

S.B. NO. 2773

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THIRD PARTY ADMINISTRATORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purposes of this Act are to: (1) encourage
2 disclosure of contracts between insurers and third party
3 administrators ("administrators"), both to potential insureds
4 and the insurance commissioner; (2) promote the financial
5 responsibility of administrators; (3) regulate administrators'
6 practices in conformity with the general purposes of this Act;
7 and (4) govern the qualifications and procedures for the
8 licensing of administrators.

9 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
10 amended by adding a new article to be appropriately designated
11 and to read as follows:

12 **"ARTICLE**

13 **THIRD PARTY ADMINISTRATORS**

14 **§431- Definitions.** For purposes of this article:

15 "Administrator" or "third party administrator" means a
16 person who collects charges or premiums from, or who adjusts or
17 settles claims on, residents of this State in connection with
18 life insurance coverage, accident and health or sickness

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1 insurance coverage, or article 1 of chapter 432, except the
2 following:

- 3 (1) An employer on behalf of its employees or the
4 employees of a subsidiary or an affiliated corporation
5 of the employer;
- 6 (2) A union on behalf of its members;
- 7 (3) An insurer authorized to transact insurance in this
8 State with respect to a policy lawfully issued and
9 delivered in and pursuant to the laws of this State or
10 another state;
- 11 (4) A producer licensed to sell life insurance coverage or
12 accident and health or sickness insurance coverage in
13 this State, whose activities are limited exclusively
14 to the sale of insurance;
- 15 (5) A managing general agent licensed in this State whose
16 activities are limited exclusively to the scope of
17 activities conveyed under that license;
- 18 (6) An individual adjuster licensed in this State whose
19 activities are limited to adjustment of claims;
- 20 (7) An individual who adjusts or settles claims in the
21 normal course of practice or employment as an attorney
22 at law and who does not collect charges or premiums in

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1 connection with life insurance coverage or accident
2 and health or sickness insurance coverage;

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

6 (9) A trust established in conformity with 29 U.S.C.
7 section 186 and trustees, agents, and employees acting
8 under that trust;

9 (10) A trust exempt from taxation under 26 U.S.C. section
10 501(a) and trustees and employees acting under that
11 trust, or a custodian and the custodian's agents and
12 employees acting under a custodian account that meets
13 the requirements of 26 U.S.C. section 401(f);

14 (11) A financial institution subject to supervision or
15 examination by federal or state banking authorities,
16 or a mortgage lender that collects and remits premiums
17 to licensed producers or authorized insurers in
18 connection with loan payments;

19 (12) A credit card issuing company advancing for and
20 collecting premiums or charges from its credit card
21 holders who have authorized collection, provided the
22 company does not adjust or settle claims; and

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(13) A person who acts solely as an administrator of one or more employee benefit plans established by an employer or an employee organization.

"Commissioner" means the insurance commissioner.

"Insurance producer" or "producer" is defined in section 431:9A-102.

"Insurer" is defined in section 431:1-202.

"Person" is defined in section 431:1-212.

§431- License required; application. (a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following:

(1) A nonrefundable fee as set forth in section 431:7-101;

(2) All basic organizational documents of the administrator, 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 the documents;

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1 (3) The bylaws, rules, regulations, or similar documents
2 regulating the internal affairs of the administrator;

3 (4) The names, addresses, official positions, and
4 professional qualifications of the individuals
5 responsible for the conduct of affairs of the
6 administrator, including, but not limited to, all
7 members of the board of directors, board of trustees,
8 executive committee, or other governing board or
9 committee, the principal officers in the case of a
10 corporation, or the partners in the case of a
11 partnership;

12 (5) Annual audited financial statements for the two most
13 recent years that prove the applicant is solvent and
14 information the commissioner may require to review the
15 current financial condition of the applicant; and

16 (6) Any other pertinent information the commissioner may
17 require.

18 (c) An administrator licensed or applying for licensure
19 shall notify the commissioner within thirty days of any material
20 change in its ownership, control, contact person for the
21 administrator, or any other fact or circumstance affecting its
22 qualification for licensure.

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1 (d) If an administrator employs or has contracted
2 individuals to adjust claims for the administrator, the
3 employees or contracted individuals shall first be licensed as
4 individual adjusters.

