Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 22 (Chair, Finance Committee)(By Request - Departmental - Maryland Insurance Administration)

Finance Economic Matters

Insurance Regulation - Third Party Administrators - Life Insurance

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This departmental bill expands the regulatory authority of the Maryland Insurance Administration (MIA) over third-party administrators (TPAs) to include TPAs for life insurance and makes a series of conforming changes.

Fiscal Summary

State Effect: Minimal special fund revenue increase for MIA in FY 2020 and odd-numbered fiscal years thereafter. Potential minimal increase in general fund revenues due to imposition of existing civil penalties. Registration, renewal, and oversight can likely be handled using existing budgeted resources.

Local Effect: None.

Small Business Effect: MIA has determined that this bill has a minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: The various requirements that govern TPAs do not currently apply to TPAs for life insurance; thus, the bill alters definitions, responsibilities, and prohibitions for TPAs to ensure that each requirement applies to a TPA's activities on behalf of a life insurer. MIA is also granted explicit enforcement authority over TPAs for life insurance, as appropriate.

An "administrator" is a person that acts for an insurer or plan sponsor and has (1) control over or custody of premiums, contributions, or any other money related to a plan or (2) discretionary authority over the adjustment, payment, or settlement of benefit claims under a plan or over the investment of a plan's assets. The bill expands this definition to include such activities undertaken on behalf of a life insurer.

To act as a TPA, an applicant must register with the Insurance Commissioner and meet other specified requirements. The application fee is $250 and the renewal fee is $65 every two years. Failure to register as a TPA is subject to a civil penalty of up to $1,000 per day. A TPA must maintain adequate books and records about each plan it administers. When the TPA ceases to administer a plan, it must either (1) give the information to its successor or the sponsor or (2) retain the information and provide access to the sponsor for three years. The bill subjects TPAs for life insurance to these registration and recordkeeping provisions.

A TPA must maintain a bond that provides protection to the plans for which the TPA acts as an administrator. The bond must be issued by an authorized corporate surety insurer and take into consideration specified information to determine the amount of the bond. Depending on the amount of business the TPA has, the bond requirement ranges from $5,000 (minimum) to $500,000 (maximum). The bond may not be procured from a surety insurer, insurance producer, or other company if the TPA has direct or indirect control or significant financial interest in the company's business operations. The bill subjects TPAs for life insurance to these bonding provisions.

A TPA may not:

- deal with the assets of the plan in the TPA's own interest or for the TPA's own account;
- act in any capacity on behalf of or represent a party whose interests are adverse to the interests of the plan or the plan's participants or beneficiaries;
- receive consideration from a party dealing with the plan in connection with a transaction involving assets of the plan (except for commissions and service fees); or
- knowingly participate in or attempt to conceal an act of omission of another TPA involved in the administration of the plan activities, knowing that the act or omission would be a legal violation.

The bill applies these prohibitions to a life insurer in the same way they apply under current law to a plan.

A TPA who breaches one of the aforementioned responsibilities is generally personally liable for the restitution of money, property, or other assets and is subject to any other equitable or remedial relief that a court considers appropriate, including the removal of the TPA. The bill extends this responsibility to TPAs for life insurance.

To enforce the statutory and regulatory duties and prohibitions on TPAs, the Commissioner is granted broad authority and enforcement powers. For example, the Commissioner may issue cease and desist orders, file circuit court petitions, and impose civil penalties. In addition, after a hearing, the Commissioner may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a TPA if the applicant or registrant, among other things, (1) makes a material misstatement in an application; (2) has been convicted of a felony or misdemeanor involving moral turpitude; or (3) in connection with the administration of a plan commits fraud or engages in illegal or dishonest activities. This enforcement authority is extended to apply to TPAs for life insurance.

Background: Under current law, MIA does not have direct regulatory authority over TPAs for life insurance. As a result, when a TPA for life insurance violates the law, MIA must work through the companies and insurers that contract with the TPA to correct the violation, which hampers MIA’s ability to enforce the law and ensure compliance. MIA advises that the bill grants the administration the authority to directly regulate TPAs working for life insurers, which will result in additional consumer protections and more efficient oversight of life insurers and their TPAs.

State Revenues: Special fund revenues for MIA increase by $250 in fiscal 2020 for each TPA for life insurance that registers as a result of the bill. As TPAs renew biennially, by June 30 in odd-numbered years, special fund revenues increase by $65 for each TPA for life insurance that must renew on the same schedule as all other TPAs – beginning in fiscal 2021 and in every odd-numbered fiscal year thereafter. Even though the precise number of TPAs for life insurance that must register under the bill is unknown, total revenues from registration and renewal are anticipated to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History:	First Reader - January 25, 2019
mm/jc	Third Reader - February 8, 2019

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Insurers – Third Party Administrators for Life Insurance

BILL NUMBER: SB 22

PREPARED BY:
(Dept./Agency) Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

To the extent a TPA for a life insurer qualifies as a small business, registration fees are initially $250 and $65 to renew. TPAs are also required to carry bonds in the amount of $5,000 (minimum) to $500,000 (maximum) depending on the amount of business the TPA has.