business in this State hazardous or  
33 injurious to the benefits payers with which it has contracted or the  
34 public;  
35 c. has failed to pay any judgment rendered against it in this State  
36 within 60 days after the judgment has become final;  
37 d. has violated any lawful rule or order of the commissioner or any  
38 provision of State law;  
39 e. has refused to be examined or produce its accounts, records and  
40 files for examination, or if any of its officers has refused to give  
41 information with respect to its affairs or has refused to perform any  
42 other legal obligation as to an examination, when required by the  
43 commissioner;  
44 f. has, without just cause, refused or failed to pay proper claims or  
45 perform services arising under its contracts;  
46 g. at any time fails to meet any qualification for which issuance of

1 the license could have been refused had that failure then existed and  
2 been known to the commissioner;

3 h. has been convicted of, or has entered a plea of guilty or nolo  
4 contendere to a felony or crime of the first, second or third degree in  
5 this State, without regard to whether adjudication was held;

6 i. is under suspension or revocation in another state; or

7 j. has willfully reimbursed enrollees for benefits not eligible under  
8 the benefits payer's benefits plan.

9 If the commissioner finds that one or more grounds exist for the  
10 suspension or revocation of a certificate of authority issued under this  
11 act, the commissioner may, in lieu of suspension or revocation, impose  
12 a fine upon the administrator.

13

14 15. The commissioner may, without advance notice or hearing,  
15 immediately suspend the license or registration of a third party  
16 administrator if he finds that one or more of the following  
17 circumstances exist:

18 a. the administrator is insolvent or impaired;

19 b. a proceeding for receivership, conservatorship, rehabilitation or  
20 other delinquency proceeding regarding the administrator has been  
21 commenced in another state; or

22 c. the financial condition or business practices of the administrator  
23 otherwise pose an imminent threat to the public health, safety or  
24 welfare of the residents of this State.

25

26 16. On or after January 1, 2002, no person shall act as, offer to act  
27 as or hold himself out to be a third party billing service in this State  
28 unless certified by the commissioner in accordance with this act.  
29 Application for certification shall be made to the commissioner on a  
30 form provided by the commissioner. The commissioner shall establish  
31 by regulation the information that shall accompany the application,  
32 which shall include, but need not be limited to:

33 a. a copy of the applicant's basic organizational documents, which  
34 shall include articles of incorporation, articles of association,  
35 partnership agreement, management agreement, trust agreement or  
36 other documents governing the operation of the applicant that are  
37 applicable to the applicant's form of business organization;

38 b. a copy of the executed bylaws, rules and regulations, or other  
39 documents relating to the operation of the applicant's internal affairs;

40 c. the names, addresses and official positions of the persons  
41 responsible for the conduct of the affairs of the applicant, including,  
42 but not limited to, if applicable: the members of the board of directors,  
43 executive committee or other governing board or committee, the  
44 principal officers or partners, shareholders owning or having the right  
45 to acquire 10% or more of the voting securities of the corporation or  
46 partnership interest of a partnership or equity interest, in the case of

1 another form of business organization;

2 d. if the applicant accepts monies from benefits payers on behalf of  
3 clients, the application shall include a copy of the applicant's most  
4 recent financial statements audited by an independent certified public  
5 accountant.

6 e. a copy of the applicant's business plan, including information on  
7 staffing levels and the activities undertaken or to be undertaken in this  
8 State. The plan shall include a statement of the third party billing  
9 service's capability for providing a sufficient number of experienced  
10 and qualified personnel in the areas of claims processing and record  
11 keeping.

12 f. a list of the applicant's clients and a copy of the standard  
13 contract or contracts used by the applicant in the course of business;  
14 and

15 g. if the applicant accepts monies from benefits payers on behalf of  
16 clients, the application shall be accompanied by a power of attorney,  
17 duly executed by the applicant, if not domiciled in this State,  
18 appointing the commissioner and his successors in office as the true  
19 and lawful attorney of the applicant in and for this State upon whom  
20 all lawful process in any legal action or proceeding against the  
21 organization on a cause of action arising in this State may be served.  
22

23 17. In addition to the information otherwise required by this act or  
24 by the commissioner, a third party billing service shall file with the  
25 commissioner:

26 a. a description of the applicant's proposed method of marketing  
27 its services;

28 b. a statement setting forth the means by which the applicant is to  
29 be compensated;

30 c. a description of the quality assurance procedures established by  
31 the applicant; and

32 d. a copy of the standard contract or contracts used by the  
33 applicant in contracting with providers.  
34

35 18. The commissioner may approve an application for certification  
36 as a third party billing service if he finds that the applicant meets the  
37 standards established by this act, including, but not limited to, the  
38 following:

39 a. all of the material required by this act or by the commissioner  
40 have been filed;

41 b. the persons responsible for conducting the applicant's affairs are  
42 competent, trustworthy and possess good reputations, and have  
43 appropriate experience, training and education;

44 c. the applicant has demonstrated the ability to ensure that its  
45 services will be performed in a manner which will result in the efficient  
46 operation of its business, including, if the applicant accepts payments



1 from benefits payers on behalf of its clients, appropriate financial  
2 controls;

3 d. the standard contract forms to be used by the applicant are  
4 acceptable; and

5 e. the applicant has adequate arrangements for complying with the  
6 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

7

8 19. The commissioner may deny an application for certification as  
9 a third party billing service if he finds that any of the standards  
10 established by this act have not been met or for any other reasonable  
11 grounds. If the application for certification is denied, the commissioner  
12 shall notify the applicant in writing by certified mail, return receipt  
13 requested, setting forth his reasons for denial. The applicant may  
14 request a hearing by notice to the commissioner no later than the 30th  
15 day following receipt of the notice of denial.

16

17 20. A third party billing service shall not conduct any business with  
18 a client in the absence of a written agreement between the billing  
19 service and the client. The agreement shall be retained as part of the  
20 official records of the third party billing service for the duration of the  
21 agreement.

22 The agreement shall include the services to be provided by the third  
23 party billing service on behalf of the client; financial arrangements to  
24 be used if the third party billing service accepts monies from benefits  
25 payers on behalf of a client; provisions setting forth the respective  
26 liability of the client and the third party billing service for the accuracy  
27 and eligibility of submitted claims, and for the prompt submission of  
28 claims pursuant to the provisions of P.L.1999, c.154 (C.17B:30-23 et  
29 al.); and the responsibilities of the third party billing service to the  
30 client with respect to the maintenance of appropriate back-up systems  
31 against the loss of records, and the maintenance of appropriate  
32 insurance coverage by the third party billing service against the risk of  
33 loss.

34

35 21. A third party billing service that accepts monies from health  
36 benefits payers on behalf of a client shall be deemed to act in a  
37 fiduciary capacity on behalf of the client in the receipt and transmittal  
38 of funds and shall have all responsibility attendant to a fiduciary as  
39 established by law. Monies transmitted by benefits payers or on behalf  
40 of clients shall be kept in a separate account maintained in the name of  
41 the client or jointly in the names of the client and the third party billing  
42 service and shall not be commingled with any other funds of the third  
43 party billing service or other clients of the third party billing service.

44

45 22. a. A third party billing service shall immediately notify the  
46 commissioner of any material change in its ownership, control, or

1 other fact or circumstance affecting its qualification for certification.

2 b. A third party billing service shall file such reports, at such times  
3 as may be required by the commissioner, including reports that will  
4 verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-  
5 23 et al.).

6

7 23. The commissioner may suspend or revoke a certification issued  
8 pursuant to this act if he finds that the third party billing service:

9 a. is using methods or practices in the conduct of its business that  
10 render its further transaction of business in this State hazardous or  
11 injurious to its clients or the public;

12 b. has failed to pay any judgment rendered against it within 60 days  
13 after the judgment has become final;

14 c. has violated any lawful rule or order of the commissioner or any  
15 provision of the laws of this State;

16 d. has, without just cause, refused or failed to perform services  
17 arising under its contracts with clients;

18 e. has been convicted of, or has entered a plea of guilty or nolo  
19 contendere to a felony or crime of the first, second or third degree in  
20 this State, without regard to whether adjudication was held; or

21 f. is under suspension or revocation in another State.

22 If the commissioner finds that one or more grounds exist for the  
23 suspension or revocation of a certification issued under this act, the  
24 commissioner may, in lieu of suspension or revocation, impose a fine  
25 upon the third party billing service.

26

27 24. The commissioner may, upon notice and hearing, assess a civil  
28 administrative penalty in an amount not less than \$250 nor more than  
29 \$5,000 for each day that a third party administrator or third party  
30 billing service is in violation of this act. A penalty imposed by the  
31 commissioner pursuant to this section may be in lieu of, or in addition  
32 to, suspension or revocation of a license pursuant to this act. A  
33 penalty may be recovered in a summary proceeding pursuant to the  
34 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
35 seq.).

36

37 25. The commissioner shall adopt rules and regulations pursuant  
38 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
39 et seq.) to carry out the purposes of this act.

40

41 26. This act shall take effect immediately.

STATEMENT

1

2

3 This bill requires third party administrators of health benefits plans  
4 to be licensed or registered, as applicable, and third party billing  
5 services of health care providers to be certified by the Department of  
6 Banking and Insurance, effective January 1, 2002. A "third party  
7 administrator" is defined as a person or entity that processes claims  
8 and pays claims on behalf of a benefits payer without the assumption  
9 of financial risk for the payment of health or dental benefits. A  
10 "benefits payer" is defined as an insurer authorized to issue health or  
11 dental benefits plans in this State, or any other person who undertakes  
12 to provide health or dental benefits and is obligated to pay claims for  
13 health or dental benefits to providers or other claimants.

14 As provided in the bill, third party administrators include: an entity  
15 not licensed as an insurer that is not an affiliate or subsidiary of an  
16 insurer, that processes claims on behalf of a benefits payer; an entity  
17 that is a subsidiary or affiliate of an insurer that processes claims on  
18 behalf of the licensee and benefits payers other than an insurer; and an  
19 entity that is a subsidiary or affiliate of an insurer that only processes  
20 claims on behalf of benefits payers other than licensees. A third party  
21 administrator does not include an employee, affiliate or subsidiary of  
22 a benefits payer formed for the purpose of processing and paying  
23 claims solely on behalf of the benefits payer, nor shall it include a  
24 collection agency or bureau or pharmacy benefits manager.

25 The bill requires that an applicant for licensure or registration as a  
26 third party administrator shall submit certain information to the  
27 department, as enumerated in the bill.

28 The bill establishes that an application for licensure as a third party  
29 administrator shall be deemed approved, if not disapproved, by the  
30 commissioner within 60 days of receipt of a completed application.

31 The bill establish certain account requirements with respect to the  
32 funds remitted to third party administrators or monies transmitted to  
33 third party billing services.

34 "Third party billing service" is defined as a person or entity that is  
35 paid by a health care provider to process claims or claims payments on  
36 behalf of the provider. The bill requires that an applicant for  
37 certification as a third party billing service shall submit certain  
38 information to the department, as enumerated in the bill.

39 The bill provides that a third party administrator and a third party  
40 billing service shall not conduct any business with a benefits payer or  
41 client, as applicable, in the absence of a written agreement between the  
42 administrator or billing service and the benefits payer or client. The  
43 bill specifies the responsibilities of each entity and the benefits payer  
44 or client, as applicable, that shall be included in the agreement.

45 An administrator is required to submit an annual report to the  
46 commissioner and a billing service shall file such reports as are

**A3702 KELLY**

14

1 required by the commissioner. Both entities are required to  
2 immediately notify the commissioner of any material change in their  
3 ownership, control or other fact or circumstance affecting their  
4 qualification for a license or certification.

5 Finally, the bill provides the grounds for suspension or revocation  
6 of a license, registration or certification by the commissioner, and  
7 authorizes the commissioner to assess an administrator or billing  
8 service who is in violation of this bill a civil administrative penalty of  
9 between \$250 and \$5,000 for each day the administrator or billing  
10 service is in violation.

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 375  
(Second Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill No. 375 (Second Reprint) with my recommendations for reconsideration.