5 (e) If an administrator employs or has contracted
6 individuals to sell, solicit, or negotiate insurance business,
7 the employees or contracted individuals shall first be licensed
8 as producers. An administrator who intends to directly solicit
9 insurance contracts or otherwise act as a producer shall first
10 be licensed as an insurance producer.

11 (f) The commissioner may refuse to issue a license if the
12 commissioner determines, after notice and hearing pursuant to
13 section 431:2-308 and chapter 91, that the administrator is not
14 competent, trustworthy, financially responsible, or of good
15 personal and business reputation, or has had an application for
16 an insurance license denied or revoked for cause within the past
17 five years.

18 (g) The license is renewable or extendable biennially.
19 The renewal or extension date for a license issued to a natural
20 person shall be the sixteenth day of the licensee's birth month.
21 The renewal or extension date for a license issued to an
22 artificial person shall be the sixteenth day of April for a

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1 nonresident licensee, and the sixteenth day of July for a
2 resident licensee. The license shall remain in effect so long
3 as the fees set forth in section 431:7-101 are paid.

4 (h) The commissioner may contract with nongovernmental
5 entities, including the National Association of Insurance
6 Commissioners or any affiliations or subsidiaries that the
7 National Association of Insurance Commissioners oversees, to
8 perform any ministerial functions relating to the licensure of
9 administrators.

10 **§431- Surety bond required.** Prior to the issuance or
11 renewal of the administrator license, the administrator shall
12 file and maintain with the commissioner a surety bond in the
13 form and penal sum acceptable to the commissioner, but in no
14 event shall be less than \$300,000, and shall provide that the
15 bond may not be canceled or otherwise terminated until two years
16 have elapsed from the last day the applicant was an
17 administrator, unless the commissioner has given prior written
18 consent. The surety bond shall be undertaken and may be
19 enforced in the name of "Commissioner of Insurance, State of
20 Hawaii."

21 **§431- Written agreement required.** (a) An administrator
22 shall have a written agreement between the administrator and

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1 insurer that contains all requirements of this article, except
2 those that do not apply to administrator functions.

3 (b) The written agreement shall make provision with
4 respect to underwriting or other standards pertaining to the
5 business underwritten by the insurer.

6 (c) The written agreement shall be retained as part of the
7 official records of the administrator and the insurer for the
8 duration of their agreement and five years thereafter.

9 (d) When an insurance policy is issued to a trustee, the
10 administrator shall furnish the insurer a copy of the trust
11 agreement and any amendments to it. The trust agreement shall
12 be retained as part of the official records of the administrator
13 and the insurer for the duration of the insurance policy and
14 five years thereafter.

15 **§431- Effect of payments to administrator.** (a) Payment
16 to the administrator of any insurance premiums or charges by or
17 on behalf of the insured shall be deemed received by the
18 insurer.

19 (b) Payment of return premiums or claims by the insurer to
20 the administrator shall not be deemed payment to the insured
21 until the insured receives the payment.

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(c) This section does not limit any right of the insurer against the administrator resulting from failure of the administrator to make payments to the insurer or insured.

§431- Recordkeeping required; commissioner's access to records. (a) An administrator shall maintain and make available to the insurer complete books and records of all transactions between the administrator, insurers, and insureds. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and for the duration of the written agreement and five years thereafter.

(b) The commissioner shall have access to the books and records for examination, audit, and inspection. Trade secrets in the books and records, including the identity and addresses of insureds, shall be confidential and privileged. However, the commissioner may use the information in proceedings brought against the administrator.

(c) An administrator shall retain the right to continuing access to the books and records to fulfill its contractual obligations to the insurer and insureds, subject to any restrictions in the written agreement.

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1 **§431- Advertising by administrator.** An administrator
2 shall use only the advertising pertaining to the business an
3 insurer has underwritten and approved in advance of its use.

4 **§431- Fiduciary duties of administrator; payment of**
5 **claims by administrator.** (a) The administrator shall hold in a
6 fiduciary capacity all charges or premiums it collects for or on
7 behalf of an insurer and all return premiums it receives from
8 the insurer. These funds shall be immediately remitted to the
9 person entitled to them or shall be deposited promptly in a
10 fiduciary account established and maintained by the
11 administrator in a federally insured financial institution.

