

Third Party Administrator Rule

Reg. I-2021-01

Section 1. Purpose

The purpose of this rule is to set forth standards and requirements, pursuant to the authority contained in 8 V.S.A. § 15 and 18 V.S.A. §§ 9402(8) and 9417, for entities engaged in the business of insurance, as defined in 8 V.S.A. § 3301a, that directly or indirectly underwrite, collect charges, collateral or premiums from, or adjust or settle claims on residents of this state.

Section 2. Authority.

This rule is adopted under the authority granted to the Commissioner by 8 V.S.A. §§ 15 and 3301a, and as required under 18 V.S.A. § 9417.

Section 3. Definitions.

For purposes of this rule:

1. “Affiliate” or “affiliated” means a person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person.
2. “Business entity” means a corporation, association, partnership, limited liability company, or other legal entity.
3. “Collateral” means funds, letters of credit or any item with economic value owned by the payor but held by an insurer or TPA in case it needs to be used to fulfill premium or loss reimbursement obligations in accordance with a contract between the insurer or TPA and the payor. “Collateral” shall include anticipated loss prepayments made prior to the payment of losses, pursuant to arrangements where reimbursement is not due until after losses have been paid.
4. “Commissioner” means the Commissioner of the Department of Financial Regulation.
5. “Control” (including the term “controlled by”) has the same meaning as in 8 V.S.A. § 3681(3).
6. “Flexible spending account” or “FSA” has the same meaning as in 18 V.S.A. § 9417(a)(1).
7. “GAAP” means United States generally accepted accounting principles consistently applied.
8. “Health reimbursement arrangement” or “HRA” has the same meaning as in 18 V.S.A. § 9417(a)(2).
9. “Health savings account” or “HSA” has the same meaning as in 18 V.S.A. § 9417(a)(3).
10. “Home state” means a United States jurisdiction that has adopted the National Association of Insurance Commissioners (NAIC) model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs and that has granted the TPA a home state TPA license.

11. “Insurer” means an entity licensed in a United States jurisdiction to provide life, annuity, health, or stop-loss coverage as an insurance company, health maintenance organization, fraternal benefit society, multiple employer welfare arrangement (MEWA), professional employer organization (PEO), or prepaid hospital or medical care plan.
12. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, and also includes a business entity whose primary activities are the sales, solicitation and negotiation of insurance.
13. “Nonresident TPA” means a TPA whose home state is any jurisdiction other than this state.
14. “Payor” means an insurer or an employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control.
15. “Person” means an individual or a business entity.
16. “Third party administrator” or “TPA” means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity, health or stop-loss coverage, including HRA, FSA, HSA, or similar tax-advantaged accounts for health-related expenses, except that a person shall not be considered a TPA if that person’s only actions that would otherwise cause it to be considered a TPA are among the following:
 - a. A person working for a TPA to the extent that the person’s activities are subject to the supervision and control of the TPA;
 - b. An employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control;
 - c. The administration of a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 (ERISA);
 - d. A union administering a benefit plan on behalf of its members;
 - e. An insurer administering insurance coverage for its policyholders, subscribers, or certificate holders, or for those of an affiliated insurer under common management and control;
 - f. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums from, or adjusting or settling claims on behalf of a client that is not a policyholder, subscriber or certificate holder, and that has its United States headquarters or principal location of business in a jurisdiction in which the insurer is licensed to write life, annuity, or health coverage;
 - g. An insurer directly or indirectly underwriting, collecting charges, collateral, or premiums, or adjusting or settling claims, provided that the insurer is licensed in this state to write life, annuity, or health coverage;

- h. An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;
 - i. A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
 - j. A trust and its trustees and agents acting pursuant to such trust established in conformity with 29 U.S.C. § 186;
 - k. A trust exempt from taxation under 26 U.S.C. § 501(a) of the Internal Revenue Code and its trustees acting pursuant to such trust, or a custodian and the custodian's agents acting pursuant to a custodian account which meets the requirements of 26 U.S.C. § 401(f);
 - l. A credit union or other financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, when collecting or remitting premiums to licensed insurance producers or to limited lines producers or authorized payors in connection with loan payments;
 - m. A credit card issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;
 - n. An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
 - o. A person licensed as a managing general agent in Vermont under 8 V.S.A. § 4815 when acting within the scope of that license; or
 - p. A business entity that is affiliated with a licensed insurer while acting as a TPA for the direct and assumed insurance business of an affiliated insurer;
17. "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals and the overall planning and coordination of a benefits program.
18. "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators.

Section 4. Licensing Required.