A.SUMMARY

This bill establishes licensing and certification requirements for third party administrators of health benefits plans and third party billing services of health care providers. According to the provisions of the bill, third party administrators must be licensed and third party billing services must be certified by the Department of Banking and Insurance, effective January 1, 2002.

B.RECOMMENDED ACTION

While I support the sponsors intent of the bill, I believe that the bill should be amended to provide for registration of certain third party administrators, as an alternative to the licensing process currently established under the bill. Specifically, I recommend that the bill be amended to provide that certain third party administrators which are a subsidiary or affiliate of an insurer that processes claims on behalf of both the insurer and benefits payers other than the insurer should be registered with the Department of Banking and Insurance, rather than licensed.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 375 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 9:

Delete "a licensed" insert "an" delete ", health, hospital or medical service corporation, or health maintenance organization"

Page 2, Section 1, Line 26:

Insert "Insurer" means a licensed health insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization."

Page 2, Section 1, Line 30:

Delete "Third party administrator shall not include an employee or affiliate of a benefits payer, but it shall include an affiliate of a licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization formed for the purpose of processing claims or claims payments on behalf of a benefits payer other than

the licensed insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization. Third party administrator shall not include a collection agency or bureau or a pharmacy benefits manager." insert ""Third party administrator" shall include: (1) An entity not licensed as an insurer that is not an affiliate or subsidiary of an insurer, that processes claims on behalf of a benefits payer: (2) An entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of the insurer; and (3) An entity that is a subsidiary or affiliate of an insurer that only processes claims on behalf of benefits payers other than insurers. "Third party administrator" shall not include an employee, affiliate or subsidiary of a benefits payer formed for the purpose of processing and paying claims solely on behalf of the benefits payer, nor shall it include a collection agency or bureau or pharmacy benefits manager."

Page 3, Section 2, Line 1:After "2." insert "a."

Page 3, Section 2, Line 2:After "as" insert "," after "be" insert ","

Page 3, Section 2, Line 3:After "licensed" insert "or registered" after "act." insert "Every third party administrator that is either: (1) an entity that is not licensed as an insurer and is not an affiliate or subsidiary of an insurer: or (2) an entity that is an affiliate or a subsidiary of an insurer that only processes or pays claims on behalf of benefits payers other than insurers shall be licensed under the provisions of this act. Every third party administrator that is an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of both the insurer and benefits payers other than the insurer shall be registered with the commissioner pursuant to the provisions of this act."

Page 3, Section 2, Line 4:Delete "a." insert "b." after "licensure" delete "for third party administrators that"

Page 3, Section 2, Lines 5-6:Delete

Page 3, Section 2, Line 7:Delete "corporations or dental plan organizations"

Page 4, Section 2, Line 18:

Delete "b." after "applicant" insert "for licensure" after "affiliate" insert "or subsidiary" delete "a licensed" and insert "an"

Page 4, Section 2, Line 19:Delete “health, hospital or medical service corporation,  
health”

Page 4, Section 2, Line 20:Delete

Page 4, Section 2, Line 21:Delete “organization,” delete “require that information”

Page 4, Section 2, Line 22: Delete “necessary and appropriate for licensure” insert  
“establish by regulation the information  
necessary to be filed, which shall not be  
unnecessarily duplicative of any  
information already on file with the  
Department of Banking and Insurance”

Page 4, Section 2, Line 23:Delete “c.”

Page 4, Section 2, Line 25:Delete “For the purposes of this section, an” insert “An”

Page 4, Section 2, Line 26:After “be” insert “deemed to be”

Page 4, Section 2, Line 28:Insert “c. Registration shall be on a form prescribed by the  
commissioner, which shall include: (1) a  
copy of the applicant’s basic  
organizational documents, as required  
by the commissioner: (2) the names and  
official positions of the persons  
responsible for the conduct of the affairs  
of the applicant: (3) a copy of the  
applicant’s most recent financial  
statements, or a consolidated financial  
statement of the applicant and its parent  
company: (4) such other information as  
the commissioner may require. An  
application for registration shall be  
approved if not disapproved by the  
commissioner within 60 days of receipt  
of a completed application. For the  
purposes of this subsection, an  
application shall be complete if all of the  
information required to be submitted to  
the commissioner by regulation has  
been submitted by the applicant.  
Information required pursuant to this  
subsection shall not be unnecessarily  
duplicative of any information already  
on file with the Department of Banking  
and Insurance.”

Page 4, Section 3, Line 30:After “applicant” insert “for licensure or registration”

Page 4, Section 3, Line 40:After “all” insert “standard”

Page 4, Section 3, Line 42:After “reinsurers.” insert “In the case of an applicant for  
registration, the information required to  
be filed with the commissioner shall  
apply only to

services provided to benefits payers  
other than an insurer.”

Page 4, Section 4, Line 44:Delete “for”

Page 4, Section 4, Line 45:Delete “licensure” and insert “or approve an application for  
registration”

Page 5, Section 4, Line 19: Insert “In the case of an applicant for registration, the provisions of subsections d., e., and f. of this section shall apply only to services provided by the applicant to benefits payers other than an insurer.”

Page 5, Section 5, Line 20: After “licensure” insert “or registration”

Page 5, Section 5, Line 23: After “licensure” insert “or registration”

Page 5, Section 6, Line 31: After “payer” insert “, except that this shall not apply to a third party administrator registered under the provisions of section 2 of this act with respect to services performed for an insurer”

Page 7, Section 10, Line 17: After “payer” insert “or in a separate account maintained jointly in the names of the benefits payer and the administrator.”

Page 7, Section 10, Line 22: Delete “in trust for” insert “maintained in the name of” after “payer” insert “, maintained jointly in the names of the benefits payer and the administrator”

Page 8, Section 14, Line 1: After “license” insert “or registration”

Page 8, Section 15, Line 34: After “license” insert “or registration”

Page 11, Section 21, Line 12: After “account” insert “maintained in the name of the client or jointly in the names of the client and the third party billing service”

Page 11, Section 21, Line 13: After “funds” insert “of the third party billing service or other clients of the third party billing service”

Respectfully,

/s/ Donald T. DiFrancesco

Acting Governor

[seal]

Attest:

/s/ James A. Harkness

Chief Counsel to the Governor



[Third Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 375**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED NOVEMBER 9, 2000

**Sponsored by:**

**Senator JACK SINAGRA**

**District 18 (Middlesex)**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Co-Sponsored by:**

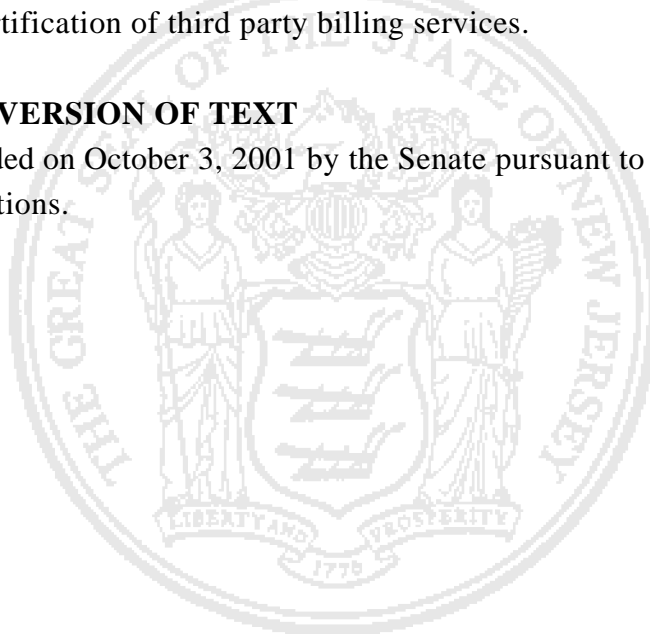
**Senators Gormley, McNamara, Cafiero, Bennett, Bark, Singer, Robertson,  
Kosco, Palaia, Kavanaugh, Bassano, Matheussen, Allen, Inverso, Bucco,  
Turner and Assemblyman Kelly**

**SYNOPSIS**

Requires licensure of third party administrators of health and dental benefits plans and certification of third party billing services.

**CURRENT VERSION OF TEXT**

As amended on October 3, 2001 by the Senate pursuant to the Governor's recommendations.



**(Sponsorship Updated As Of: 6/29/2001)**

1 **AN ACT** concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Benefits payer" means <sup>3</sup>[a licensed] an<sup>3</sup> insurer<sup>3</sup> [, health, hospital  
10 or medical service corporation, or health maintenance organization]<sup>3</sup>  
11 authorized to issue health or dental benefits plans in this State, or any  
12 other person who undertakes to provide <sup>2</sup>and assumes financial risk  
13 for the payment of<sup>2</sup> health or dental benefits and is obligated to pay  
14 claims for health or dental benefits to providers or other claimants.

15 "Client" means a health care provider that contracts with a third  
16 party billing service to remit claims to benefits payers on behalf of the  
17 provider or other claimant.

18 "Commissioner" means the Commissioner of Banking and  
19 Insurance.

20 "Enrollee" means a person entitled to receive benefits under a  
21 health benefits plan.

22 "Health benefits plan" means a benefits plan which pays or  
23 provides hospital and medical expense or dental benefits for covered  
24 services.

25 "Health care provider" or "provider" means an individual or entity  
26 which provides a covered benefit or service.

27 <sup>3</sup>"Insurer" means a licensed health insurer, health, hospital or  
28 medical service corporation, health maintenance organization, dental  
29 service corporation or dental plan organization.<sup>3</sup>

30 "Third party administrator" means a person or entity that:  
31 processes claims and pays claims on behalf of a benefits payer <sup>2</sup>without  
32 the assumption of financial risk for the payment of health or dental  
33 benefits<sup>2</sup>. <sup>3</sup>[Third party administrator shall not include an employee  
34 or affiliate of a benefits payer, but it shall include an affiliate of a  
35 licensed insurer, health, hospital or medical service corporation, health  
36 maintenance organization, dental service corporation or dental plan  
37 organization formed for the purpose of processing claims or claims  
38 payments on behalf of a benefits payer<sup>2</sup>, other than the licensed  
39 insurer, health, hospital or medical service corporation, health  
40 maintenance organization, dental service corporation or dental plan

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

<sup>2</sup> Assembly ABI committee amendments adopted March 1, 2001.

<sup>3</sup> Senate amendments adopted in accordance with Governor's recommendations October 3, 2001.

1 organization<sup>2</sup>. Third party administrator shall not include a collection  
2 agency or bureau or a pharmacy benefits manager.] Third party  
3 administrator shall include: (1) an entity not licensed as an insurer that  
4 is not an affiliate or subsidiary of an insurer, that processes claims on  
5 behalf of a benefits payer; (2) an entity that is a subsidiary or affiliate  
6 of an insurer that processes claims on behalf of the insurer; and (3) an  
7 entity that is a subsidiary or affiliate of an insurer that only processes  
8 claims on behalf of benefits payers other than insurers. Third party  
9 administrator shall not include an employee, affiliate or subsidiary of  
10 a benefits payer formed for the purpose of processing and paying  
11 claims solely on behalf of the benefits payer, nor shall it include a  
12 collection agency or bureau or pharmacy benefits manager.<sup>3</sup>

13 "Third party billing service" means a person or entity that  
14 <sup>2</sup>[processes] is paid by a health care provider to process<sup>2</sup> claims or  
15 claims payments on behalf of <sup>2</sup>[a] the<sup>2</sup> health care provider.

