
HOUSE BILL 1544

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Dellwo, R. Meyers, Paris, R. Johnson, Winsley and Wang; by request of Insurance Commissioner.

Read first time January 31, 1991. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to third party administrators for insurance; adding
2 a new chapter to Title 48 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Administrator" or "third party administrator" means a person
8 who directly or indirectly solicits or effects coverage of,
9 underwrites, collects charges or premiums from, or adjusts or settles
10 claims on, residents of this state, or residents of another state from
11 offices in this state, in connection with life or disability insurance
12 coverage or annuities, or coverages offered by health care service
13 contractors or health maintenance organizations, except any of the
14 following:

1 (a) An employer on behalf of its employees or the employees of one
2 or more subsidiary or affiliated corporations of such employer;

3 (b) A union on behalf of its members;

4 (c) An insurer which is authorized to transact insurance in this
5 state with respect to a policy lawfully issued and delivered in and
6 pursuant to the laws of this state or another state;

7 (d) An agent or broker licensed to sell life or disability
8 insurance in this state, whose activities are limited exclusively to
9 the sale of insurance;

10 (e) A creditor on behalf of its debtors with respect to insurance
11 covering a debt between the creditor and its debtors;

12 (f) A trust and its trustees, agents and employees acting pursuant
13 to such trust established in conformity with 29 U.S.C. Sec. 186;

14 (g) A trust exempt from taxation under section 501(a) of the
15 internal revenue code, its trustees and employees acting pursuant to
16 such trust, or a custodian and the custodian's agents or employees
17 acting pursuant to a custodian account which meets the requirements of
18 section 401(f) of the internal revenue code;

19 (h) A credit union or a financial institution which is subject to
20 supervision or examination by federal or state banking authorities, or
21 a mortgage lender, to the extent they collect and remit premiums to
22 licensed insurance agents or authorized insurers in connection with
23 loan payments;

24 (i) A credit card issuing company which advances for and collects
25 premiums or charges from its credit card holders who have authorized
26 collection if the company does not adjust or settle claims;

27 (j) A person who adjusts or settles claims in the normal course of
28 that person's practice or employment as an attorney at law and who does
29 not collect charges or premiums in connection with life or disability
30 insurance coverage or annuities;

1 (k) An adjuster licensed by this state whose activities are limited
2 to adjustment of claims; or

3 (1) A person who acts solely as an administrator of one or more
4 bona fide employee benefit plans established by an employer or an
5 employee organization, or both, for which the insurance laws of this
6 state are preempted pursuant to the employee retirement income security
7 act of 1974. Such person shall comply with the requirements of section
8 11(8) of this act.

9 (2) "Affiliate" or "affiliated" means any entity or person who
10 directly or indirectly through one or more intermediaries, controls or
11 is controlled by, or is under common control with, a specified entity
12 or person.

13 (3) "Commissioner" means the insurance commissioner.

14 (4) "Control" has the meaning given that term in RCW 48.31A.010.

15 (5) "Insurance" or "insurance coverage" means any coverage offered
16 or provided by an insurer.

17 (6) "Disability insurance" has the meaning given that term in RCW
18 48.11.030 and includes what is commonly referred to as "health
19 insurance." For the purposes of this chapter "disability insurance"
20 includes the products of health care service contractors and health
21 maintenance organizations.

22 (7) "Insurer" means any person undertaking to provide life or
23 disability insurance coverage in this state. For the purposes of this
24 chapter, insurer includes a licensed insurance company, a health care
25 service contractor, a health maintenance organization, a multiple
26 employer welfare arrangement, or any person providing a plan of
27 insurance subject to state insurance regulation. "Insurer" does not
28 include a bona fide employee benefit plan established by an employer or
29 an employee organization, or both, for which the insurance laws of this

1 state are preempted pursuant to the employee retirement income security
2 act of 1974.

3 (8) "Underwrites" or "underwriting" includes, but is not limited
4 to, the acceptance of employer or individual applications for coverage
5 of individuals in accordance with the written rules of the insurer, the
6 overall planning and coordinating of an insurance program, and the
7 ability to procure bonds and excess insurance.

