
HOUSE BILL 1961

State of Washington

54th Legislature

1995 Regular Session

By Representative Dyer

Read first time 02/17/95. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to third party administrators; adding a new chapter
2 to Title 48 RCW; prescribing penalties; and providing an effective
3 date.

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

5 NEW SECTION. **Sec. 1.** In this chapter, unless the context clearly
6 requires otherwise:

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 health insurance
12 coverage or annuities, except any of the following:

13 (a) An employer on behalf of its employees or the employees of one
14 or more subsidiaries or affiliated corporations of that employer;

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

16 (c) An insurer that is authorized to transact insurance in this
17 state with respect to its own policies lawfully issued and delivered in
18 and under the laws of this state or another state;

1 (d) An agent or broker licensed to sell life or health insurance in
2 this state, whose activities are limited exclusively to the sale of
3 insurance;

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

6 (f) A trust and its trustees, agents, and employees acting under a
7 trust established in conformity with 29 U.S.C. Sec. 186;

8 (g) A trust exempt from taxation under section 501(a) of the
9 internal revenue code, its trustees and employees acting under the
10 trust, or a custodian and the custodian's agents or employees acting
11 under a custodian account that meets the requirements of section 401(f)
12 of the internal revenue code;

13 (h) A credit union or a financial institution that is subject to
14 supervision or examination by federal or state banking authorities, or
15 a mortgage lender, to the extent they collect and remit premiums to
16 licensed insurance agents or authorized insurers in connection with
17 loan payments;

18 (i) A credit card issuing company that advances for and collects
19 premiums or charges from its credit card holders who have authorized
20 collection if the company does not adjust or settle claims;

21 (j) A person who adjusts or settles claims in the normal course of
22 that person's practice or employment as an attorney at law and who does
23 not collect charges or premiums in connection with life or health
24 insurance coverage or annuities;

25 (k) An adjuster licensed by this state whose activities are limited
26 to adjustment of claims;

27 (l) Except as provided in section 11 of this act, a person who acts
28 solely as an administrator of one or more bona fide employee benefit
29 plans established by an employer or an employee organization, or both,
30 for which the insurance laws of this state are preempted by the
31 employee retirement income security act of 1974; or

32 (m) A person licensed as a managing general agent in this state,
33 whose activities are limited exclusively to the scope of activities
34 conveyed under his or her license and is in compliance with the
35 provisions of chapter 48.98 RCW.

36 (2) "Affiliate" or "affiliated" means any entity or person who
37 directly or indirectly through one or more intermediaries, controls or
38 is controlled by, or is under common control with, a specified entity
39 or person.

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

2 (4) "Control" means the same as in RCW 48.31B.005.

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

5 (6) "Insurer" means any person undertaking to provide life or
6 health insurance coverage in this state. For the purposes of this
7 chapter, insurer includes a licensed insurance company, a health care
8 service contractor, a health maintenance organization, a multiple
9 employer welfare arrangement, or any other person providing a plan of
10 insurance subject to state insurance regulation. Insurer does not
11 include a bona fide employee benefit plan established by an employer or
12 an employee organization, or both, for which the insurance laws of this
13 state are preempted by the employee retirement income security act of
14 1974.

15 (7) "Underwrites" or "underwriting" means, but is not limited to,
16 the acceptance of employer or individual applications for coverage of
17 individuals in accordance with the written rules of the insurer; the
18 overall planning and coordinating of an insurance program; and the
19 ability to procure bonds and excess insurance.

20 NEW SECTION. **Sec. 2.** (1) An administrator shall not act as an
21 administrator without a written agreement between the administrator and
22 the insurer, and the written agreement shall be retained as part of the
23 official records of both the insurer and the administrator for the
24 duration of the agreement and for seven years thereafter. The
25 agreement shall contain all provisions required by this chapter, except
26 insofar as those requirements do not apply to the functions performed
27 by the administrator.

28 (2) The written agreement shall include a statement of duties that
29 the administrator is expected to perform on behalf of the insurer and
30 the lines, classes, or types of insurance for which the administrator
31 is to be authorized to administer. The agreement shall make provision
32 with respect to underwriting or other standards pertaining to the
33 business underwritten by the insurer.

34 (3) The insurer or administrator may, with written notice,
35 terminate the written agreement for cause as provided in the agreement.
36 The insurer may suspend the underwriting authority of the administrator
37 during the pendency of any dispute regarding the cause for termination
38 of the written agreement. The insurer must fulfill any lawful

1 obligations with respect to policies affected by the written agreement,
2 regardless of any dispute between the insurer and the administrator.

3 NEW SECTION. **Sec. 3.** If an insurer utilizes the services of an
4 administrator, the payment to the administrator of any premiums or
5 charges for insurance by or on behalf of the insured party is deemed to
6 have been received by the insurer, and the payment of return premiums
7 or claim payments forwarded by the insurer to the administrator is not
8 deemed to have been paid to the insured party or claimant until the
9 payments are received by the insured party or claimant. Nothing in
10 this section limits any right of the insurer against the administrator
11 resulting from the failure of the administrator to make payments to the
12 insurer, insured parties, or claimants.