16  
17 2. <sup>3</sup>a.<sup>3</sup> On or after January 1, 2002, no person shall act as, offer  
18 to act as <sup>3</sup>a.<sup>3</sup> or hold himself out to be <sup>3</sup>a.<sup>3</sup> a third party administrator  
19 in this State unless licensed <sup>3</sup>or registered<sup>3</sup> by the commissioner in  
20 accordance with this act. <sup>3</sup>Every third party administrator that is  
21 either: (1) an entity that is not licensed as an insurer and is not an  
22 affiliate or subsidiary of an insurer; or (2) an entity that is an affiliate  
23 or a subsidiary of an insurer that only processes or pays claims on  
24 behalf of benefits payers other than insurers shall be licensed under the  
25 provisions of this act. Every third party administrator that is an entity  
26 that is a subsidiary or affiliate of an insurer that processes claims on  
27 behalf of both the insurer and benefits payers other than the insurer  
28 shall be registered with the commissioner pursuant to the provisions  
29 of this act.<sup>3</sup>

30 <sup>3</sup>[<sup>2</sup>a.<sup>2</sup>] b.<sup>3</sup> Application for licensure <sup>3</sup>[<sup>2</sup>for third party  
31 administrators that are not licensed insurers, health, hospital or  
32 medical service corporations, health maintenance organizations, dental  
33 service corporations or dental plan organizations<sup>2</sup>]<sup>3</sup> shall be made to  
34 the commissioner on a form provided by the commissioner. The  
35 commissioner shall establish by regulation the information that shall  
36 accompany the application, which <sup>2</sup>[shall] may<sup>2</sup> include, but need not  
37 be limited to:

38 <sup>2</sup>[a.] (1)<sup>2</sup> a copy of the applicant's basic organizational  
39 documents, which shall include articles of incorporation, articles of  
40 association, partnership agreement, management agreement, trust  
41 agreement or other documents governing the operation of the  
42 applicant that are applicable to the applicant's form of business  
43 organization;

44 <sup>2</sup>[b.] (2)<sup>2</sup> a copy of the executed bylaws, rules and regulations,  
45 or other documents relating to the operation of the applicant's internal  
46 affairs;

1           <sup>2</sup>[c.] (3)<sup>2</sup> the names, addresses and official positions of the  
2 persons responsible for the conduct of the affairs of the applicant,  
3 including, but not limited to, if applicable: the members of the board  
4 of directors, executive committee or other governing board or  
5 committee; the principal officers or partners; shareholders owning or  
6 having the right to acquire 10% or more of the voting securities of the  
7 corporation or partnership interest of a partnership, or equity interest,  
8 in the case of another form of business organization; each person who  
9 has loaned funds to the applicant for the operation of its business; a  
10 statement of any criminal convictions and civil, regulatory or  
11 enforcement action, including actions related to professional licensing,  
12 taken or pending against any principal officer or owner of the  
13 applicant; and the relationship with any other business entity, including  
14 a parent corporation;

15           <sup>2</sup>[d.] (4)<sup>2</sup> a copy of the applicant's most recent financial  
16 statements audited by an independent certified public accountant. If  
17 the financial affairs of the applicant's parent company are audited by  
18 an independent certified public accountant, but those of the applicant  
19 are not, then a copy of the most recent audited financial statement of  
20 the applicant's parent company, audited by an independent certified  
21 public accountant, shall be submitted. A consolidated financial  
22 statement of the applicant and its parent company shall satisfy this  
23 requirement unless the commissioner determines that additional or  
24 more recent financial information is required for the proper  
25 administration of this act;

26           <sup>2</sup>[e.] (5)<sup>2</sup> a copy of the applicant's business plan, including  
27 information on staffing levels and the activities undertaken or to be  
28 undertaken in this State. The plan shall include a statement of the  
29 administrator's capability for providing a sufficient number of  
30 experienced and qualified personnel in the areas of claims processing  
31 and record keeping and a three-year projection of anticipated  
32 operating results, a statement of the sources of working capital and  
33 any other sources of funding and provision for contingencies that  
34 enable the applicant to perform the work for which it has contracted;

35           <sup>2</sup>[f.] (6)<sup>2</sup> a list of the benefits payers under contract with the  
36 applicant and a copy of the standard contract or contracts used by the  
37 applicant in the course of business; and

38           <sup>2</sup>[g.] (7)<sup>2</sup> a power of attorney, duly executed by the applicant, if  
39 not domiciled in this State, appointing the commissioner and his  
40 successors in office as the true and lawful attorney of the applicant in  
41 and for this State upon whom all lawful process in any legal action or  
42 proceeding against the organization on a cause of action arising in this  
43 State may be served.

44           <sup>3</sup>[<sup>2</sup> b.]<sup>3</sup> With respect to an applicant<sup>3</sup> for licensure<sup>3</sup> that is an  
45 affiliate<sup>3</sup> or subsidiary<sup>3</sup> of<sup>3</sup> [a licensed] an<sup>3</sup> insurer, <sup>3</sup>[health, hospital  
46 or medical service corporation, health maintenance organization,

1 dental service corporation or dental plan organization.]<sup>3</sup> the  
2 commissioner shall <sup>3</sup>[require that information necessary and  
3 appropriate for licensure] establish by regulation the information  
4 necessary to be filed, which shall not be unnecessarily duplicative of  
5 any information already on file with the Department of Banking and  
6 Insurance<sup>3</sup>.

7 <sup>3</sup>[c.]<sup>3</sup> An application for licensure shall be approved if not  
8 disapproved by the commissioner within 60 days of receipt of a  
9 completed application. <sup>3</sup>[For the purposes of this section, an] An<sup>3</sup>  
10 application shall be <sup>3</sup>deemed to be<sup>3</sup> complete if all of the information  
11 required to be submitted to the commissioner by regulation has been  
12 submitted by the applicant.<sup>2</sup>

13 <sup>3</sup>c. Registration shall be on a form prescribed by the commissioner,  
14 which shall include: (1) a copy of the applicant's basic organizational  
15 documents, as required by the commissioner; (2) the names and official  
16 positions of the persons responsible for the conduct of the affairs of  
17 the applicant; (3) a copy of the applicant's most recent financial  
18 statements, or a consolidated financial statement of the applicant and  
19 its parent company; (4) such other information as the commissioner  
20 may require. An application for registration shall be approved if not  
21 disapproved by the commissioner within 60 days of receipt of a  
22 completed application. For the purposes of this subsection, an  
23 application shall be complete if all of the information required to be  
24 submitted to the commissioner by regulation has been submitted by the  
25 applicant. Information required pursuant to this subsection shall not  
26 be unnecessarily duplicative of any information already on file with the  
27 Department of Banking and Insurance.<sup>3</sup>

28  
29 3. In addition to the information required by section 2 of this act,  
30 the applicant <sup>3</sup>for licensure or registration<sup>3</sup> shall file with the  
31 commissioner:

- 32 a. a description of the applicant's proposed method of marketing  
33 its services;  
34 b. a statement setting forth the means by which the applicant is to  
35 be compensated;  
36 c. a description of the complaint and appeals procedures instituted  
37 by the applicant; and  
38 d. a description of the quality assurance procedures established by  
39 the applicant.

40 An applicant shall make available for inspection by the  
41 commissioner copies of all <sup>3</sup>standard<sup>3</sup> contracts with benefits payers  
42 or other persons with whom it does business, including subcontractors  
43 and reinsurers. <sup>3</sup>In the case of an applicant for registration, the  
44 information required to be filed with the commissioner shall apply only  
45 to services provided to benefits payers other than an insurer.<sup>3</sup>

1       4. The commissioner may issue a license to an applicant <sup>3</sup>[for  
2 licensure] or approve an application for registration<sup>3</sup> as a third party  
3 administrator if he finds that the applicant meets the standards  
4 established by this act, including, but not limited to, the following:

5       a. all of the materials required by this act or by the commissioner  
6 have been filed;

7       b. the persons responsible for conducting the applicant's affairs  
8 are competent, trustworthy and possess good reputations, and have  
9 appropriate experience, training and education;

10       c. the applicant has demonstrated the ability to assure that its  
11 services will be performed in a manner which will ensure the efficient  
12 operation of its business, including appropriate financial controls;

13       d. the standard contract forms to be used by the applicant are  
14 acceptable;

15       e. the applicant has adequate financial arrangements with the  
16 benefits payers for which it will perform its services and adequate  
17 arrangements for complying with the provisions of P.L.1999, c.154  
18 (C.17B:30-23 et al.); and

19       f. the compensation arrangements made between the applicant and  
20 benefits payers do not result in the assumption of financial risk by the  
21 applicant.

22       <sup>3</sup>In the case of an applicant for registration, the provisions of  
23 subsections d., e., and f. of this section shall apply only to services  
24 provided by the applicant to benefits payers other than an insurer.<sup>3</sup>  
25

26       5. The commissioner may deny an application for licensure <sup>3</sup>or  
27 registration<sup>3</sup> as a third party administrator if he finds that any of the  
28 standards established by this act have not been met or for any other  
29 reasonable grounds. If the application for licensure <sup>3</sup>or registration<sup>3</sup>  
30 is denied, the commissioner shall notify the applicant in writing by  
31 certified mail, return receipt requested, setting forth his reasons for  
32 denial. The applicant may request a hearing by notice to the  
33 commissioner no later than the 30th day following receipt of the notice  
34 of denial.

35  
36       6. A third party administrator shall not conduct any business with  
37 a benefits payer in the absence of a written agreement between the  
38 administrator and the benefits payer<sup>3</sup>, except that this shall not apply  
39 to a third party administrator registered under the provisions of section  
40 2 of this act with respect to services performed for an insurer<sup>3</sup>. The  
41 agreement shall be retained as part of the official records of the  
42 administrator for the duration of the agreement and for five years  
43 thereafter. The provisions of the agreement shall include, but shall not  
44 be limited to:

45       a. the services to be provided by the administrator and the means  
46 by which the administrator is to be compensated;

1       b. the responsibilities of the benefits payer to the administrator  
2 with respect to claims to be paid by the administrator on behalf of a  
3 benefits payer, including: the provision of enrollment and eligibility  
4 information; arrangement for a preliminary or escrowed deposit of  
5 funds by the benefits payer, if any; the method used for the transmittal  
6 of funds from the benefits payer to the administrator; notification by  
7 the benefits payer of modifications in the benefits payer's benefits plan;  
8 provisions setting forth the respective liability of the administrator and  
9 benefits payer for payment of ineligible claims; liability for claims  
10 payments that are overdue; and provisions regarding the procurement  
11 of reinsurance or stop-loss insurance; and

12       c. the responsibilities of the administrator to the benefits payer,  
13 including: the maintenance of appropriate back-up systems against the  
14 loss of records; establishment and maintenance of appropriate financial  
15 controls; provisions regarding the benefits payer's rights with respect  
16 to conducting claims audits by an outside auditor; the maintenance of  
17 appropriate insurance coverage, which may include, but not be limited  
18 to, general liability insurance, valuable papers insurance and errors and  
19 omissions coverage; appropriate access by the benefits payer to the  
20 administrator's records; and procedures for making available the  
21 claims experience or other information to the benefits payer at its  
22 request, including, but not limited to, monthly reports.

23

24       7. a. The commissioner shall have access to all books and records  
25 of a third party administrator for the purposes of examination, audit  
26 and inspection. Any trade secrets, proprietary information or the  
27 identity and addresses of enrollees contained in the books and records  
28 shall be kept confidential, except that the commissioner may use the  
29 information in any proceeding instituted against the administrator.

30       b. The benefits payer shall own the records generated by the  
31 administrator pertaining to the benefits payer, except that the  
32 administrator shall retain the right to continuing access to books and  
33 records to permit the administrator to fulfill all of its contractual  
34 obligations to the benefits payer.

35       c. In the event that an agreement between an administrator and a  
36 benefits payer is canceled, notwithstanding the provisions of section  
37 6 of this act to the contrary, the administrator may, with the written  
38 agreement of the benefits payer, transfer all records to a new  
39 administrator instead of retaining them for five years.

40

41       8. If a third party administrator <sup>2</sup>[adjusts or settles] adjudicates<sup>2</sup>  
42 claims under a health benefits plan, the commissions, fees or charges  
43 that the benefits payer pays the administrator, shall not be based solely  
44 on the number or amount of claims denied by the administrator. This  
45 provision shall not prohibit an administrator from receiving  
46 performance-based compensation if that compensation is not

1 predicated on denial of claims or coverage.