No person shall act as a TPA in this state unless that person is licensed as a TPA pursuant to this rule or unless exempted under this rule. This prohibition shall not apply to a person while employed by, or when operating under contract to, a TPA that is licensed pursuant to this rule, or exempted from this rule's licensing requirements.

Section 5. Payment to a TPA.

If an insurer, HRA, FSA, or HSA utilizes the services of a TPA, any payments made to the TPA by or on behalf of the insured party, or any collateral furnished to the TPA by or on behalf of the insured party, shall be held in trust by the TPA and shall be deemed to have been received by the insurer, HRA, FSA, or HSA,

and the return of any collateral or payment forwarded by the insurer, HRA, FSA, or HSA to the TPA shall not be deemed to have been paid to the insured party until payment is received by the insured party. Nothing in this section limits any right of the insurer, HRA, FSA, or HSA against the TPA resulting from the TPA's failure to make payments to the insurer, HRA, FSA, or HSA, insured parties, or claimants.

Section 6. Books and Records.

- A. A TPA shall maintain and make available to the payor complete books and records of all transactions performed on behalf of the payor. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for five (5) years from the date of their creation, unless another provision of law or regulation requires a longer period.
- B. The Commissioner and the Commissioner's designees shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, payor, insurance producer or an employee or agent thereof acting on behalf of the TPA, payor or insurance producer, or obtained by the commissioner in an investigation shall be kept confidential under 8 V.S.A. § 3574(d)(4). However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.
- C. Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection B of this section.
- D. In order to assist in the performance of his or her duties, the Commissioner may:
 - 1. Share documents, materials or other information, including the confidential documents, materials or information subject to subsection B of this section, with other state, federal and international regulatory agencies, with the NAIC, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality status of the document, material or other information;
 - 2. Receive documents, materials or information, including otherwise confidential documents, materials or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential any document, material or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material or information;
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection D of this section.
- F. Notwithstanding any contractual agreements between the payor and the TPA that operate to the contrary, the TPA shall retain the right to sufficient continuing access to books and records to

permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the payor.

- G. In the event the payor or the TPA cancels their agreement; notwithstanding the provisions of subsection A of this section, the TPA may, by written agreement with the payor, transfer all records to a new TPA rather than retain them for five (5) years. In such cases, the new TPA shall affirm to the Commissioner, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection A of this section.

Section 7. Approval of Advertising.

A TPA that advertises on behalf of its client may only use advertising that has been approved in writing by the client in advance of its use. A TPA that mentions any current or former client in its advertising must obtain the client's prior written consent. Such approvals and consents shall be maintained pursuant to Section six with other books and records.

Section 8. Responsibilities of the Payor and TPA.

- A. No TPA shall act as such without a written agreement between the TPA and the payor. A copy of the agreement shall be retained by the TPA for the duration of the agreement and for five (5) years thereafter, subject to Section six. The agreement shall contain all provisions required by this section, except insofar as the TPA does not perform all of the functions referenced in this section.
- B. A payor that utilizes the services of a TPA shall retain responsibility for the benefits, collateral and reimbursement procedures, and claims payment procedures applicable to the account. The rules pertaining to these matters, to the extent that they are relevant to the duties of the TPA, shall be agreed to in writing by the payor and the TPA.
- C. The written agreement between the TPA and the payor shall provide that communications between the TPA and claimants shall avoid deceptive statements with regard to the TPA or payor's responsibilities.
- D. In the event of a dispute between the payor and the TPA regarding which of them is to fulfill a lawful obligation with respect to a policy, certificate, or claim subject to the written agreement, the payor shall fulfill such obligation.
- E. The payor has the duty to provide for competent administration of its programs administered by a TPA and within the scope of this rule.

Section 9. Deposits and Claims.

- A. All monies collected by a TPA on behalf of or for a payor, and any funds held by the TPA for the payment of claims, shall be held by the TPA in a fiduciary capacity. Funds shall be immediately remitted to the person entitled to them upon demand, or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally insured financial institution. The TPA shall render a periodic accounting to the payor detailing all transactions performed by the TPA pertaining to the business of the payor, and the written agreement between the payor and the TPA shall include the specifications of this reporting.

- B. The TPA shall keep copies of all records of any fiduciary account maintained or controlled by the TPA, and, upon request of a payor, shall furnish the payor with copies of the records pertaining to the deposits and withdrawals made on behalf of the payor. If funds deposited in a fiduciary account have been collected on behalf of or for more than one payor, or for the payment of claims associated with more than one policy, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each payor and relating to each policyholder.