8 NEW SECTION. **Sec. 2.** (1) An administrator shall not act as
9 such without a written agreement between the administrator and the
10 insurer, and such written agreement shall be retained as part of the
11 official records of both the insurer and the administrator for the
12 duration of the agreement and for six years thereafter. The agreement
13 shall contain all provisions required by this chapter, except insofar
14 as those requirements do not apply to the functions performed by the
15 administrator.

16 (2) The written agreement shall include a statement of duties which
17 the administrator is expected to perform on behalf of the insurer and
18 the lines, classes, or types of insurance for which the administrator
19 is to be authorized as administrator. The agreement shall make
20 provision with respect to underwriting or other standards pertaining to
21 the business underwritten by such insurer.

22 (3) The insurer or administrator may, with written notice,
23 terminate the written agreement for cause as provided in the agreement.
24 The insurer may suspend the underwriting authority of the administrator
25 during the pendency of any dispute regarding the cause for termination
26 of the written agreement. The insurer must fulfill any lawful
27 obligations with respect to policies affected by the written agreement,
28 regardless of any dispute between the insurer and the administrator.

1 NEW SECTION. **Sec. 3.** If an insurer uses the services of an
2 administrator, the payment to the administrator of any premiums or
3 charges for insurance by or on behalf of the insured party is deemed to
4 have been received by the insurer, and the payment of return premiums
5 or claims payments forwarded by the insurer to the administrator is
6 deemed to have been paid to the insured party or claimant until such
7 payments are received by the insured party or claimant. Nothing in
8 this section limits any right of the insurer against the administrator
9 resulting from the failure of the administrator to make payments to the
10 insurer, insured parties, or claimants.

11 NEW SECTION. **Sec. 4.** (1) Every administrator shall maintain
12 and make available to the insurer complete books and records of all
13 transactions performed on behalf of the insurer. The books and records
14 shall be maintained in accordance with prudent standards of insurance
15 recordkeeping and must be maintained for a period of not less than six
16 years from the date of their creation.

17 (2) The commissioner shall have access to books and records
18 maintained by an administrator for the purposes of examination, audit,
19 and inspection. Any trade secrets contained in such books and records,
20 including the identity and addresses of policyholders and certificate
21 holders, shall be kept confidential, except that the commissioner may
22 use such information in any proceeding instituted against the
23 administrator.

24 (3) The insurer shall own the records generated by the
25 administrator pertaining to the insurer, however, the administrator
26 shall retain the right to continuing access to books and records to
27 permit the administrator to fulfill all of its contractual obligations
28 to insured persons, parties, claimants, and the insurer.

1 (4) In the event the insurer and the administrator cancel their
2 agreement, notwithstanding the provisions of subsection (1) of this
3 section, the administrator may, by written agreement with the insurer,
4 transfer all records to a new administrator rather than retain them for
5 six years. In such cases, the new administrator shall acknowledge, in
6 writing, that it is responsible for retaining the records of the prior
7 administrator as required in subsection (1) of this section.

8 NEW SECTION. **Sec. 5.** An administrator may use only such
9 advertising pertaining to the business underwritten by an insurer as
10 has been approved in writing by the insurer in advance of its use.

11 NEW SECTION. **Sec. 6.** (1) If an insurer uses the services of
12 an administrator, the insurer is responsible for determining the
13 benefits, premium rates, underwriting criteria, and claims payment
14 procedures applicable to such coverage and for securing reinsurance, if
15 any. The rules pertaining to these matters must be provided, in
16 writing, by the insurer to the administrator. The responsibilities of
17 the administrator as to any of these matters shall be set forth in the
18 written agreement between the administrator and the insurer.

19 (2) It is the sole responsibility of the insurer to provide for
20 competent administration of its programs.

21 (3) In cases where an administrator administers benefits for more
22 than one hundred certificate holders on behalf of an insurer, the
23 insurer shall, at least semiannually, conduct a review of the
24 operations of the administrator. At least one such review shall be an
25 on-site audit of the operations of the administrator.