2

3 9. a. A third party administrator shall be deemed to act in a  
4 fiduciary capacity on behalf of the benefits payer in the receipt and  
5 transmittal of the benefits payer's funds, and shall have all  
6 responsibility attendant to a fiduciary as established by law. <sup>2</sup>Funds  
7 transmitted shall be kept in a separate account and shall not be  
8 commingled with any other funds.<sup>2</sup> If an account is jointly held by the  
9 administrator and the benefits payer, it shall be deposited in a State or  
10 federally chartered insured depository institution, and the  
11 administrator shall provide a monthly accounting of all transactions in  
12 that account. <sup>2</sup>[If the administrator is paying claims on behalf of the  
13 benefits payer using the benefits payer's funds for that purpose, the]  
14 A<sup>2</sup> benefits payer shall have the responsibility to make <sup>2</sup>[the]<sup>2</sup> funds  
15 necessary to pay the claims<sup>2</sup> available to the administrator in a timely  
16 manner, as provided in the contract. An administrator shall not be  
17 liable to any party for the failure of the benefits payer to make funds  
18 available to pay claims.

19 b. An administrator shall maintain in force a fidelity bond in its  
20 own name on its officers and employees, in an amount established by  
21 the commissioner by regulation.

22

23 10. All <sup>1</sup>[insurance charges or premiums] funds<sup>1</sup> <sup>2</sup>[collected by]  
24 remitted to<sup>2</sup> an administrator <sup>2</sup>[on behalf of or for] by<sup>2</sup> a benefits  
25 payer licensed or authorized to do business in this State shall be held  
26 by the third party administrator in a separate account maintained in the  
27 name of the benefits payer <sup>2</sup>[and shall be remitted to the benefits payer  
28 in a manner provided for in the written contract]<sup>2</sup> <sup>3</sup>or in a separate  
29 account maintained jointly in the names of the benefits payer and the  
30 administrator<sup>3</sup>. If <sup>1</sup>[charges or premiums] funds<sup>1</sup> have been collected  
31 by the administrator <sup>2</sup>from a provider or enrollee<sup>2</sup> on behalf of <sup>2</sup>[more  
32 than one] a<sup>2</sup> benefits <sup>2</sup>[payers] payer<sup>2</sup>, they shall be maintained in  
33 <sup>2</sup>[separate accounts] a separate account <sup>3</sup>[in trust for] maintained in  
34 the name of<sup>3</sup> the benefits payer<sup>3</sup>, maintained jointly in the names of the  
35 benefits payer and the administrator<sup>3</sup> or remitted to the benefits payer,  
36 as provided in the contract<sup>2</sup>. Copies of all records pertaining to the  
37 collection of <sup>1</sup>[charges or premiums] funds<sup>1</sup> shall be made available  
38 to the benefits payer as provided in the contract.

39 <sup>1</sup>[The administrator shall not pay any claim by withdrawals from  
40 a fiduciary account in which premiums or charges are deposited.]<sup>1</sup>

41

42 11. Any policies, certificates, booklets, termination notices or  
43 other written communications delivered by the benefits payer to the  
44 third party administrator for delivery to <sup>2</sup>[covered persons] enrollees<sup>2</sup>  
45 shall be delivered by the administrator promptly, in accordance with



1 the instructions of the benefits payer.

2

3 12. A third party administrator shall immediately notify the  
4 commissioner of any material change in its ownership, control or other  
5 fact or circumstance affecting its qualification for a license.

6

7 13. A third party administrator shall file an annual report for the  
8 preceding calendar year with the commissioner on or before March 1  
9 of each year, in a form and manner prescribed by the commissioner.  
10 The annual report shall contain the complete names and addresses of  
11 all benefits payers with which the administrator had a contract in effect  
12 during the preceding calendar year. The commissioner shall establish  
13 a filing fee for the report, by regulation.

14

15 14. The commissioner may suspend or revoke a license <sup>3</sup>or  
16 registration<sup>3</sup> issued pursuant to this act if he finds that the third party  
17 administrator:

18 a. is in an unsound financial condition;

19 b. is using methods or practices in the conduct of its business that  
20 render its further transaction of business in this State hazardous or  
21 injurious to the benefits payers with which it has contracted or the  
22 public;

23 c. has failed to pay any judgment rendered against it in this State  
24 within 60 days after the judgment has become final;

25 d. has violated any lawful rule or order of the commissioner or any  
26 provision of State law;

27 e. has refused to be examined or produce its accounts, records and  
28 files for examination, or if any of its officers has refused to give  
29 information with respect to its affairs or has refused to perform any  
30 other legal obligation as to an examination, when required by the  
31 commissioner;

32 f. has, without just cause, refused or failed to pay proper claims  
33 or perform services arising under its contracts;

34 g. at any time fails to meet any qualification for which issuance of  
35 the license could have been refused had that failure then existed and  
36 been known to the commissioner;

37 h. has been convicted of, or has entered a plea of guilty or nolo  
38 contendere to a felony or crime of the first, second or third degree in  
39 this State, without regard to whether adjudication was held;

40 i. is under suspension or revocation in another state; or

41 j. has willfully reimbursed enrollees for benefits not eligible under  
42 the benefits payer's benefits plan.

43 If the commissioner finds that one or more grounds exist for the  
44 suspension or revocation of a certificate of authority issued under this  
45 act, the commissioner may, in lieu of suspension or revocation, impose  
46 a fine upon the administrator.

1       15. The commissioner may, without advance notice or hearing,  
2 immediately suspend the license <sup>3</sup>or registration<sup>3</sup> of a third party  
3 administrator if he finds that one or more of the following  
4 circumstances exist:

5       a. the administrator is insolvent or impaired;

6       b. a proceeding for receivership, conservatorship, rehabilitation or  
7 other delinquency proceeding regarding the administrator has been  
8 commenced in another state; or

9       c. the financial condition or business practices of the administrator  
10 otherwise pose an imminent threat to the public health, safety or  
11 welfare of the residents of this State.

12  
13       16. On or after January 1, 2002, no person shall act as, offer to act  
14 as or hold himself out to be a third party billing service in this State  
15 unless certified by the commissioner in accordance with this act.  
16 Application for certification shall be made to the commissioner on a  
17 form provided by the commissioner. The commissioner shall establish  
18 by regulation the information that shall accompany the application,  
19 which shall include, but need not be limited to:

20       a. a copy of the applicant's basic organizational documents, which  
21 shall include articles of incorporation, articles of association,  
22 partnership agreement, management agreement, trust agreement or  
23 other documents governing the operation of the applicant that are  
24 applicable to the applicant's form of business organization;

25       b. a copy of the executed bylaws, rules and regulations, or other  
26 documents relating to the operation of the applicant's internal affairs;

27       c. the names, addresses and official positions of the persons  
28 responsible for the conduct of the affairs of the applicant, including,  
29 but not limited to, if applicable: the members of the board of directors,  
30 executive committee or other governing board or committee, the  
31 principal officers or partners, shareholders owning or having the right  
32 to acquire 10% or more of the voting securities of the corporation or  
33 partnership interest of a partnership or equity interest, in the case of  
34 another form of business organization;

35       d. if the applicant accepts monies from benefits payers on behalf  
36 of clients, the application shall include a copy of the applicant's most  
37 recent financial statements audited by an independent certified public  
38 accountant.

39       e. a copy of the applicant's business plan, including information on  
40 staffing levels and the activities undertaken or to be undertaken in this  
41 State. The plan shall include a statement of the third party billing  
42 service's capability for providing a sufficient number of experienced  
43 and qualified personnel in the areas of claims processing and record  
44 keeping.

45       f. a list of the applicant's clients and a copy of the standard  
46 contract or contracts used by the applicant in the course of business;

1 and

2 g. if the applicant accepts monies from benefits payers on behalf  
3 of clients, the application shall be accompanied by a power of attorney,  
4 duly executed by the applicant, if not domiciled in this State,  
5 appointing the commissioner and his successors in office as the true  
6 and lawful attorney of the applicant in and for this State upon whom  
7 all lawful process in any legal action or proceeding against the  
8 organization on a cause of action arising in this State may be served.  
9

10 17. In addition to the information otherwise required by this act  
11 or by the commissioner, a third party billing service shall file with the  
12 commissioner:

- 13 a. a description of the applicant's proposed method of marketing  
14 its services;  
15 b. a statement setting forth the means by which the applicant is to  
16 be compensated;  
17 c. a description of the quality assurance procedures established by  
18 the applicant; and  
19 d. a copy of the standard contract or contracts used by the  
20 applicant in contracting with providers.  
21

22 18. The commissioner may approve an application for certification  
23 as a third party billing service if he finds that the applicant meets the  
24 standards established by this act, including, but not limited to, the  
25 following:

- 26 a. all of the material required by this act or by the commissioner  
27 have been filed;  
28 b. the persons responsible for conducting the applicant's affairs  
29 are competent, trustworthy and possess good reputations, and have  
30 appropriate experience, training and education;  
31 c. the applicant has demonstrated the ability to ensure that its  
32 services will be performed in a manner which will result in the efficient  
33 operation of its business, including, if the applicant accepts payments  
34 from benefits payers on behalf of its clients, appropriate financial  
35 controls;  
36 d. the standard contract forms to be used by the applicant are  
37 acceptable; and  
38 e. the applicant has adequate arrangements for complying with the  
39 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).  
40

41 19. The commissioner may deny an application for certification as  
42 a third party billing service if he finds that any of the standards  
43 established by this act have not been met or for any other reasonable  
44 grounds. If the application for certification is denied, the commissioner  
45 shall notify the applicant in writing by certified mail, return receipt  
46 requested, setting forth his reasons for denial. The applicant may

1 request a hearing by notice to the commissioner no later than the 30th  
2 day following receipt of the notice of denial.

3

4 20. A third party billing service shall not conduct any business  
5 with a client in the absence of a written agreement between the billing  
6 service and the client. The agreement shall be retained as part of the  
7 official records of the third party billing service for the duration of the  
8 agreement.

9 The agreement shall include the services to be provided by the  
10 third party billing service on behalf of the client; financial  
11 arrangements to be used if the third party billing service accepts  
12 monies from benefits payers on behalf of a client; provisions setting  
13 forth the respective liability of the client and the third party billing  
14 service for the accuracy and eligibility of submitted claims, and for the  
15 prompt submission of claims pursuant to the provisions of P.L.1999,  
16 c.154 (C.17B:30-23 et al.); and the responsibilities of the third party  
17 billing service to the client with respect to the maintenance of  
18 appropriate back-up systems against the loss of records, and the  
19 maintenance of appropriate insurance coverage by the third party  
20 billing service against the risk of loss.

21

22 21. A third party billing service that accepts monies from health  
23 benefits payers on behalf of a client shall be deemed to act in a  
24 fiduciary capacity on behalf of the client in the receipt and transmittal  
25 of funds and shall have all responsibility attendant to a fiduciary as  
26 established by law. <sup>2</sup>Monies transmitted by benefits payers or on  
27 behalf of clients shall be kept in a separate account <sup>3</sup>maintained in the  
28 name of the client or jointly in the names of the client and the third  
29 party billing service<sup>3</sup> and shall not be commingled with any other funds  
30 <sup>3</sup>of the third party billing service or other clients of the third party  
31 billing service<sup>3</sup> .<sup>2</sup>

32

33 22. a. A third party billing service shall immediately notify the  
34 commissioner of any material change in its ownership, control, or  
35 other fact or circumstance affecting its qualification for certification.

36 b. A third party billing service shall file such reports, at such times  
37 as may be required by the commissioner, including reports that will  
38 verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-  
39 23 et al.).

40

41 23. The commissioner may suspend or revoke a certification  
42 issued pursuant to this act if he finds that the third party billing  
43 service:

44 a. is using methods or practices in the conduct of its business that  
45 render its further transaction of business in this State hazardous or  
46 injurious to its clients or the public;

1       b. has failed to pay any judgment rendered against it within 60  
2 days after the judgment has become final;

3       c. has violated any lawful rule or order of the commissioner or any  
4 provision of the laws of this State;

5       d. has, without just cause, refused or failed to perform services  
6 arising under its contracts with clients;

7       e. has been convicted of, or has entered a plea of guilty or nolo  
8 contendere to a felony or crime of the first, second or third degree in  
9 this State, without regard to whether adjudication was held; or

10      f. is under suspension or revocation in another State.

