

## **Item No. 19**

### **DRAFT IRDAI (THIRD PARTY ADMINISTRATORS- HEALTH SERVICES (AMENDMENT), 2019 FOR APPROVAL OF THE AUTHORITY**

#### **1. Background:**

Insurance Regulatory and Development Authority (Third Party Administrators-Health Services) Regulations, 2001 were notified on 17<sup>th</sup> September 2001 introducing the concept of Third Party Administrators (hereafter referred as TPAs) into the Health Insurance Industry. Since the notification of these Regulations, significant developments have taken place in Health Insurance space. Most importantly, under the Insurance (Amendment) Act, 2015, the definition of word intermediary or Insurance intermediary was amended and Third Party Administrators were brought under the definition of the Insurance Intermediaries. In this backdrop, the then IRDA (TPA-HS) Regulations, 2001 were revisited and Insurance Regulatory and Development Authority of India (Third Party Administrators-Health Services) Regulations, 2016 (referred as TPA Regulations, 2016) were notified on 14<sup>th</sup> March 2016. Subsequently, certain clarifications on the provisions of TPA Regulations, 2016 were issued vide Circular Ref no IRDA/HLT/REG/CIR/219/11/2016 dated 15<sup>th</sup> Nov 2016.

TPA Regulations, 2016 have various provisions specifying certain conditions for grant of Certificate of Registration (referred as CoR) to the TPA Applicants. However, taking into consideration the experience gained while reviewing the applications received seeking CoR to act as TPAs, it is considered important to strengthen the certain regulatory provisions apart from effecting the clarifications issued vide above referred Circular dated 15<sup>th</sup> November, 2016 in the TPA Regulations, 2016. Accordingly, an in-principle approval of the Authority was obtained in the 104<sup>th</sup> Board meeting held on 28<sup>th</sup> March, 2019 to modify the TPA Regulations, 2016. Subsequently, the Authority in the 105<sup>th</sup> meeting held on 21<sup>st</sup> June 2019 accorded approval for publishing the draft IRDAI (TPA- Health Services) (Amendment) Regulations, 2019 for stakeholder consultation. The draft amendment regulations were published in IRDAI website on 09<sup>th</sup> July, 2019.

The Department has received comments from 29 stakeholders as mentioned hereunder:

S. No	Category of stakeholder	Number of entities submitted comments/suggestions
1	TPAs	11
2	General Insurance Companies	9
3	Life Insurance companies	3
4	Reinsurance Companies	1
5	Individuals	1
6	Other stakeholders	4 (General Insurance council, Association of TPAs, Indian Institute of Public Administration, IIB of India )

2. Through the proposed IRDAI (TPA – Health Services) (Amendment) Regulations, 2019, the following changes would be effected:
- (i) Definition of the “Cashless Facility” shall be omitted as it is already defined under Regulation 2(f) of IRDAI (Health Insurance) Regulations, 2016 and there was an inconsistency in both the definitions. (Clause 2(a))
  - (ii) The definition of “Network Provider” is substituted to give effect to the Circular dated 15<sup>th</sup> Nov, 2016 wherein clarification furnished to the definition of Network Provider. (Clause 2(b))
  - (iii) The definition of “Third Party Administrator” is revised to remove the word “remuneration” as the word ‘remuneration’ is defined under IRDAI (Payment of commission, remuneration and rewards to insurance agents and insurance intermediaries) Regulations, 2016 to mean compensation paid by the insurer and received by an insurance intermediary for soliciting and procuring an insurance policy. Since, TPA does not solicit and procure insurance business, hence reference to the word “remuneration” is deleted and consequential changes in the subsequent regulations are also effected to maintain consistency. (Clause 2(c))
  - (iv) “Health Services” as specified under TPA Regulations, 2016 covered, inter alia, only foreign travel policies under its ambit while allowing the TPAs to service foreign travel policies issued by foreign insurers for policyholders travelling to India. However, to increase the scope of health services to be rendered, “Foreign Travel” is replaced with “foreign travel or health or medical insurance” and consequential changes in the subsequent regulations are also effected to maintain consistency. (Clause 2(d))
  - (v) In order to enhance the quality of service delivery by the TPAs and to let the policyholders have an option of choosing TPA, it is considered to allow the policyholders to choose the TPA of its choice from amongst the TPAs engaged by the Insurer. Hence, suitable regulatory provisions have been introduced.