26 NEW SECTION. **Sec. 7.** (1) All insurance charges or premiums
27 collected by an administrator on behalf of or for an insurer or

1 insurers, and the return of premiums received from that insurer or
2 insurers, shall be held by the administrator in a fiduciary capacity.
3 Such funds shall be immediately remitted to the person or persons
4 entitled to them or shall be deposited promptly in a fiduciary account
5 established and maintained by the administrator in a federally insured
6 financial institution. The written agreement between the administrator
7 and the insurer shall provide for the administrator to periodically
8 render an accounting to the insurer detailing all transactions
9 performed by the administrator pertaining to the business underwritten
10 by the insurer.

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

18 (3) The administrator shall not pay any claim by withdrawals from
19 a fiduciary account in which premiums or charges are deposited.
20 Withdrawals from such account shall be made as provided in the written
21 agreement between the administrator and the insurer. The written
22 agreement shall address, but not be limited to, the following:

- 23 (a) Remittance to an insurer entitled to remittance;
- 24 (b) Deposit in an account maintained in the name of the insurer;
- 25 (c) Transfer to and deposit in a claims paying account, with claims
26 to be paid as provided for in subsection (4) of this section;
- 27 (d) Payment to a group policyholder for remittance to the insurer
28 entitled to such remittance;
- 29 (e) Payment to the administrator for its commissions, fees, or
30 charges; or

1 (f) Remittance of return premium to the person or persons entitled
2 to such return premium.

3 (4) All claims paid by the administrator from funds collected on
4 behalf of or for an insurer shall be paid only on drafts or checks of
5 and as authorized by the insurer.

6 NEW SECTION. **Sec. 8.** (1) An administrator shall not enter
7 into any agreement or understanding with an insurer in which the effect
8 is to make the amount of the administrator's commissions, fees, or
9 charges contingent upon savings effected in the adjustment, settlement,
10 and payment of losses covered by the insurer's obligations. This
11 provision shall not prohibit an administrator from receiving
12 performance-based compensation for providing hospital or other auditing
13 services.

14 (2) This section shall not prevent the compensation of an
15 administrator from being based on premiums or charges collected or the
16 number of claims paid or processed.

17 NEW SECTION. **Sec. 9.** (1) When the services of an
18 administrator are used, the insurer shall, through the administrator if
19 the insurer chooses, provide a written notice approved by the insurer
20 to covered individuals advising them of the identity of, and
21 relationship among, the administrator, the policyholder, and the
22 insurer. A copy of such notice shall be filed with the commissioner.

23 (2) When an administrator collects funds, the reason for collection
24 of each item must be identified to the insured party and each item must
25 be shown separately from any premium. Additional charges may not be
26 made for services to the extent the services have been paid for by the
27 insurer.

1 (3) The administrator shall disclose to the insurer all charges,
2 fees, and commissions received from all services in connection with the
3 provision of administrative services for such insurer, including any
4 fees or commissions paid by insurers providing reinsurance.

5 NEW SECTION. **Sec. 10.** Any policies, certificates, booklets,
6 termination notices, or other written communications delivered by the
7 insurer to the administrator for delivery to insured parties or covered
8 individuals shall be delivered by the administrator promptly after
9 receipt of instructions from the insurer to deliver them.

10 NEW SECTION. **Sec. 11.** (1) Beginning January 1, 1992, a person
11 may not act as, or offer to act as, or hold himself or herself out to
12 be an administrator in this state without a valid certificate of
13 registration as an administrator issued by the commissioner.

14 (2) Applicants to be an administrator shall make an application to
15 the commissioner upon a form to be furnished by the commissioner. The
16 application shall include or be accompanied by the following
17 information and documents:

18 (a) All basic organizational documents of the administrator,
19 including any articles of incorporation, articles of association,
20 partnership agreement, trade name certificate, trust agreement,
21 shareholder agreement, and other applicable documents, and all
22 amendments to such documents;

23 (b) The bylaws, rules, regulations, or similar documents regulating
24 the internal affairs of the administrator;

25 (c) The names, addresses, official positions, and professional
26 qualifications of the individuals who are responsible for the conduct
27 of affairs of the administrator, including all members of the board of
28 directors, board of trustees, executive committee or other governing