11      If the commissioner finds that one or more grounds exist for the  
12 suspension or revocation of a certification issued under this act, the  
13 commissioner may, in lieu of suspension or revocation, impose a fine  
14 upon the third party billing service.

15

16      24. The commissioner may, upon notice and hearing, assess a civil  
17 administrative penalty in an amount not less than \$250 nor more than  
18 \$5,000 for each day that a third party administrator or third party  
19 billing service is in violation of this act. A penalty imposed by the  
20 commissioner pursuant to this section may be in lieu of, or in addition  
21 to, suspension or revocation of a license pursuant to this act. A  
22 penalty may be recovered in a summary proceeding pursuant to the  
23 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
24 seq.).

25

26      25. The commissioner shall adopt rules and regulations pursuant  
27 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
28 et seq.) to carry out the purposes of this act.

29

30      26. This act shall take effect immediately.

P.L. 2001, CHAPTER 267, *approved December 13, 2001*  
Senate Committee Substitute (*Third Reprint*) for  
Senate, No. 375

1 AN ACT concerning third party administrators of health benefits plans  
2 and third party billing services and supplementing Title 17B of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in this act:

9 "Benefits payer" means <sup>3</sup>[a licensed] an<sup>3</sup> insurer<sup>3</sup> [, health, hospital  
10 or medical service corporation, or health maintenance organization]<sup>3</sup>  
11 authorized to issue health or dental benefits plans in this State, or any  
12 other person who undertakes to provide <sup>2</sup>and assumes financial risk  
13 for the payment of<sup>2</sup> health or dental benefits and is obligated to pay  
14 claims for health or dental benefits to providers or other claimants.

15 "Client" means a health care provider that contracts with a third  
16 party billing service to remit claims to benefits payers on behalf of the  
17 provider or other claimant.

18 "Commissioner" means the Commissioner of Banking and  
19 Insurance.

20 "Enrollee" means a person entitled to receive benefits under a  
21 health benefits plan.

22 "Health benefits plan" means a benefits plan which pays or  
23 provides hospital and medical expense or dental benefits for covered  
24 services.

25 "Health care provider" or "provider" means an individual or entity  
26 which provides a covered benefit or service.

27 <sup>3</sup>Insurer means a licensed health insurer, health, hospital or  
28 medical service corporation, health maintenance organization, dental  
29 service corporation or dental plan organization.<sup>3</sup>

30 "Third party administrator" means a person or entity that:  
31 processes claims and pays claims on behalf of a benefits payer <sup>2</sup>without  
32 the assumption of financial risk for the payment of health or dental  
33 benefits<sup>2</sup>. <sup>3</sup>[Third party administrator shall not include an employee

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted December 4, 2000.

<sup>2</sup> Assembly ABI committee amendments adopted March 1, 2001.

<sup>3</sup> Senate amendments adopted in accordance with Governor's recommendations October 3, 2001.

1 or affiliate of a benefits payer, but it shall include an affiliate of a  
2 licensed insurer, health, hospital or medical service corporation, health  
3 maintenance organization, dental service corporation or dental plan  
4 organization formed for the purpose of processing claims or claims  
5 payments on behalf of a benefits payer<sup>2</sup>, other than the licensed  
6 insurer, health, hospital or medical service corporation, health  
7 maintenance organization, dental service corporation or dental plan  
8 organization<sup>2</sup>. Third party administrator shall not include a collection  
9 agency or bureau or a pharmacy benefits manager.] Third party  
10 administrator shall include: (1) an entity not licensed as an insurer that  
11 is not an affiliate or subsidiary of an insurer, that processes claims on  
12 behalf of a benefits payer; (2) an entity that is a subsidiary or affiliate  
13 of an insurer that processes claims on behalf of the insurer; and (3) an  
14 entity that is a subsidiary or affiliate of an insurer that only processes  
15 claims on behalf of benefits payers other than insurers. Third party  
16 administrator shall not include an employee, affiliate or subsidiary of  
17 a benefits payer formed for the purpose of processing and paying  
18 claims solely on behalf of the benefits payer, nor shall it include a  
19 collection agency or bureau or pharmacy benefits manager.<sup>3</sup>

20 "Third party billing service" means a person or entity that  
21 <sup>2</sup>[processes] is paid by a health care provider to process<sup>2</sup> claims or  
22 claims payments on behalf of <sup>2</sup>[a] the<sup>2</sup> health care provider.  
23

24 2. <sup>3</sup>a.<sup>3</sup> On or after January 1, 2002, no person shall act as, offer  
25 to act as <sup>3</sup> or hold himself out to be <sup>3</sup> a third party administrator  
26 in this State unless licensed <sup>3</sup>or registered<sup>3</sup> by the commissioner in  
27 accordance with this act. <sup>3</sup>Every third party administrator that is  
28 either: (1) an entity that is not licensed as an insurer and is not an  
29 affiliate or subsidiary of an insurer; or (2) an entity that is an affiliate  
30 or a subsidiary of an insurer that only processes or pays claims on  
31 behalf of benefits payers other than insurers shall be licensed under the  
32 provisions of this act. Every third party administrator that is an entity  
33 that is a subsidiary or affiliate of an insurer that processes claims on  
34 behalf of both the insurer and benefits payers other than the insurer  
35 shall be registered with the commissioner pursuant to the provisions  
36 of this act.<sup>3</sup>

37 <sup>3</sup>[<sup>2</sup>a.<sup>2</sup>] b.<sup>3</sup> Application for licensure <sup>3</sup>[<sup>2</sup>for third party  
38 administrators that are not licensed insurers, health, hospital or  
39 medical service corporations, health maintenance organizations, dental  
40 service corporations or dental plan organizations<sup>2</sup>]<sup>3</sup> shall be made to  
41 the commissioner on a form provided by the commissioner. The  
42 commissioner shall establish by regulation the information that shall  
43 accompany the application, which <sup>2</sup>[shall] may<sup>2</sup> include, but need not  
44 be limited to:

45 <sup>2</sup>[a.] (1)<sup>2</sup> a copy of the applicant's basic organizational  
46 documents, which shall include articles of incorporation, articles of

1 association, partnership agreement, management agreement, trust  
2 agreement or other documents governing the operation of the  
3 applicant that are applicable to the applicant's form of business  
4 organization;

5 <sup>2</sup>[b.] (2)<sup>2</sup> a copy of the executed bylaws, rules and regulations,  
6 or other documents relating to the operation of the applicant's internal  
7 affairs;

8 <sup>2</sup>[c.] (3)<sup>2</sup> the names, addresses and official positions of the  
9 persons responsible for the conduct of the affairs of the applicant,  
10 including, but not limited to, if applicable: the members of the board  
11 of directors, executive committee or other governing board or  
12 committee; the principal officers or partners; shareholders owning or  
13 having the right to acquire 10% or more of the voting securities of the  
14 corporation or partnership interest of a partnership, or equity interest,  
15 in the case of another form of business organization; each person who  
16 has loaned funds to the applicant for the operation of its business; a  
17 statement of any criminal convictions and civil, regulatory or  
18 enforcement action, including actions related to professional licensing,  
19 taken or pending against any principal officer or owner of the  
20 applicant; and the relationship with any other business entity, including  
21 a parent corporation;

22 <sup>2</sup>[d.] (4)<sup>2</sup> a copy of the applicant's most recent financial  
23 statements audited by an independent certified public accountant. If  
24 the financial affairs of the applicant's parent company are audited by  
25 an independent certified public accountant, but those of the applicant  
26 are not, then a copy of the most recent audited financial statement of  
27 the applicant's parent company, audited by an independent certified  
28 public accountant, shall be submitted. A consolidated financial  
29 statement of the applicant and its parent company shall satisfy this  
30 requirement unless the commissioner determines that additional or  
31 more recent financial information is required for the proper  
32 administration of this act;

33 <sup>2</sup>[e.] (5)<sup>2</sup> a copy of the applicant's business plan, including  
34 information on staffing levels and the activities undertaken or to be  
35 undertaken in this State. The plan shall include a statement of the  
36 administrator's capability for providing a sufficient number of  
37 experienced and qualified personnel in the areas of claims processing  
38 and record keeping and a three-year projection of anticipated  
39 operating results, a statement of the sources of working capital and  
40 any other sources of funding and provision for contingencies that  
41 enable the applicant to perform the work for which it has contracted;

42 <sup>2</sup>[f.] (6)<sup>2</sup> a list of the benefits payers under contract with the  
43 applicant and a copy of the standard contract or contracts used by the  
44 applicant in the course of business; and

45 <sup>2</sup>[g.] (7)<sup>2</sup> a power of attorney, duly executed by the applicant, if  
46 not domiciled in this State, appointing the commissioner and his



1 successors in office as the true and lawful attorney of the applicant in  
2 and for this State upon whom all lawful process in any legal action or  
3 proceeding against the organization on a cause of action arising in this  
4 State may be served.

5 <sup>3</sup>[<sup>2</sup> b.]<sup>3</sup> With respect to an applicant <sup>3</sup>for licensure <sup>3</sup>that is an  
6 affiliate <sup>3</sup>or subsidiary<sup>3</sup> of <sup>3</sup>[a licensed] an<sup>3</sup> insurer, <sup>3</sup>[health, hospital  
7 or medical service corporation, health maintenance organization,  
8 dental service corporation or dental plan organization.]<sup>3</sup> the  
9 commissioner shall <sup>3</sup>[require that information necessary and  
10 appropriate for licensure] establish by regulation the information  
11 necessary to be filed, which shall not be unnecessarily duplicative of  
12 any information already on file with the Department of Banking and  
13 Insurance<sup>3</sup>.

14 <sup>3</sup>[c.]<sup>3</sup> An application for licensure shall be approved if not  
15 disapproved by the commissioner within 60 days of receipt of a  
16 completed application. <sup>3</sup>[For the purposes of this section, an] An<sup>3</sup>  
17 application shall be <sup>3</sup>deemed to be<sup>3</sup> complete if all of the information  
18 required to be submitted to the commissioner by regulation has been  
19 submitted by the applicant.<sup>2</sup>

20 <sup>3</sup>c. Registration shall be on a form prescribed by the commissioner,  
21 which shall include: (1) a copy of the applicant's basic organizational  
22 documents, as required by the commissioner; (2) the names and official  
23 positions of the persons responsible for the conduct of the affairs of  
24 the applicant; (3) a copy of the applicant's most recent financial  
25 statements, or a consolidated financial statement of the applicant and  
26 its parent company; (4) such other information as the commissioner  
27 may require. An application for registration shall be approved if not  
28 disapproved by the commissioner within 60 days of receipt of a  
29 completed application. For the purposes of this subsection, an  
30 application shall be complete if all of the information required to be  
31 submitted to the commissioner by regulation has been submitted by the  
32 applicant. Information required pursuant to this subsection shall not  
33 be unnecessarily duplicative of any information already on file with the  
34 Department of Banking and Insurance.<sup>3</sup>

35  
36 3. In addition to the information required by section 2 of this act,  
37 the applicant <sup>3</sup>for licensure or registration shall file with the  
38 commissioner:

39 a. a description of the applicant's proposed method of marketing  
40 its services;

41 b. a statement setting forth the means by which the applicant is to  
42 be compensated;

43 c. a description of the complaint and appeals procedures instituted  
44 by the applicant; and

45 d. a description of the quality assurance procedures established by  
46 the applicant.