- Pursuant to the suggestions received in order to enable policyholders choose a TPA of their choice, enabling provisions are incorporated to specify norms on disclosures to be made by the Insurers in respect of qualitative and quantitative parameters on health services rendered (Clause 2(e)).
- (vi) Modifications are required to give effect the clarifications issued vide Circular dated 15<sup>th</sup> Nov 2016 in removing the restriction of mandating provision of the “Health services” specified under Regulation 3(1) (c ) to 3 (1)(g) to be carried out only by TPAs registered with the Authority. It is submitted that these services, namely, pre-insurance medical examination, servicing foreign insurers’ policyholders travelling to India, servicing Indian policyholders travelling outside India and servicing of non-insurance healthcare schemes may not be exclusively restricted to TPAs alone and may also normally be carried out by even individual medical practitioners and other entities. (Clause 2(f) and (g))
  - (vii) The concept of “Working Capital” is to be replaced with “Net Worth” of the Company as the concept of Working Capital was more prevalent in the earlier times when the concept of Float fund was being followed by the TPAs. However, now the payments are to be made by the Insurers directly to the hospitals or policyholders, hence the concept of the Working Capital for the TPAs is discontinued and subsequently is replaced with the concept of “Net Worth” to provide the TPAs more leeway to manage their funds/capital more effectively and efficiently. (Clause 2(h) and 3(i))
  - (viii) Various fees charged by the Authority from the TPAs is revised as the fee payable by TPA/ Applicants was remained unchanged since, 2001. It is proposed to amend the non-refundable processing fee from Rs. 20,000 to Rs. 1,00,000 (One Lakh), registration fee for new applicants from Rs. 30,000 to Rs. 2,00,000 (Two lakhs) and renewal application fee from Rs. 15,000 to Rs. 1,50,000 (Rs. One lakh fifteen thousand). Thus, consequential amendments are to be effected in the respective regulations. (Clause 2(j), (m) and (q))
  - (ix) In order to ensure that the promoters with credible background and requisite experience only enter the TPA space, it is specified that the promoters of the applicant shall have professional competence and general reputation of fairness and integrity. (Clause 2(k))
  - (x) Taking into consideration the experience gained while reviewing the Applications received seeking Certificate of Registration to act as TPAs, it is considered important to put in place stronger norms for promoters and investors of the TPA Applicant companies by duly incorporating appropriate regulatory provisions to ensure that promoters with credible and established financial background only enter the TPA space. In this regard, it is proposed to specify;

- 1) that promoters of the applicant shall be carrying on any business or profession in the preceding three years to the date of application; and
- 2) their net worth is positive in all the immediate preceding three years to the date of application; and
- 3) the net worth of each promoter in the immediate preceding two financial years to the date of application is more than the capital contribution of the respective promoters.
- 4) Investors holding more than 10% stake of the applicant shall be considered as the promoter;
- 5) all such Indian investors other than the promoters shall not hold more than 25% of paid up equity share capital
- 6) all promoters shall agree to a lock in period of three years from the date of grant of Certificate of Registration.

(Clause 2(l))

- (xi) In addition to the above provisions to be incorporated, the following are other qualitative parameters that are already in existence in the TPA Regulations, 2016 which continue to be applicable to all the TPAs.

- a) The promoters of the applicant have the financial strength to carry out the business of TPA (Reg 8 (2) (c));
- b) The promoters shall conduct himself or itself in a courteous and professional manner (Clause 2 (g) of Sch II read with Reg 23).
- c) The director(s), promoter(s), shareholder(s), CAO, CEO, CMO and Key Managerial person(s) of a company shall not engage directly or indirectly in any other insurance or insurance related activities that may lead to conflict of interest (Clause 3 of Sch II read with Reg 23).

- (xii) In addition to the existing norms, it is specified that the Applicant shall demonstrate the preparedness in respect of adequate technological capabilities, data security and human resources. There are various norms in place in the existing TPA Regulations, 2016 that require the Applicant / TPA Company to have in place IT capabilities. The following are other existing norms that are already in place, which continue to be in force, that require the Applicant / TPA company to put in place technological capabilities.

- a) The applicant has sufficient reach with Network Hospitals and Information Technology capability (Reg 8 (2) (i))
- b) The TPA and insurer shall establish electronic systems for seamless flow of data for all the claims and shall follow standards and protocols for capture of data as may be specified by the Authority from time to time (Reg 19 (5)).
- c) The TPA shall have in place the necessary infrastructure to extend the health services as required to the policyholders at all times (Reg 21 (1)).