- C. The TPA shall not pay any claim by withdrawals from a fiduciary account in which payments or charges are deposited. Withdrawals from a fiduciary account shall be made as provided in the written agreement between the TPA and the payor, and only for the following purposes:
 - 1. Remittance to a payor entitled to remittance;
 - 2. Deposit in an account maintained in the name of the payor;
 - 3. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection D of this section;
 - 4. Payment to a group policyholder for remittance to the payor entitled to such remittance;
 - 5. Payment to the TPA of its earned commissions, fees, or charges;
 - 6. Remittance of return premium to the person or persons entitled to such return premium; and
 - 7. Payment to other service providers as authorized by the payor.

- D. All claims paid by the TPA from funds collected on behalf of or for a payor shall be paid only as authorized by the payor. Payments from an account maintained or controlled by the TPA for purposes including the payment of claims may be made only for the following purposes:
 - 1. Payment of valid claims;
 - 2. Payment of expenses associated with claims handling to the TPA or to other service providers approved by the payor;
 - 3. Remittance to the payor, or transfer to a successor TPA as directed by the payor, for the purpose of paying claims and associated expenses; and
 - 4. Return of funds held as collateral or prepayment, to the person entitled to those funds, upon a determination by the payor that those funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

Section 10. Compensation to the TPA.

- A. A TPA shall not enter into an agreement or understanding with a payor in which the effect is to make the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the payment of losses covered by the payor's obligations. This provision shall not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services,

from providing managed care or related services, or from being compensated for subrogation expenses.

- B. A payor shall not enter into an agreement with a TPA in violation of this section.
- C. This section shall not prevent the compensation of a TPA from being based on deposits or charges collected or the number of claims paid or processed.

Section 11. Disclosure of Charges and Fees.

- A. When a TPA collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any deposits received. Additional charges may not be made for services to the extent the services have been already paid for by the payor.
- B. The TPA shall disclose to the payor all charges, fees and commissions that the TPA receives arising from services it provides for the payor, including any fees or commissions paid by payors providing reinsurance or stop-loss insurance.

Section 12. Delivery of Materials to Covered Individuals.

Any notices or other written communications delivered by the payor to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the payor to deliver them.

Section 13. Resident TPA License.

- A. If a TPA is incorporated in this state or this state is its principal place of business within the United States, then the TPA may designate this state as its home state and apply to this state for licensure as a TPA. If neither the state in which a TPA is incorporated nor the state that is its principal place of business have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, and if the TPA has not designated any other state that has adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs as its home state, then the TPA may apply for licensure in Vermont as its home state.
- B. A TPA applying to Vermont as its home state shall apply for licensure using the Uniform Application and designate an individual as the TPA's contact person for department communications.
- C. If a TPA designates this state as its home state because neither its state of incorporation nor the state that is its principal place of business within the United States have adopted the NAIC model regulation for the registration and regulation of TPAs or a substantially similar law governing TPAs, but if one or both of these other jurisdictions have licensed the TPA, then the Commissioner may consult with that state or states and may give due consideration to any relevant findings made by that state or states in order to avoid an unnecessarily duplicative review of the application.
- D. The Uniform Application shall include or be accompanied by the following information and documents:

1. All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;
2. The bylaws, rules, regulations, and similar documents regulating the internal affairs of the applicant;
3. An NAIC Biographical Affidavit for each individual who is responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;
4. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.
5. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, financial statements certified by at least two (2) officers of the TPA to be true and correct that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. Financial reports shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require to review the current financial condition of the applicant.
6. A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth

the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting; and

7. Such other pertinent information as may be required by the Commissioner.
- E. A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with payors or other persons utilizing the TPA's services.
- F. A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- G. The Commissioner may refuse to issue or renew a license if the Commissioner determines that the TPA or any individual responsible for the conduct of affairs of the TPA is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had an insurance or a TPA certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in Section 15 of this Act exists with respect to the TPA.
- H. A license issued under this section shall remain valid, unless surrendered, suspended, non-renewed or revoked by the Commissioner, for so long as the TPA continues in business in this state and remains in compliance with this rule.
- I. TPAs making an initial application for a license to operate in Vermont shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

Section 14. Registration Requirement.

A person who is not required to be licensed as a TPA under this Act and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall register with the commissioner annually, verifying its status as herein described. This section shall not apply to an insurer or to an individual performing these actions as an employee of an insurer. This section shall also not apply to a person performing these actions under contract to or as an employee of a TPA.

Section 15. Nonresident TPA License.