1 board or committee; the principal officers in the case of a corporation
2 or the partners or members in the case of a partnership or association;
3 shareholders holding directly or indirectly ten percent or more of the
4 voting securities of the administrator; and any other person who
5 exercises control or influence over the affairs of the administrator;

6 (d) Annual financial statements or reports for the two most recent
7 years which prove that the applicant is solvent and such information as
8 the commissioner may require in order to review the current financial
9 condition of the applicant;

10 (e) A statement describing the business plan including information
11 on staffing levels and activities proposed in this state and nation-
12 wide. The plan must provide details setting forth the administrator's
13 capability for providing a sufficient number of experienced and
14 qualified personnel in the areas of claims processing, recordkeeping,
15 and underwriting;

16 (f) If the applicant will be managing the solicitation of new or
17 renewal business, proof that it employs or has contracted with an agent
18 licensed by this state for solicitation and taking of applications.
19 Any applicant which intends to directly solicit insurance contracts or
20 otherwise act as an insurance agent must provide proof that it has a
21 license as an insurance agent in this state; and

22 (g) Such other pertinent information as may be required by
23 the commissioner.

24 (3) The applicant shall make available for inspection by the
25 commissioner copies of all contracts with insurers or other persons
26 using the services of the administrator.

27 (4) The commissioner shall, by rule, establish the amount of
28 registration fees for administrators. The amount of these fees shall
29 be set at a sufficient level to cover costs of administering provisions

1 of this chapter. Fees collected shall be deposited in the insurance
2 commissioner's regulatory account in the state treasury.

3 (5) The commissioner may refuse to issue a certificate of
4 registration if the commissioner determines that the administrator, or
5 any individual responsible for the conduct of affairs of the
6 administrator as defined in subsection (2)(c) of this section, is not
7 competent, trustworthy, financially responsible, or of good personal
8 and business reputation, or has had an insurance or an administrator
9 license or registration denied or revoked for cause by any state.

10 (6) A certificate of registration issued under this section shall
11 remain valid, unless surrendered, suspended, or revoked by the
12 commissioner, for so long as the administrator continues in business in
13 this state and remains in compliance with this chapter.

14 (7) An administrator is not required to hold a certificate of
15 registration as an administrator in this state if all of the following
16 conditions are met:

17 (a) The administrator has its principal place of business in
18 another state;

19 (b) The administrator is not soliciting business as an
20 administrator in this state; and

21 (c) In the case of any group policy or plan of insurance serviced
22 by the administrator, the lesser of five percent or one hundred
23 certificate holders reside in this state.

24 (8) A person is not required to hold a certificate of registration
25 as an administrator in this state if the person exclusively provides
26 services to one or more bona fide employee benefit plans each of which
27 is established by an employer or an employee organization, or both, and
28 for which the insurance laws of this state are preempted pursuant to
29 the employee retirement income security act of 1974. Such persons

1 shall register with the commissioner annually, verifying their status
2 under this chapter.

3 (9) An administrator shall immediately notify the commissioner of
4 any material change in its ownership, control, or other fact or
5 circumstance affecting its qualification for a certificate of
6 registration in this state.

7 (10) Errors and omissions insurance or bond shall not be required
8 by the commissioner of any administrator whose business is restricted
9 solely to benefit plans which are either fully insured by an authorized
10 insurer or which are bona fide employer benefit plans established by an
11 employer or any employee organization, or both, for which the insurance
12 laws of this state are preempted pursuant to the employee retirement
13 investment security act of 1974.

14 (11)(a) Any administrator not exempt from maintaining errors and
15 omissions insurance coverage or a bond pursuant to subsection (10) of
16 this section shall file and maintain with the commissioner at all times
17 a current certificate of errors and omissions insurance, in an amount
18 established by the commissioner, by rule, from an insurer authorized to
19 transact insurance in this state. The insurance must cover errors and
20 omissions of, and any violation of fiduciary responsibility by, the
21 administrator, its employees, or both.