- d) TPAs shall endeavor to collect all documents pertaining to the claims reported in electronic mode for seamless processing and for recommending to the insurer for payment or rejection as the case may be (Reg 21 (3)(b)).
  - e) TPA shall have systems in place for assisting the policyholder or claimant during hospitalization with respect to concerned health insurance policy terms and conditions and services for cashless facility (Clause 2 (ee) of Sch II read with Reg 23).
  - f) TPA shall have systems in place to identify, monitor, control and deal with fraud including hospital abuse, by various agencies including healthcare providers (Clause 2 (ii) of Sch II read with Reg 23).
  - g) TPA shall put in place systems and internal processes for detection of fraud and its mitigation, delineate and disseminate information on fraudulent cases to the concerned insurer (Clause 2 (jj) of Sch II read with Reg 23)  
(Clause 2(k))
- (xiii) Existing Regulation 16(3)(d) has a necessary mandate to conduct an enquiry in case the CoR of the TPA is revoked or suspended due to non-commencement of business within twelve months from the date of Certificate of Registration. However, it is observed that the mandate to conduct an inquiry is redundant in the case of a TPA which has not commenced business/operations after grant of CoR. Hence, suitable provisions for cancellation of CoR in case the TPA does not commence business is incorporated. (Clause 2(n))
- (xiv) Existing provisions stipulate that the applicant whose application for grant of CoR is refused is not eligible to apply afresh for two years. This waiting period of two years is stipulated to ensure that same applicant whose application is refused shall not approach without any improvement or substantive reasons. This provision is now modified to be applicable to the promoters of the Applicant whose application for grant of Certificate of Registration is refused and to bring down the waiting period to one year for the Applicant. Further, a new provision is incorporated that a TPA whose CoR is revoked, cancelled or denied renewal shall also be barred from applying fresh application for a period of two years. (Clause 2(o) and (t))
- (xv) With reference to handing of over of claims files and data a period of 15 days after the close of every quarter is stipulated in the existing provisions. This is modified to “90 days after the close of the quarter”. Further, it is specified that a TPA who maintains files, data and other information pertaining to settlement of claim in an electronic form is dispensed in maintaining the same in physical mode. (Clause 2(u))

- (xvi) As part of the code of conduct, a clause is inserted specifying that a TPA shall furnish information or data pertaining to a group insurance policy of one insurer to another insurer only with explicit and written approval of both the Insurer and Group Policyholder to whom the data belongs. Pursuant to the suggestions received it is proposed to specify that such data shall not be shared to any other third party also (Clause 2(dd)(iv))
- (xvii) Consequent to the introduction of a provision allowing policyholders to choose a TPA, a provision is incorporated in Code of Conduct to ensure that the policyholders/ prospects are not influenced by the TPAs and that the policyholders can make informed choice with regards to selection of the TPA of its choice for rendering health services. (Clause 2(dd)(iv))
- (xviii) Modification is effected under Clause 2 (d) of Code of Conduct to ensure that the information which is relevant to the concerned insurer is only shared by the TPAs. (Clause 2(dd)(i))

Copy of IRDAI (TPA-HS) (Amendment) Regulations, 2019 are attached as Annexure-1 to this note.

Copy of Comparative statement of IRDAI (TPA-Health Services) Regulations, 2016 vis-à-vis Proposed Regulations along with rationale are attached as Annexure-2 to this note.

Copy of Circular Ref no IRDA/HLT/REG/CIR/219/11/2016 dated 15<sup>th</sup> Nov 2016 is attached as Annexure-3 to this note.

Summary of the Comments received from various stakeholders pursuant to the publication of the Exposure Draft of IRDAI (TPA-HS) (Amendment) Regulations, 2019 on internet is placed as Annexure-4 to this note.

The draft amendment regulations along with the summary of comments were placed before Insurance Advisory Committee in the meeting held on 25<sup>th</sup> September, 2019 and the following suggestions are made:

1. In the definition of TPA it was suggested that the word remuneration may only be deleted so that the existing service level agreements entered by Insurers may stand valid if word 'fee' or any other word mentioned thereunder.
2. There was a suggestion of independent assessment of performance of TPAs. It was decided to notify guidelines on disclosure of qualitative and quantitative parameters by all Insurers and TPAs so as to enhance an informed choice by policyholders.

Suggestions made in the IAC meeting have being duly considered and have been incorporated in the proposed amendment regulations (annexure – 1).

Submitted for approval of the Authority.