1 An applicant shall make available for inspection by the  
2 commissioner copies of all <sup>3</sup>standard<sup>3</sup> contracts with benefits payers  
3 or other persons with whom it does business, including subcontractors  
4 and reinsurers. <sup>3</sup>In the case of an applicant for registration, the  
5 information required to be filed with the commissioner shall apply only  
6 to services provided to benefits payers other than an insurer.<sup>3</sup>

7  
8 4. The commissioner may issue a license to an applicant <sup>3</sup>[for  
9 licensure] or approve an application for registration<sup>3</sup> as a third party  
10 administrator if he finds that the applicant meets the standards  
11 established by this act, including, but not limited to, the following:

12 a. all of the materials required by this act or by the commissioner  
13 have been filed;

14 b. the persons responsible for conducting the applicant's affairs  
15 are competent, trustworthy and possess good reputations, and have  
16 appropriate experience, training and education;

17 c. the applicant has demonstrated the ability to assure that its  
18 services will be performed in a manner which will ensure the efficient  
19 operation of its business, including appropriate financial controls;

20 d. the standard contract forms to be used by the applicant are  
21 acceptable;

22 e. the applicant has adequate financial arrangements with the  
23 benefits payers for which it will perform its services and adequate  
24 arrangements for complying with the provisions of P.L.1999, c.154  
25 (C.17B:30-23 et al.); and

26 f. the compensation arrangements made between the applicant and  
27 benefits payers do not result in the assumption of financial risk by the  
28 applicant.

29 <sup>3</sup>In the case of an applicant for registration, the provisions of  
30 subsections d., e., and f. of this section shall apply only to services  
31 provided by the applicant to benefits payers other than an insurer.<sup>3</sup>

32  
33 5. The commissioner may deny an application for licensure <sup>3</sup>or  
34 registration<sup>3</sup> as a third party administrator if he finds that any of the  
35 standards established by this act have not been met or for any other  
36 reasonable grounds. If the application for licensure <sup>3</sup>or registration<sup>3</sup>  
37 is denied, the commissioner shall notify the applicant in writing by  
38 certified mail, return receipt requested, setting forth his reasons for  
39 denial. The applicant may request a hearing by notice to the  
40 commissioner no later than the 30th day following receipt of the notice  
41 of denial.

42  
43 6. A third party administrator shall not conduct any business with  
44 a benefits payer in the absence of a written agreement between the  
45 administrator and the benefits payer<sup>3</sup>, except that this shall not apply  
46 to a third party administrator registered under the provisions of section

1 2 of this act with respect to services performed for an insurer<sup>3</sup>. The  
2 agreement shall be retained as part of the official records of the  
3 administrator for the duration of the agreement and for five years  
4 thereafter. The provisions of the agreement shall include, but shall not  
5 be limited to:

6 a. the services to be provided by the administrator and the means  
7 by which the administrator is to be compensated;

8 b. the responsibilities of the benefits payer to the administrator  
9 with respect to claims to be paid by the administrator on behalf of a  
10 benefits payer, including: the provision of enrollment and eligibility  
11 information; arrangement for a preliminary or escrowed deposit of  
12 funds by the benefits payer, if any; the method used for the transmittal  
13 of funds from the benefits payer to the administrator; notification by  
14 the benefits payer of modifications in the benefits payer's benefits plan;  
15 provisions setting forth the respective liability of the administrator and  
16 benefits payer for payment of ineligible claims; liability for claims  
17 payments that are overdue; and provisions regarding the procurement  
18 of reinsurance or stop-loss insurance; and

19 c. the responsibilities of the administrator to the benefits payer,  
20 including: the maintenance of appropriate back-up systems against the  
21 loss of records; establishment and maintenance of appropriate financial  
22 controls; provisions regarding the benefits payer's rights with respect  
23 to conducting claims audits by an outside auditor; the maintenance of  
24 appropriate insurance coverage, which may include, but not be limited  
25 to, general liability insurance, valuable papers insurance and errors and  
26 omissions coverage; appropriate access by the benefits payer to the  
27 administrator's records; and procedures for making available the  
28 claims experience or other information to the benefits payer at its  
29 request, including, but not limited to, monthly reports.

30

31 7. a. The commissioner shall have access to all books and records  
32 of a third party administrator for the purposes of examination, audit  
33 and inspection. Any trade secrets, proprietary information or the  
34 identity and addresses of enrollees contained in the books and records  
35 shall be kept confidential, except that the commissioner may use the  
36 information in any proceeding instituted against the administrator.

37 b. The benefits payer shall own the records generated by the  
38 administrator pertaining to the benefits payer, except that the  
39 administrator shall retain the right to continuing access to books and  
40 records to permit the administrator to fulfill all of its contractual  
41 obligations to the benefits payer.

42 c. In the event that an agreement between an administrator and a  
43 benefits payer is canceled, notwithstanding the provisions of section  
44 6 of this act to the contrary, the administrator may, with the written  
45 agreement of the benefits payer, transfer all records to a new  
46 administrator instead of retaining them for five years.

1 8. If a third party administrator <sup>2</sup>[adjusts or settles] adjudicates<sup>2</sup>  
2 claims under a health benefits plan, the commissions, fees or charges  
3 that the benefits payer pays the administrator, shall not be based solely  
4 on the number or amount of claims denied by the administrator. This  
5 provision shall not prohibit an administrator from receiving  
6 performance-based compensation if that compensation is not  
7 predicated on denial of claims or coverage.

8  
9 9. a. A third party administrator shall be deemed to act in a  
10 fiduciary capacity on behalf of the benefits payer in the receipt and  
11 transmittal of the benefits payer's funds, and shall have all  
12 responsibility attendant to a fiduciary as established by law. <sup>2</sup>Funds  
13 transmitted shall be kept in a separate account and shall not be  
14 commingled with any other funds.<sup>2</sup> If an account is jointly held by the  
15 administrator and the benefits payer, it shall be deposited in a State or  
16 federally chartered insured depository institution, and the  
17 administrator shall provide a monthly accounting of all transactions in  
18 that account. <sup>2</sup>[If the administrator is paying claims on behalf of the  
19 benefits payer using the benefits payer's funds for that purpose, the]  
20 A<sup>2</sup> benefits payer shall have the responsibility to make <sup>2</sup>[the]<sup>2</sup> funds  
21 <sup>2</sup>necessary to pay the claims<sup>2</sup> available to the administrator in a timely  
22 manner, as provided in the contract. An administrator shall not be  
23 liable to any party for the failure of the benefits payer to make funds  
24 available to pay claims.

25 b. An administrator shall maintain in force a fidelity bond in its  
26 own name on its officers and employees, in an amount established by  
27 the commissioner by regulation.

28  
29 10. All <sup>1</sup>[insurance charges or premiums] funds<sup>1</sup> <sup>2</sup>[collected by]  
30 remitted to<sup>2</sup> an administrator <sup>2</sup>[on behalf of or for] by<sup>2</sup> a benefits  
31 payer licensed or authorized to do business in this State shall be held  
32 by the third party administrator in a separate account maintained in the  
33 name of the benefits payer <sup>2</sup>[and shall be remitted to the benefits payer  
34 in a manner provided for in the written contract]<sup>2</sup> <sup>3</sup>or in a separate  
35 account maintained jointly in the names of the benefits payer and the  
36 administrator<sup>3</sup>. If <sup>1</sup>[charges or premiums] funds<sup>1</sup> have been collected  
37 by the administrator <sup>2</sup>from a provider or enrollee<sup>2</sup> on behalf of <sup>2</sup>[more  
38 than one] a<sup>2</sup> benefits <sup>2</sup>[payers] payer<sup>2</sup>, they shall be maintained in  
39 <sup>2</sup>[separate accounts] a separate account<sup>3</sup> <sup>3</sup>[in trust for] maintained in  
40 the name of<sup>3</sup> the benefits payer<sup>3</sup>, maintained jointly in the names of the  
41 benefits payer and the administrator<sup>3</sup> or remitted to the benefits payer,  
42 as provided in the contract<sup>2</sup>. Copies of all records pertaining to the  
43 collection of <sup>1</sup>[charges or premiums] funds<sup>1</sup> shall be made available  
44 to the benefits payer as provided in the contract.

45 <sup>1</sup>[The administrator shall not pay any claim by withdrawals from

1 a fiduciary account in which premiums or charges are deposited.]]<sup>1</sup>

2

3 11. Any policies, certificates, booklets, termination notices or  
4 other written communications delivered by the benefits payer to the  
5 third party administrator for delivery to <sup>2</sup>[covered persons] enrollees<sup>2</sup>  
6 shall be delivered by the administrator promptly, in accordance with  
7 the instructions of the benefits payer.

8

9 12. A third party administrator shall immediately notify the  
10 commissioner of any material change in its ownership, control or other  
11 fact or circumstance affecting its qualification for a license.

12

13 13. A third party administrator shall file an annual report for the  
14 preceding calendar year with the commissioner on or before March 1  
15 of each year, in a form and manner prescribed by the commissioner.  
16 The annual report shall contain the complete names and addresses of  
17 all benefits payers with which the administrator had a contract in effect  
18 during the preceding calendar year. The commissioner shall establish  
19 a filing fee for the report, by regulation.

20

21 14. The commissioner may suspend or revoke a license <sup>3</sup>or  
22 registration<sup>3</sup> issued pursuant to this act if he finds that the third party  
23 administrator:

24 a. is in an unsound financial condition;

25 b. is using methods or practices in the conduct of its business that  
26 render its further transaction of business in this State hazardous or  
27 injurious to the benefits payers with which it has contracted or the  
28 public;

29 c. has failed to pay any judgment rendered against it in this State  
30 within 60 days after the judgment has become final;

31 d. has violated any lawful rule or order of the commissioner or any  
32 provision of State law;

33 e. has refused to be examined or produce its accounts, records and  
34 files for examination, or if any of its officers has refused to give  
35 information with respect to its affairs or has refused to perform any  
36 other legal obligation as to an examination, when required by the  
37 commissioner;

38 f. has, without just cause, refused or failed to pay proper claims  
39 or perform services arising under its contracts;

40 g. at any time fails to meet any qualification for which issuance of  
41 the license could have been refused had that failure then existed and  
42 been known to the commissioner;

43 h. has been convicted of, or has entered a plea of guilty or nolo  
44 contendere to a felony or crime of the first, second or third degree in  
45 this State, without regard to whether adjudication was held;

46 i. is under suspension or revocation in another state; or

1 j. has willfully reimbursed enrollees for benefits not eligible under  
2 the benefits payer's benefits plan.

3 If the commissioner finds that one or more grounds exist for the  
4 suspension or revocation of a certificate of authority issued under this  
5 act, the commissioner may, in lieu of suspension or revocation, impose  
6 a fine upon the administrator.

7  
8 15. The commissioner may, without advance notice or hearing,  
9 immediately suspend the license <sup>3</sup>or registration<sup>3</sup> of a third party  
10 administrator if he finds that one or more of the following  
11 circumstances exist:

12 a. the administrator is insolvent or impaired;

13 b. a proceeding for receivership, conservatorship, rehabilitation or  
14 other delinquency proceeding regarding the administrator has been  
15 commenced in another state; or

16 c. the financial condition or business practices of the administrator  
17 otherwise pose an imminent threat to the public health, safety or  
18 welfare of the residents of this State.

19  
20 16. On or after January 1, 2002, no person shall act as, offer to act  
21 as or hold himself out to be a third party billing service in this State  
22 unless certified by the commissioner in accordance with this act.  
23 Application for certification shall be made to the commissioner on a  
24 form provided by the commissioner. The commissioner shall establish  
25 by regulation the information that shall accompany the application,  
26 which shall include, but need not be limited to:

27 a. a copy of the applicant's basic organizational documents, which  
28 shall include articles of incorporation, articles of association,  
29 partnership agreement, management agreement, trust agreement or  
30 other documents governing the operation of the applicant that are  
31 applicable to the applicant's form of business organization;

32 b. a copy of the executed bylaws, rules and regulations, or other  
33 documents relating to the operation of the applicant's internal affairs;

34 c. the names, addresses and official positions of the persons  
35 responsible for the conduct of the affairs of the applicant, including,  
36 but not limited to, if applicable: the members of the board of directors,  
37 executive committee or other governing board or committee, the  
38 principal officers or partners, shareholders owning or having the right  
39 to acquire 10% or more of the voting securities of the corporation or  
40 partnership interest of a partnership or equity interest, in the case of  
41 another form of business organization;

42 d. if the applicant accepts monies from benefits payers on behalf  
43 of clients, the application shall include a copy of the applicant's most  
44 recent financial statements audited by an independent certified public  
45 accountant.