22 (b) If the commissioner determines that insurance required under
23 this section is not generally available at a reasonable cost, the
24 commissioner, by rule, may suspend the requirement of insurance and
25 substitute the requirement of a bond in an amount determined by the
26 commissioner to protect the insurer with whom the administrator has
27 contracted to provide services. The commissioner must reimpose the
28 insurance requirement when the insurance becomes available once again
29 at a reasonable cost.

1 NEW SECTION. **Sec. 12.** Upon request from an administrator, the
2 commissioner may waive the application required by section 11(2) of
3 this act if the administrator has a valid certificate of registration
4 as an administrator issued in a state which has standards for
5 administrators that the commissioner determines are at least as
6 stringent as those contained in the 1990 model statute for third party
7 administrators of the national association of insurance commissioners.

8 NEW SECTION. **Sec. 13.** (1) Each administrator shall file an
9 annual report for the preceding calendar year with the commissioner on
10 or before March 1 of each year, or within such extension of time as the
11 commissioner for good cause may grant. The report shall be in the form
12 and contain such matters as the commissioner prescribes and shall be
13 verified by at least two officers of the administrator.

14 (2) The annual report shall include the complete names and
15 addresses of all insurers with which the administrator had an agreement
16 during the preceding fiscal year.

17 NEW SECTION. **Sec. 14.** (1) The certificate of registration of
18 an administrator shall be suspended or revoked if the commissioner
19 finds that the administrator:

20 (a) Is in an unsound financial condition;

21 (b) Is using such methods or practices in the conduct of its
22 business so as to render its further transaction of business in this
23 state hazardous or injurious to insured persons or the public; or

24 (c) Has failed to pay any judgment rendered against it in this
25 state within the latter of thirty days after the judgment has become
26 final, thirty days after the time for taking the appeal has expired, or
27 thirty days after the dismissal of an appeal before final
28 determination.

1 (2) The commissioner may, in his or her discretion, suspend or
2 revoke the certificate of registration of an administrator if the
3 commissioner finds that the administrator:

4 (a) Has violated any lawful rule or order of the commissioner or
5 any provision of the insurance laws of this state;

6 (b) Has refused to be examined or to produce its accounts, records,
7 and files for examination, or if any of its officers has refused to
8 give information with respect to its affairs or has refused to perform
9 any other legal obligation as to such examination when required by the
10 commissioner;

11 (c) Has, without just cause, refused to pay proper claims or
12 perform services arising under its contracts or has, without just
13 cause, caused covered individuals to accept less than the amount due
14 them or caused covered individuals to employ attorneys or bring suit
15 against the administrator to secure full payment or settlement of such
16 claims;

17 (d) Is affiliated with or under the same general management or
18 interlocking directorate or ownership as another administrator or
19 insurer which unlawfully transacts business in this state without
20 having a certificate of registration or authority;

21 (e) At any time fails to meet any qualifications for which issuance
22 of a certificate of registration could have been refused had such
23 failure then existed and been known to the commissioner;

24 (f) Has been convicted of, or has entered a plea of guilty or nolo
25 contendere to, a felony without regard to whether adjudication was
26 withheld; or

27 (g) Is under suspension or revocation in another state.

28 (3) The commissioner may, in his or her discretion and without
29 advance notice or hearing, immediately suspend the certificate of

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

3 (a) The administrator is insolvent or impaired;

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

7 (c) 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 (4) After hearing or upon stipulation by the administrator, and in
11 addition to or in lieu of the suspension, revocation, or refusal to
12 renew any administrator's certificate of registration, the commissioner
13 may levy a fine upon the administrator.

14 (a) For each offense the fine shall be an amount not more than one
15 thousand dollars.

16 (b) The order levying such fine shall specify that the fine shall
17 be fully paid not less than fifteen nor more than thirty days from the
18 date of the order.

19 (c) Upon failure to pay any such fine when due, the commissioner
20 shall revoke the certificate of registration of the administrator, if
21 not already revoked. The fine shall be recovered in a civil action
22 brought on behalf of the commissioner by the attorney general. Any
23 fine so collected shall be paid by the commissioner to the state
24 treasurer for the account of the general fund.

25 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act shall
26 constitute a new chapter in Title 48 RCW.