12 (b) If charges or premiums deposited in a fiduciary
13 account have been collected for or on behalf of more than one
14 insurer, the administrator shall keep records clearly recording
15 the deposits in and withdrawals from the account for or on
16 behalf of each insurer. The administrator shall keep copies of
17 the records and, upon request of an insurer, shall furnish the
18 insurer with copies of records pertaining to the deposits and
19 withdrawals.

20 (c) An administrator shall not pay claims by withdrawals
21 from the fiduciary account in which premiums or charges are
22 deposited.

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(d) The written agreement shall provide that withdrawals from the fiduciary account shall be made only for:

(1) Remittance to an insurer entitled to remittance;

(2) Deposit in an account maintained in the name of the insurer;

(3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in subsection (e);

(4) Payment to a group policyholder for remittance to the insurer entitled to remittance;

(5) Payment to the administrator of its commission, fees, or charges; and

(6) Remittance of return premiums to the person entitled to return premiums.

(e) All claims the administrator pays from funds collected for or on behalf of an insurer shall be paid only as authorized by the insurer.

§431- Compensation of administrator. Compensation to an administrator for adjusting or settling claims shall not be contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

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1 **§431- Written notice to insureds required.** (a) When the
2 services of an administrator are used, the administrator shall
3 provide written notice approved by the insurer to insureds,
4 advising them of the identity of and relationship between the
5 administrator, insurer, and insured.

6 (b) When an administrator collects funds, the
7 administrator must identify the reason for collecting each item
8 and show each item separately from the premium. Additional
9 charges shall not be made for services to the extent the insurer
10 has already paid for those services.

11 (c) The administrator shall disclose to the insurer all
12 charges, fees, and commissions the administrator receives from
13 services the administrator provides the insurer, including any
14 fees or commissions paid by insurers providing reinsurance.

15 **§431- Delivery of written information to insured.** An
16 administrator shall deliver promptly to the insured all
17 policies, certificates, booklets, termination notices, or other
18 written communications after receiving instructions from the
19 insurer for delivery.

20 **§431- Annual report required.** (a) An administrator
21 shall file an annual report for the preceding calendar year with

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1 the commissioner on or before March 1 of each year, in a form
2 and manner prescribed by the commissioner.

3 (b) The annual report shall include the names and
4 addresses of all insurers with which the administrator had an
5 agreement during the preceding calendar year.

6 **§431- License denial, nonrenewal, suspension, or**
7 **revocation; fines.** (a) After notice and hearing, the
8 commissioner shall impose a fine pursuant to section 431:2-203
9 and issue a cease and desist order against any person who acts
10 or holds out as an administrator without a license.

11 (b) After notice and hearing, the commissioner shall deny,
12 refuse to renew, suspend, or revoke the license of an
13 administrator if the commissioner finds the administrator:

14 (1) Is in an unsound financial condition;

15 (2) Is using methods or practices in the conduct of
16 business that renders the administrator's further
17 transaction of business in this State hazardous or
18 injurious to insureds or the public; or

19 (3) Has failed to pay a judgment rendered against the
20 administrator in this State within sixty days after
21 the judgment has become final.

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1 (c) The commissioner may deny, refuse to renew, suspend,
2 or revoke the license of an administrator if the commissioner
3 finds the administrator:

4 (1) Has violated any lawful rule or order of the
5 commissioner or this code;

6 (2) Has refused examination or production of the
7 administrator's accounts, records, and files for
8 examination, or if any individual responsible for or
9 who exercises control or influence over the affairs of
10 the administrator has refused to give information
11 about the administrator's affairs, or has refused to
12 perform any other legal obligation as to an
13 examination, when required by the commissioner;

14 (3) Has, without just cause, refused to pay proper claims
15 or perform services arising under the administrator's
16 contracts or has, without just cause, caused insureds
17 to accept less than the amount due them or caused
18 insureds to employ attorneys or bring suit against the
19 administrator to secure full payment or settlement of
20 claims;

21 (4) Fails at any time to meet any qualification for which
22 issuance of the license could have been refused, had

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1 the failure then existed and been known to the
2 commissioner;

3 (5) Has been convicted of, or has entered a plea of guilty
4 or nolo contendere to, a felony without regard to
5 whether adjudication was withheld;

6 (6) Is under suspension or revocation in another state; or

7 (7) Has failed to timely file the annual report pursuant
8 to section 431- .