46 e. a copy of the applicant's business plan, including information on

1 staffing levels and the activities undertaken or to be undertaken in this  
2 State. The plan shall include a statement of the third party billing  
3 service's capability for providing a sufficient number of experienced  
4 and qualified personnel in the areas of claims processing and record  
5 keeping.

6 f. a list of the applicant's clients and a copy of the standard  
7 contract or contracts used by the applicant in the course of business;  
8 and

9 g. if the applicant accepts monies from benefits payers on behalf  
10 of clients, the application shall be accompanied by a power of attorney,  
11 duly executed by the applicant, if not domiciled in this State,  
12 appointing the commissioner and his successors in office as the true  
13 and lawful attorney of the applicant in and for this State upon whom  
14 all lawful process in any legal action or proceeding against the  
15 organization on a cause of action arising in this State may be served.

16

17 17. In addition to the information otherwise required by this act  
18 or by the commissioner, a third party billing service shall file with the  
19 commissioner:

20 a. a description of the applicant's proposed method of marketing  
21 its services;

22 b. a statement setting forth the means by which the applicant is to  
23 be compensated;

24 c. a description of the quality assurance procedures established by  
25 the applicant; and

26 d. a copy of the standard contract or contracts used by the  
27 applicant in contracting with providers.

28

29 18. The commissioner may approve an application for certification  
30 as a third party billing service if he finds that the applicant meets the  
31 standards established by this act, including, but not limited to, the  
32 following:

33 a. all of the material required by this act or by the commissioner  
34 have been filed;

35 b. the persons responsible for conducting the applicant's affairs  
36 are competent, trustworthy and possess good reputations, and have  
37 appropriate experience, training and education;

38 c. the applicant has demonstrated the ability to ensure that its  
39 services will be performed in a manner which will result in the efficient  
40 operation of its business, including, if the applicant accepts payments  
41 from benefits payers on behalf of its clients, appropriate financial  
42 controls;

43 d. the standard contract forms to be used by the applicant are  
44 acceptable; and

45 e. the applicant has adequate arrangements for complying with the  
46 provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

1       19. The commissioner may deny an application for certification as  
2 a third party billing service if he finds that any of the standards  
3 established by this act have not been met or for any other reasonable  
4 grounds. If the application for certification is denied, the commissioner  
5 shall notify the applicant in writing by certified mail, return receipt  
6 requested, setting forth his reasons for denial. The applicant may  
7 request a hearing by notice to the commissioner no later than the 30th  
8 day following receipt of the notice of denial.

9  
10       20. A third party billing service shall not conduct any business  
11 with a client in the absence of a written agreement between the billing  
12 service and the client. The agreement shall be retained as part of the  
13 official records of the third party billing service for the duration of the  
14 agreement.

15       The agreement shall include the services to be provided by the  
16 third party billing service on behalf of the client; financial  
17 arrangements to be used if the third party billing service accepts  
18 monies from benefits payers on behalf of a client; provisions setting  
19 forth the respective liability of the client and the third party billing  
20 service for the accuracy and eligibility of submitted claims, and for the  
21 prompt submission of claims pursuant to the provisions of P.L.1999,  
22 c.154 (C.17B:30-23 et al.); and the responsibilities of the third party  
23 billing service to the client with respect to the maintenance of  
24 appropriate back-up systems against the loss of records, and the  
25 maintenance of appropriate insurance coverage by the third party  
26 billing service against the risk of loss.

27  
28       21. A third party billing service that accepts monies from health  
29 benefits payers on behalf of a client shall be deemed to act in a  
30 fiduciary capacity on behalf of the client in the receipt and transmittal  
31 of funds and shall have all responsibility attendant to a fiduciary as  
32 established by law. <sup>2</sup>Monies transmitted by benefits payers or on  
33 behalf of clients shall be kept in a separate account <sup>3</sup>maintained in the  
34 name of the client or jointly in the names of the client and the third  
35 party billing service<sup>3</sup> and shall not be commingled with any other funds  
36 <sup>3</sup>of the third party billing service or other clients of the third party  
37 billing service<sup>3</sup> .<sup>2</sup>

38  
39       22. a. A third party billing service shall immediately notify the  
40 commissioner of any material change in its ownership, control, or  
41 other fact or circumstance affecting its qualification for certification.

42       b. A third party billing service shall file such reports, at such times  
43 as may be required by the commissioner, including reports that will  
44 verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-  
45 23 et al.).



1       23. The commissioner may suspend or revoke a certification  
2 issued pursuant to this act if he finds that the third party billing  
3 service:

4       a. is using methods or practices in the conduct of its business that  
5 render its further transaction of business in this State hazardous or  
6 injurious to its clients or the public;

7       b. has failed to pay any judgment rendered against it within 60  
8 days after the judgment has become final;

9       c. has violated any lawful rule or order of the commissioner or any  
10 provision of the laws of this State;

11       d. has, without just cause, refused or failed to perform services  
12 arising under its contracts with clients;

13       e. has been convicted of, or has entered a plea of guilty or nolo  
14 contendere to a felony or crime of the first, second or third degree in  
15 this State, without regard to whether adjudication was held; or

16       f. is under suspension or revocation in another State.

17       If the commissioner finds that one or more grounds exist for the  
18 suspension or revocation of a certification issued under this act, the  
19 commissioner may, in lieu of suspension or revocation, impose a fine  
20 upon the third party billing service.

21

22       24. The commissioner may, upon notice and hearing, assess a civil  
23 administrative penalty in an amount not less than \$250 nor more than  
24 \$5,000 for each day that a third party administrator or third party  
25 billing service is in violation of this act. A penalty imposed by the  
26 commissioner pursuant to this section may be in lieu of, or in addition  
27 to, suspension or revocation of a license pursuant to this act. A  
28 penalty may be recovered in a summary proceeding pursuant to the  
29 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
30 seq.).

31

32       25. The commissioner shall adopt rules and regulations pursuant  
33 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
34 et seq.) to carry out the purposes of this act.

35

36       26. This act shall take effect immediately.

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41       \_\_\_\_\_  
42 Requires licensure of third party administrators of health and dental  
benefits plans and certification of third party billing services.

## CHAPTER 267

AN ACT concerning third party administrators of health benefits plans and third party billing services and supplementing Title 17B of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.17B:27B-1 Definitions relative to third party administrators, billing services.

1. As used in this act:

"Benefits payer" means an insurer authorized to issue health or dental benefits plans in this State, or any other person who undertakes to provide and assumes financial risk for the payment of health or dental benefits and is obligated to pay claims for health or dental benefits to providers or other claimants.

"Client" means a health care provider that contracts with a third party billing service to remit claims to benefits payers on behalf of the provider or other claimant.

"Commissioner" means the Commissioner of Banking and Insurance.

"Enrollee" means a person entitled to receive benefits under a health benefits plan.

"Health benefits plan" means a benefits plan which pays or provides hospital and medical expense or dental benefits for covered services.

"Health care provider" or "provider" means an individual or entity which provides a covered benefit or service.

"Insurer" means a licensed health insurer, health, hospital or medical service corporation, health maintenance organization, dental service corporation or dental plan organization.

"Third party administrator" means a person or entity that: processes claims and pays claims on behalf of a benefits payer without the assumption of financial risk for the payment of health or dental benefits. Third party administrator shall include: (1) an entity not licensed as an insurer that is not an affiliate or subsidiary of an insurer, that processes claims on behalf of a benefits payer; (2) an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of the insurer; and (3) an entity that is a subsidiary or affiliate of an insurer that only processes claims on behalf of benefits payers other than insurers. Third party administrator shall not include an employee, affiliate or subsidiary of a benefits payer formed for the purpose of processing and paying claims solely on behalf of the benefits payer, nor shall it include a collection agency or bureau or pharmacy benefits manager.

"Third party billing service" means a person or entity that is paid by a health care provider to process claims or claims payments on behalf of the health care provider.

C.17B:27B-2 Licensure, registration required for third party administrators.

2. a. On or after January 1, 2002, no person shall act as, offer to act as, or hold himself out to be, a third party administrator in this State unless licensed or registered by the commissioner in accordance with this act. Every third party administrator that is either: (1) an entity that is not licensed as an insurer and is not an affiliate or subsidiary of an insurer; or (2) an entity that is an affiliate or a subsidiary of an insurer that only processes or pays claims on behalf of benefits payers other than insurers shall be licensed under the provisions of this act. Every third party administrator that is an entity that is a subsidiary or affiliate of an insurer that processes claims on behalf of both the insurer and benefits payers other than the insurer shall be registered with the commissioner pursuant to the provisions of this act.

b. Application for licensure shall be made to the commissioner on a form provided by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which may include, but need not be limited to:

(1) a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

(2) a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

(3) the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee; the principal officers or partners; shareholders owning or having the right to acquire 10% or more

of the voting securities of the corporation or partnership interest of a partnership, or equity interest, in the case of another form of business organization; each person who has loaned funds to the applicant for the operation of its business; a statement of any criminal convictions and civil, regulatory or enforcement action, including actions related to professional licensing, taken or pending against any principal officer or owner of the applicant; and the relationship with any other business entity, including a parent corporation;

(4) a copy of the applicant's most recent financial statements audited by an independent certified public accountant. If the financial affairs of the applicant's parent company are audited by an independent certified public accountant, but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, audited by an independent certified public accountant, shall be submitted. A consolidated financial statement of the applicant and its parent company shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act;

(5) a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping and a three-year projection of anticipated operating results, a statement of the sources of working capital and any other sources of funding and provision for contingencies that enable the applicant to perform the work for which it has contracted;

(6) a list of the benefits payers under contract with the applicant and a copy of the standard contract or contracts used by the applicant in the course of business; and

(7) a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

With respect to an applicant for licensure that is an affiliate or subsidiary of an insurer, the commissioner shall establish by regulation the information necessary to be filed, which shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

An application for licensure shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. An application shall be deemed to be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant.

c. Registration shall be on a form prescribed by the commissioner, which shall include: (1) a copy of the applicant's basic organizational documents, as required by the commissioner; (2) the names and official positions of the persons responsible for the conduct of the affairs of the applicant; (3) a copy of the applicant's most recent financial statements, or a consolidated financial statement of the applicant and its parent company; (4) such other information as the commissioner may require. An application for registration shall be approved if not disapproved by the commissioner within 60 days of receipt of a completed application. For the purposes of this subsection, an application shall be complete if all of the information required to be submitted to the commissioner by regulation has been submitted by the applicant. Information required pursuant to this subsection shall not be unnecessarily duplicative of any information already on file with the Department of Banking and Insurance.

#### C.17B:27B-3 Additional information required for licensure, registration.

3. In addition to the information required by section 2 of this act, the applicant for licensure or registration shall file with the commissioner:

- a. a description of the applicant's proposed method of marketing its services;
- b. a statement setting forth the means by which the applicant is to be compensated;
- c. a description of the complaint and appeals procedures instituted by the applicant; and
- d. a description of the quality assurance procedures established by the applicant.

An applicant shall make available for inspection by the commissioner copies of all standard

contracts with benefits payers or other persons with whom it does business, including subcontractors and reinsurers. In the case of an applicant for registration, the information required to be filed with the commissioner shall apply only to services provided to benefits payers other than an insurer.

C.17B:27B-4 Issuance of license, approval of application for registration.

4. The commissioner may issue a license to an applicant or approve an application for registration as a third party administrator if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

- a. all of the materials required by this act or by the commissioner have been filed;
- b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;
- c. the applicant has demonstrated the ability to assure that its services will be performed in a manner which will ensure the efficient operation of its business, including appropriate financial controls;
- d. the standard contract forms to be used by the applicant are acceptable;
- e. the applicant has adequate financial arrangements with the benefits payers for which it will perform its services and adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.); and
- f. the compensation arrangements made between the applicant and benefits payers do not result in the assumption of financial risk by the applicant.