- A. Unless a TPA has obtained a resident license in Vermont under this rule, any TPA who performs TPA duties in Vermont shall obtain a nonresident TPA license in accordance with this section by filing with the commissioner the Uniform Application, accompanied by a letter of certification. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries.

- B. A TPA shall not be eligible for a nonresident TPA license under this section if it does not hold a home state certificate of authority or license in a state that has adopted the NAIC model regulation for the registration and regulation of TPAs or that applies substantially similar provisions as are contained in this rule to that TPA.
- C. Except as otherwise provided, the Commissioner shall issue a nonresident TPA license to the TPA promptly upon receipt of a complete application.
- D. Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the NAIC, its affiliates or subsidiaries, each nonresident TPA shall annually file a statement that its home state TPA certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.
- E. At the time of filing the statement required under subsection D of this section or, if the Commissioner has notified the nonresident TPA that the commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database, on an annual date determined by the Commissioner, the nonresident TPA shall pay a filing fee as required by the Commissioner.
- F. A TPA licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- G. A nonresident TPA licensed in its home state is not required to hold a nonresident TPA license in this state if it services no more than one hundred (100) certificate holders who reside in Vermont.

Section 16. Annual Report.

- A. Each TPA licensed under this rule shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year, or within such extension of time as the Commissioner for good cause may grant. The annual report shall include:
 - 1. For TPAs that hold monies in a fiduciary capacity under section 9 of this Rule, an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two (2) officers of the TPA.
 - 2. For TPAs that do not hold monies in a fiduciary capacity under section 9 of this Rule, a financial statement certified by at least two (2) officers of the TPA to be true and correct. The statement shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall

be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The report shall be in the form and contain such matters as the Commissioner prescribes.

- B. The annual report shall include the complete names and addresses of all payors with which the TPA had agreements during the preceding fiscal year.
- C. The Commissioner shall review the most recently filed annual report of each TPA on or before September 1 of each year. Upon completion of its review, the commissioner shall either:
 - 1. Issue a certification to the TPA that the annual report shows (a) that the TPA has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or (b) noting any deficiencies found in that annual report and financial statements; or
 - 2. Update any electronic database maintained by the NAIC, its affiliates or subsidiaries, indicating (a) that the annual report shows that the TPA has a positive net worth as evidenced by audited financial statements and complies with existing law, or (b) noting any deficiencies found in the annual report.

Section 17. Grounds for Denial, Suspension or Revocation of Licensure.

- A. The Commissioner shall deny, suspend or revoke the license of a TPA, or shall issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:
 - 1. Is in an unsound financial condition;
 - 2. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
 - 3. Has failed to pay any judgment rendered against it in this state within sixty (60) days after the judgment has become final.
- B. The Commissioner may deny, suspend, or revoke the license of a TPA, or may issue a cease and desist order should the TPA not have a license if, after notice and opportunity for hearing, the Commissioner finds that the TPA:
 - 1. Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this state;
 - 2. Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the TPA, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting

securities or voting interest of the TPA; and any other person who exercises control or influence over the affairs of the TPA; 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;

3. Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA or a payor which it represents to secure full payment or settlement of such claims;
 4. Is required under this rule to have a license and fails at any time to meet any qualification for which issuance of a license could have been refused had the failure then existed and been known to the Commissioner, unless the Commissioner issued a license with knowledge of the ground for disqualification and had the authority to waive it;
 5. Is under suspension or revocation in another state; or
 6. Has failed to file a timely annual report under this rule;
- C. The Commissioner may, without advance notice, and before a hearing may issue an order immediately suspending the license of a TPA, or may issue a cease and desist order should the TPA not have a license, if the Commissioner finds that one or more of the following circumstances exist:
1. The TPA is insolvent or impaired;
 2. A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state; or
 3. The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of Vermont residents.
- D. At the time an order has been issued by the Commissioner in accordance with subsection C of this section, the Commissioner shall serve notice to the TPA that the TPA may request a hearing within ten business days after the receipt of the order. If a hearing is requested, the Commissioner shall schedule a hearing within ten business days after receipt of the request. If a hearing is not requested and the Commissioner orders none, the order shall remain in effect until modified or vacated by the Commissioner.
- E. If the Commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this part, or for a cease and desist order, the Commissioner may, in lieu of or in addition to the suspension, revocation or cease and desist order, impose a fine upon the TPA.

Section 18. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall be not affected thereby.

Section 19. Conflict with Federal Law.

Nothing in this rule is intended to or should be construed to be in conflict with federal law.

Section 20. Effective Date.

This rule shall become effective July 1, 2022.