9 (d) Without advance notice or hearing, the commissioner
10 may immediately suspend the license of an administrator if the
11 commissioner finds the following:

12 (1) The administrator is insolvent or impaired;

13 (2) A proceeding for receivership, conservatorship,
14 rehabilitation, or other delinquency proceeding
15 regarding the administrator has been commenced in any
16 state; or

17 (3) The financial condition or business practices of the
18 administrator otherwise pose an imminent threat to the
19 public health, safety, or welfare of the residents of
20 this State.

21 (e) If the commissioner finds one or more grounds exist
22 for the denial, nonrenewal, suspension, or revocation of the

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1 license, the commissioner may additionally impose a fine upon
2 the administrator pursuant to section 431:2-203.

3 **§431- Rules.** The commissioner may adopt rules to
4 implement and enforce this article."

5 SECTION 3. Section 431:7-101, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) The commissioner shall collect, in advance, the
8 following fees:

9 (1) Certificate of authority:

10 (A) Application for certificate of authority \$900

11 (B) Issuance of certificate of authority \$600

12 (C) Application for motor vehicle self-insurance . \$300

13 (2) Organization of domestic insurers and affiliated
14 corporations:

15 (A) Application for solicitation permit \$1,500

16 (B) Issuance of solicitation permit \$150

17 (3) Producer's license:

18 (A) Issuance of regular license \$50

19 (B) Issuance of temporary license \$50

20 (4) Nonresident producer's license: Issuance \$75

21 (5) Independent adjuster's license: Issuance \$75

22 (6) Public adjuster's license: Issuance \$75

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1 (7) Claims adjuster's limited license: Issuance \$75

2 (8) Administrator's license: Issuance \$150

3 [~~(8)~~] (9) Independent bill reviewer's license: Issuance \$80

4 [~~(9)~~] (10) Limited producer's license: Issuance \$60

5 [~~(10)~~] (11) Managing general agent's license: Issuance .. \$75

6 [~~(11)~~] (12) Reinsurance intermediary's license: Issuance \$75

7 [~~(12)~~] (13) Surplus lines broker's license: Issuance ... \$150

8 [~~(13)~~] (14) Service contract provider's registration:

9 Issuance.....\$75

10 [~~(14)~~] (15) Approved course provider certificate:

11 Issuance \$100

12 [~~(15)~~] (16) Approved continuing education course

13 certificate:

14 Issuance \$30

15 [~~(16)~~] (17) Vehicle protection product warrantor's

16 registration: Issuance \$75

17 [~~(17)~~] (18) Criminal history record check; fingerprinting:

18 For each criminal history record check and

19 fingerprinting check, a fee to be established by the

20 commissioner.

21 [~~(18)~~] (19) Limited line motor vehicle rental company

22 producer's license: Issuance \$1,000

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~~[(19)]~~ (20) Legal service plan certificate of authority:

Issuance before July 1, 2014 \$1,000

Issuance on or after July 1, 2014 \$500

~~[(20)]~~ (21) Life settlement provider's license:

Issuance before July 1, 2014 \$150

Issuance on or after July 1, 2014 \$75

~~[(21)]~~ (22) Life settlement broker's license:

Issuance before July 1, 2014 \$150

Issuance on or after July 1, 2014 \$75

~~[(22)]~~ (23) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

(1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;

(2) \$50 per year for all services (including extension of the license) for a regularly licensed producer;

(3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;

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1 (4) \$45 per year for all services (including extension of
2 the license) for a regularly licensed independent
3 adjuster;

4 (5) \$45 per year for all services (including extension of
5 the license) for a regularly licensed public adjuster;

6 (6) \$45 per year for all services (including extension of
7 the license) for a claims adjuster's limited license;

8 (7) \$150 per year for all services (including extension of
9 the license) for an administrator's license;

10 ~~[(+7)]~~ (8) \$60 per year for all services (including
11 extension of the license) for a regularly licensed
12 independent bill reviewer;

13 ~~[(+8)]~~ (9) \$45 per year for all services (including
14 extension of the license) for a producer's limited
15 license;

16 ~~[(+9)]~~ (10) \$75 per year for all services (including
17 extension of the license) for a regularly licensed
18 managing general agent;

19 ~~[(+10)]~~ (11) \$75 per year for all services (including
20 extension of the license) for a regularly licensed
21 reinsurance intermediary;