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

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

26 (3) The insurer owns the records generated by the administrator
27 pertaining to the insurer; however, the administrator retains the right
28 to continuing access to books and records to permit the administrator
29 to fulfill all of its contractual obligations to insured parties,
30 claimants, and the insurer.

31 (4) In the event the insurer and the administrator cancel their
32 agreement; notwithstanding the provisions of subsection (1) of this
33 section, the administrator may, by written agreement with the insurer,
34 transfer all records to a new administrator rather than retain them for
35 seven years. In these cases, the new administrator shall acknowledge,
36 in writing, that it is responsible for retaining the records of the
37 prior administrator as required in subsection (1) of this section.

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

4 NEW SECTION. **Sec. 6.** (1) If an insurer utilizes the services of
5 an administrator, the insurer is responsible for determining the
6 benefits, premium rates, underwriting criteria, and claims payment
7 procedures applicable to the coverage and for securing reinsurance, if
8 any. The rules pertaining to these matters must be provided, in
9 writing, by the insurer to the administrator. The responsibilities of
10 the administrator as to any of these matters shall be set forth in the
11 written agreement between the administrator and the insurer.

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

14 (3) In cases where an administrator administers benefits for more
15 than one hundred certificateholders on behalf of an insurer, the
16 insurer shall, at least semiannually, conduct a review of the
17 operations of the administrator. At least one such semiannual review
18 shall be an on-site audit of the operations of the administrator.

19 NEW SECTION. **Sec. 7.** (1) All insurance charges or premiums
20 collected by an administrator on behalf of or for an insurer or
21 insurers, and the return of premiums received from that insurer or
22 insurers, shall be held by the administrator in a fiduciary capacity.
23 These funds shall be immediately remitted to the person or persons
24 entitled to them or shall be deposited promptly in a fiduciary account
25 established and maintained by the administrator in a federally insured
26 financial institution. The written agreement between the administrator
27 and the insurer shall provide for the administrator to periodically
28 render an accounting to the insurer detailing all transactions
29 performed by the administrator pertaining to the business underwritten
30 by the insurer.

31 (2) If charges or premiums deposited in a fiduciary account have
32 been collected on behalf of or for one or more insurers, the
33 administrator shall keep records clearly recording the deposits in and
34 withdrawals from the account on behalf of each insurer. The
35 administrator shall keep copies of all the records and, upon request of
36 an insurer, shall furnish the insurer with copies of the records
37 pertaining to the deposits and withdrawals.

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

6 (a) Remittance to an insurer entitled to remittance;

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

8 (c) Transfer to and deposit in a claims-paying account, with claims
9 paid as provided for in subsection (4) of this section;

10 (d) Payment to a group policyholder for remittance to the insurer
11 entitled to the remittance;

12 (e) Payment to the administrator of its commissions, fees, or
13 charges; and

14 (f) Remittance of return premium to the person or persons entitled
15 to the return premium.

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

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

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

29 NEW SECTION. **Sec. 9.** (1) When the services of an administrator
30 are utilized, the administrator shall provide a written notice approved
31 by the insurer to covered individuals advising them of the identity of,
32 and relationship among, the administrator, the policyholder, and the
33 insurer.

34 (2) When an administrator collects funds, the reason for collection
35 of each item must be identified to the insured party and each item must
36 be shown separately from any premium. Additional charges may not be

1 made for services to the extent the services have been paid for by the
2 insurer.

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

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

12 NEW SECTION. **Sec. 11.** (1) A person shall not act as, or offer to
13 act as, or hold himself or herself out to be an administrator in this
14 state without a valid certificate of authority as an administrator
15 issued by the commissioner.

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

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

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

27 (c) The names, addresses, official positions, and professional
28 qualifications of the individuals who are responsible for the conduct
29 of affairs of the administrator; including all members of the board of
30 directors, board of trustees, executive committee, or other governing
31 board or committee; the principal officers in the case of a corporation
32 or the partners or members in the case of a partnership or association;
33 shareholders holding directly or indirectly ten percent or more of the
34 voting securities of the administrator; and any other person who
35 exercises control or influence over the affairs of the administrator;

36 (d) Audited annual financial statements or reports for the two most
37 recent years that prove that the applicant is solvent and any

1 information the commissioner may require in order to review the current
2 financial condition of the applicant;

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

9 (f) If the applicant will be managing the solicitation of new or
10 renewal business, proof that it employs or has contracted with an agent
11 licensed by this state for solicitation and taking of applications.
12 Any applicant that intends to directly solicit insurance contracts or
13 to otherwise act as an insurance agent must provide proof that it has
14 a license as an insurance agent in this state; and

15 (g) Any other pertinent information as may be required by the
16 commissioner.