In the case of an applicant for registration, the provisions of subsections d., e., and f. of this section shall apply only to services provided by the applicant to benefits payers other than an insurer.

C.17B:27B-5 Denial of license, registration.

5. The commissioner may deny an application for licensure or registration as a third party administrator if he finds that any of the standards established by this act have not been met or for any other reasonable grounds. If the application for licensure or registration is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-6 Provisions of written agreement; requirements.

6. A third party administrator shall not conduct any business with a benefits payer in the absence of a written agreement between the administrator and the benefits payer, except that this shall not apply to a third party administrator registered under the provisions of section 2 of this act with respect to services performed for an insurer. The agreement shall be retained as part of the official records of the administrator for the duration of the agreement and for five years thereafter. The provisions of the agreement shall include, but shall not be limited to:

- a. the services to be provided by the administrator and the means by which the administrator is to be compensated;
- b. the responsibilities of the benefits payer to the administrator with respect to claims to be paid by the administrator on behalf of a benefits payer, including: the provision of enrollment and eligibility information; arrangement for a preliminary or escrowed deposit of funds by the benefits payer, if any; the method used for the transmittal of funds from the benefits payer to the administrator; notification by the benefits payer of modifications in the benefits payer's benefits plan; provisions setting forth the respective liability of the administrator and benefits payer for payment of ineligible claims; liability for claims payments that are overdue; and provisions regarding the procurement of reinsurance or stop-loss insurance; and
- c. the responsibilities of the administrator to the benefits payer, including: the maintenance of appropriate back-up systems against the loss of records; establishment and maintenance of appropriate financial controls; provisions regarding the benefits payer's rights with respect to conducting claims audits by an outside auditor; the maintenance of appropriate insurance coverage, which may include, but not be limited to, general liability insurance, valuable papers

insurance and errors and omissions coverage; appropriate access by the benefits payer to the administrator's records; and procedures for making available the claims experience or other information to the benefits payer at its request, including, but not limited to, monthly reports.

C.17B:27B-7 Access to books, records.

7. a. The commissioner shall have access to all books and records of a third party administrator for the purposes of examination, audit and inspection. Any trade secrets, proprietary information or the identity and addresses of enrollees contained in the books and records shall be kept confidential, except that the commissioner may use the information in any proceeding instituted against the administrator.

b. The benefits payer shall own the records generated by the administrator pertaining to the benefits payer, except that the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to the benefits payer.

c. In the event that an agreement between an administrator and a benefits payer is canceled, notwithstanding the provisions of section 6 of this act to the contrary, the administrator may, with the written agreement of the benefits payer, transfer all records to a new administrator instead of retaining them for five years.

C.17B:27B-8 Payment to third party administrators not based solely on claims denials.

8. If a third party administrator adjudicates claims under a health benefits plan, the commissions, fees or charges that the benefits payer pays the administrator, shall not be based solely on the number or amount of claims denied by the administrator. This provision shall not prohibit an administrator from receiving performance-based compensation if that compensation is not predicated on denial of claims or coverage.

C.17B:27B-9 Fiduciary responsibility of third party administrators.

9. a. A third party administrator shall be deemed to act in a fiduciary capacity on behalf of the benefits payer in the receipt and transmittal of the benefits payer's funds, and shall have all responsibility attendant to a fiduciary as established by law. Funds transmitted shall be kept in a separate account and shall not be commingled with any other funds. If an account is jointly held by the administrator and the benefits payer, it shall be deposited in a State or federally chartered insured depository institution, and the administrator shall provide a monthly accounting of all transactions in that account. A benefits payer shall have the responsibility to make funds necessary to pay the claims available to the administrator in a timely manner, as provided in the contract. An administrator shall not be liable to any party for the failure of the benefits payer to make funds available to pay claims.

b. An administrator shall maintain in force a fidelity bond in its own name on its officers and employees, in an amount established by the commissioner by regulation.

C.17B:27B-10 Separate accounts for funds remitted.

10. All funds remitted to an administrator by a benefits payer licensed or authorized to do business in this State shall be held by the third party administrator in a separate account maintained in the name of the benefits payer or in a separate account maintained jointly in the names of the benefits payer and the administrator. If funds have been collected by the administrator from a provider or enrollee on behalf of a benefits payer, they shall be maintained in a separate account maintained in the name of the benefits payer, maintained jointly in the names of the benefits payer and the administrator or remitted to the benefits payer, as provided in the contract. Copies of all records pertaining to the collection of funds shall be made available to the benefits payer as provided in the contract.

C.17B:27B-11 Prompt delivery of communications to enrollees.

11. Any policies, certificates, booklets, termination notices or other written communications delivered by the benefits payer to the third party administrator for delivery to enrollees shall be delivered by the administrator promptly, in accordance with the instructions of the benefits

payer.

C.17B:27B-12 Notification of material changes to commissioner.

12. A third party administrator shall immediately notify the commissioner of any material change in its ownership, control or other fact or circumstance affecting its qualification for a license.

C.17B:27B-13 Annual reports.

13. A third party administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner. The annual report shall contain the complete names and addresses of all benefits payers with which the administrator had a contract in effect during the preceding calendar year. The commissioner shall establish a filing fee for the report, by regulation.

C.17B:27B-14 Suspension, revocation of license, registration.

14. The commissioner may suspend or revoke a license or registration issued pursuant to this act if he finds that the third party administrator:

- a. is in an unsound financial condition;
- b. is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to the benefits payers with which it has contracted or the public;
- c. has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final;
- d. has violated any lawful rule or order of the commissioner or any provision of State law;
- e. has refused to be examined or produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner;
- f. has, without just cause, refused or failed to pay proper claims or perform services arising under its contracts;
- g. at any time fails to meet any qualification for which issuance of the license could have been refused had that failure then existed and been known to the commissioner;
- h. has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was held;
- i. is under suspension or revocation in another state; or
- j. has willfully reimbursed enrollees for benefits not eligible under the benefits payer's benefits plan.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this act, the commissioner may, in lieu of suspension or revocation, impose a fine upon the administrator.

C.17B:27B-15 Immediate suspension of license, registration, grounds.

15. The commissioner may, without advance notice or hearing, immediately suspend the license or registration of a third party administrator if he finds that one or more of the following circumstances exist:

- a. the administrator is insolvent or impaired;
- b. a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in another state; or
- c. the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State.

C.17B:27B-16 Certification required for third party billing services.

16. On or after January 1, 2002, no person shall act as, offer to act as or hold himself out to be a third party billing service in this State unless certified by the commissioner in accordance with this act. Application for certification shall be made to the commissioner on a form provided

by the commissioner. The commissioner shall establish by regulation the information that shall accompany the application, which shall include, but need not be limited to:

a. a copy of the applicant's basic organizational documents, which shall include articles of incorporation, articles of association, partnership agreement, management agreement, trust agreement or other documents governing the operation of the applicant that are applicable to the applicant's form of business organization;

b. a copy of the executed bylaws, rules and regulations, or other documents relating to the operation of the applicant's internal affairs;

c. the names, addresses and official positions of the persons responsible for the conduct of the affairs of the applicant, including, but not limited to, if applicable: the members of the board of directors, executive committee or other governing board or committee, the principal officers or partners, shareholders owning or having the right to acquire 10% or more of the voting securities of the corporation or partnership interest of a partnership or equity interest, in the case of another form of business organization;

d. if the applicant accepts monies from benefits payers on behalf of clients, the application shall include a copy of the applicant's most recent financial statements audited by an independent certified public accountant;

e. a copy of the applicant's business plan, including information on staffing levels and the activities undertaken or to be undertaken in this State. The plan shall include a statement of the third party billing service's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing and record keeping;

f. a list of the applicant's clients and a copy of the standard contract or contracts used by the applicant in the course of business; and

g. if the applicant accepts monies from benefits payers on behalf of clients, the application shall be accompanied by a power of attorney, duly executed by the applicant, if not domiciled in this State, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served.

C.17B:27B-17 Additional information to be filed by third party billing services.

17. In addition to the information otherwise required by this act or by the commissioner, a third party billing service shall file with the commissioner:

a. a description of the applicant's proposed method of marketing its services;

b. a statement setting forth the means by which the applicant is to be compensated;

c. a description of the quality assurance procedures established by the applicant; and

d. a copy of the standard contract or contracts used by the applicant in contracting with providers.

C.17B:27B-18 Approval of applications for certification.

18. The commissioner may approve an application for certification as a third party billing service if he finds that the applicant meets the standards established by this act, including, but not limited to, the following:

a. all of the material required by this act or by the commissioner have been filed;

b. the persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have appropriate experience, training and education;

c. the applicant has demonstrated the ability to ensure that its services will be performed in a manner which will result in the efficient operation of its business, including, if the applicant accepts payments from benefits payers on behalf of its clients, appropriate financial controls;

d. the standard contract forms to be used by the applicant are acceptable; and

e. the applicant has adequate arrangements for complying with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-19 Denial of applications for certification.

19. The commissioner may deny an application for certification as a third party billing service if he finds that any of the standards established by this act have not been met or for any

other reasonable grounds. If the application for certification is denied, the commissioner shall notify the applicant in writing by certified mail, return receipt requested, setting forth his reasons for denial. The applicant may request a hearing by notice to the commissioner no later than the 30th day following receipt of the notice of denial.

C.17B:27B-20 Written agreements required for conducting business as third party billing service.

20. A third party billing service shall not conduct any business with a client in the absence of a written agreement between the billing service and the client. The agreement shall be retained as part of the official records of the third party billing service for the duration of the agreement.

The agreement shall include the services to be provided by the third party billing service on behalf of the client; financial arrangements to be used if the third party billing service accepts monies from benefits payers on behalf of a client; provisions setting forth the respective liability of the client and the third party billing service for the accuracy and eligibility of submitted claims, and for the prompt submission of claims pursuant to the provisions of P.L.1999, c.154 (C.17B:30-23 et al.); and the responsibilities of the third party billing service to the client with respect to the maintenance of appropriate back-up systems against the loss of records, and the maintenance of appropriate insurance coverage by the third party billing service against the risk of loss.

C.17B:27B-21 Fiduciary responsibility of third party billing services.

21. A third party billing service that accepts monies from health benefits payers on behalf of a client shall be deemed to act in a fiduciary capacity on behalf of the client in the receipt and transmittal of funds and shall have all responsibility attendant to a fiduciary as established by law. Monies transmitted by benefits payers or on behalf of clients shall be kept in a separate account maintained in the name of the client or jointly in the names of the client and the third party billing service and shall not be commingled with any other funds of the third party billing service or other clients of the third party billing service.

C.17B:27B-22 Notification of material changes to commissioner.

22. a. A third party billing service shall immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for certification.

b. A third party billing service shall file such reports, at such times as may be required by the commissioner, including reports that will verify compliance with the provisions of P.L.1999, c.154 (C.17B:30-23 et al.).

C.17B:27B-23 Suspension, revocation of certification.

23. The commissioner may suspend or revoke a certification issued pursuant to this act if he finds that the third party billing service:

a. is using methods or practices in the conduct of its business that render its further transaction of business in this State hazardous or injurious to its clients or the public;

b. has failed to pay any judgment rendered against it within 60 days after the judgment has become final;

c. has violated any lawful rule or order of the commissioner or any provision of the laws of this State;

d. has, without just cause, refused or failed to perform services arising under its contracts with clients;

e. has been convicted of, or has entered a plea of guilty or nolo contendere to a felony or crime of the first, second or third degree in this State, without regard to whether adjudication was held; or

f. is under suspension or revocation in another State.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a certification issued under this act, the commissioner may, in lieu of suspension or



revocation, impose a fine upon the third party billing service.

C.17B:27B-24 Violations, penalties.

24. The commissioner may, upon notice and hearing, assess a civil administrative penalty in an amount not less than \$250 nor more than \$5,000 for each day that a third party administrator or third party billing service is in violation of this act. A penalty imposed by the commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a license pursuant to this act. A penalty may be recovered in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.17B:27B-25 Rules, regulations.

25. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

26. This act shall take effect immediately.

Approved December 13, 2001.