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1 [~~(11)~~] (12) \$45 per year for all services (including
2 extension of the license) for a licensed surplus lines
3 broker;

4 [~~(12)~~] (13) \$75 per year for all services (including
5 renewal of registration) for a service contract
6 provider;

7 [~~(13)~~] (14) \$65 per year for all services (including
8 extension of the certificate) for an approved course
9 provider;

10 [~~(14)~~] (15) \$20 per year for all services (including
11 extension of the certificate) for an approved
12 continuing education course;

13 [~~(15)~~] (16) \$75 per year for all services (including
14 renewal of registration) for a vehicle protection
15 product warrantor;

16 [~~(16)~~] (17) A fee to be established by the commissioner
17 for each criminal history record check and
18 fingerprinting;

19 [~~(17)~~] (18) \$600 per year for all services (including
20 extension of the license) for a regularly licensed
21 limited line motor vehicle rental company producer;

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1 [~~(18)~~] (19) \$1,000 per year for all services provided

2 before July 1, 2014, (including extension of the

3 certificate) for an authorized legal service plan;

4 [~~(19)~~] (20) \$500 per year for all services provided on or

5 after July 1, 2014, (including extension of the

6 certificate) for an authorized legal service plan;

7 [~~(20)~~] (21) \$1,200 per year for all services (including

8 extension of the license) for a regularly licensed

9 life settlement provider; and

10 [~~(21)~~] (22) \$150 per year for all services (including

11 extension of the license) for a regularly licensed

12 life settlement broker.

13 The services referred to in paragraphs (1) to [~~(21)~~] (22) shall

14 not include services in connection with examinations,

15 investigations, hearings, appeals, and deposits with a

16 depository other than the department of commerce and consumer

17 affairs."

18 SECTION 4. Section 432:1-102, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§432:1-102 Applicability of other laws.** (a) Part III of
21 article 10A, and article 10H of chapter 431 shall apply to
22 nonprofit medical indemnity or hospital service associations.

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1 Such associations shall be exempt from the provisions of part I
2 of article 10A; provided that such exemption is in compliance
3 with applicable federal statutes and regulations.

4 (b) Article 2, article 2D, parts II and IV of article 3,
5 article 6, part III of article 7, article 9A, article 13,
6 article 14G, and article 15 of chapter 431, sections 431:3-301,
7 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-102, 431:10-
8 225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers
9 granted by those provisions to the commissioner, shall apply to
10 managed care plans, health maintenance organizations, or medical
11 indemnity or hospital service associations that are owned or
12 controlled by mutual benefit societies so long as the
13 application in any particular case is in compliance with and is
14 not preempted by applicable federal statutes and regulations.

15 (c) Article of chapter 431 shall apply to mutual benefit
16 societies.

17 [~~(e)~~] (d) The commissioner may adopt rules pursuant to
18 chapter 91 to implement and administer this chapter."

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 6. This Act, upon its approval, shall take effect
2 on January 1, 2019.

3
4 INTRODUCED BY: *Mr. W.*
5 BY REQUEST

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Report Title:

Administrator; Third party administrator; License

Description:

Encourages disclosure of contracts between insurers and third party administrators (administrators), both to potential insureds and the insurance commissioner. Promotes the financial responsibility of administrators. Regulates administrators' practices in conformity with the general purposes of this article. Governs the qualifications and procedures for the licensing of administrators.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THIRD PARTY ADMINISTRATORS.

PURPOSE: This bill requires third party administrators (administrators) to be licensed by the Insurance Commissioner in accordance with this article.

MEANS: Add a new article to chapter 431 and amend sections 431:7-101(a) and (b) and 432:1-102, Hawaii Revised Statutes.

JUSTIFICATION: This bill: (1) encourages disclosure of contracts between insurers and administrators; (2) promotes the financial responsibility of administrators; (3) regulates administrators' practices in conformity with the general purposes of this article; and (4) governs the qualifications and procedures for the licensing of administrators.

Impact on the public: This bill will ensure adequate protection of Hawaii consumers and promote transparency of administrators operating in Hawaii.

Impact on the department and other agencies: None.

GENERAL FUNDS: None.

OTHER FUNDS: Compliance Resolution Fund.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: January 1, 2019.