17 (3) The applicant shall make available for inspection by the
18 commissioner copies of all contracts with insurers or other persons
19 utilizing the services of the administrator.

20 (4) The commissioner may refuse to issue a certificate of authority
21 if the commissioner determines that the administrator, or any
22 individual responsible for the conduct of affairs of the administrator
23 under subsection (2)(c) of this section, is not competent, trustworthy,
24 financially responsible, or of good personal and business reputation,
25 or has had an insurance or an administrator license denied or revoked
26 for cause by any state.

27 (5) A certificate of authority issued under this section is valid,
28 unless surrendered, suspended, or revoked by the commissioner, for so
29 long as the administrator continues in business in this state and
30 remains in compliance with this chapter.

31 (6) An administrator is not required to hold a certificate of
32 authority as an administrator in this state if all of the following
33 conditions are met:

34 (a) The administrator has its principal place of business in
35 another state;

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

1 (c) In the case of any group policy or plan of insurance serviced
2 by the administrator, the lesser of five percent or one hundred
3 certificateholders reside in this state.

4 (7) A person is not required to hold a certificate of authority as
5 an administrator in this state if the person exclusively provides
6 services to one or more bona fide employee benefit plans each of which
7 is established by an employer or an employee organization, or both, and
8 for which the insurance laws of this state are preempted by the
9 employee retirement income security act of 1974. These persons shall
10 register with the commissioner annually, verifying their status.

11 (8) An administrator shall immediately notify the commissioner of
12 any material change in its ownership, control, or other fact or
13 circumstance affecting its qualification for a certificate of authority
14 in this state.

15 (9) Bonding shall not be required by the commissioner of any
16 administrator whose business is restricted solely to benefit plans that
17 are either fully insured by an authorized insurer or are bona fide
18 employee benefit plans established by an employer or any employee
19 organization, or both, for which the insurance laws of this state are
20 preempted by the employee retirement income security act of 1974.

21 NEW SECTION. **Sec. 12.** Upon request from an administrator, the
22 commissioner may waive the application requirements of section 11(2) of
23 this act if the administrator has a valid certificate of authority as
24 an administrator issued in a state that has standards for
25 administrators that are at least as stringent as those contained in the
26 model statute for third party administrators of the national
27 association of insurance commissioners.

28 NEW SECTION. **Sec. 13.** (1) Each administrator shall file an annual
29 report for the preceding calendar year with the commissioner before
30 March 1st of each year, or within an extension of time the commissioner
31 for good cause may grant. The report shall be in the form and contain
32 those matters the commissioner prescribes and shall be verified by at
33 least two officers of the administrator.

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

1 (3) At the time of filing its annual report, the administrator
2 shall pay a filing fee as required by the commissioner.

3 NEW SECTION. **Sec. 14.** (1) The certificate of authority of an
4 administrator shall be suspended or revoked if the commissioner finds
5 that the administrator:

6 (a) Is in an unsound financial condition;

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

10 (c) Has failed to pay any judgment rendered against it in this
11 state within sixty days after the judgment has become final.

12 (2) The commissioner may, in his or her discretion, suspend or
13 revoke the certificate of authority of an administrator if the
14 commissioner finds that the administrator:

15 (a) Has violated any lawful rule or order of the commissioner or
16 the insurance laws of this state;

17 (b) Has refused to be examined or to produce its accounts, records,
18 and files for examination, or if any of its officers has refused to
19 give information with respect to its affairs or has refused to perform
20 any other legal obligation as to the examination, when required by the
21 commissioner;

22 (c) Has, without just cause, refused to pay proper claims or
23 perform services arising under its contracts or has, without just
24 cause, caused covered individuals to accept less than the amount due
25 them or caused covered individuals to employ attorneys or bring suit
26 against the administrator to secure full payment or settlement of
27 claims;

28 (d) Is affiliated with or under the same general management or
29 interlocking directorate or ownership as another administrator or
30 insurer that unlawfully transacts business in this state without having
31 a certificate of authority;

32 (e) At any time fails to meet any qualification for which issuance
33 of the certificate could have been refused had the failure then existed
34 and been known to the department;

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

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

1 (3) The commissioner may, in his or her discretion and without
2 advance notice or hearing thereon, immediately suspend the certificate
3 of any administrator if the commissioner finds that one or more of the
4 following circumstances exist:

5 (a) The administrator is insolvent or impaired;

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

9 (c) The financial condition or business practices of the
10 administrator otherwise pose an imminent threat to the public health,
11 safety, or welfare of the residents of this state.

12 (4) If the commissioner finds that one or more grounds exist for
13 the suspension or revocation of a certificate of authority issued under
14 this chapter, the commissioner may, in lieu of suspension or
15 revocation, impose a fine upon the administrator.

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

18 NEW SECTION. **Sec. 16.** This act shall take effect on January 1,
19 1996.

20 NEW SECTION. **Sec. 17.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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