
SUBSTITUTE HOUSE BILL 1728

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Campbell, Schual-Berke, Skinner and Cody)

Read first time . Referred to Committee on .

1 AN ACT Relating to third-party administrators for health carriers;
2 adding a new chapter to Title 48 RCW; and providing an effective date.

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

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

6 (1) "Administrator" or "third-party administrator" means a person
7 who directly or indirectly solicits or effects coverage of,
8 underwrites, collects charges or premiums from, or adjusts or settles
9 claims on residents of this state, or residents of another state from
10 offices in this state, in connection with disability insurance
11 coverage, or the prepayment for health care services, except any of the
12 following:

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

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

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

- 1 (d) A health care service contractor or health maintenance
2 organization registered with the commissioner;
- 3 (e) An insurance agent or broker licensed to sell disability
4 insurance or prepaid health care plans in this state whose activities
5 are limited exclusively to the sale of disability insurance or prepaid
6 health care plans;
- 7 (f) A creditor on behalf of its debtors with respect to insurance
8 covering a debt between the creditor and its debtors;
- 9 (g) A trust and its trustees, agents, and employees acting pursuant
10 to such trust established in conformity with 29 U.S.C. Sec. 186;
- 11 (h) A trust exempt from taxation under section 501(a) of the
12 internal revenue code, its trustees and employees acting pursuant to
13 such trust, or a custodian and the custodian's agents or employees
14 acting pursuant to a custodian account which meets the requirements of
15 section 401(f) of the internal revenue code;
- 16 (i) A credit union or a financial institution which is subject to
17 supervision or examination by federal or state banking authorities, or
18 a mortgage lender, to the extent they collect and remit premiums to
19 licensed insurance agents or authorized insurers in connection with
20 loan payments;
- 21 (j) A credit card issuing company which advances for and collects
22 premiums or charges from its credit card holders who have authorized
23 collection if the company does not adjust or settle claims;
- 24 (k) A person who adjusts or settles claims in the normal course of
25 that person's practice or employment as an attorney at law;
- 26 (l) An adjuster licensed by this state whose activities are limited
27 to adjustment of claims;
- 28 (m) Except as provided in section 11 of this act, a person who acts
29 solely as an administrator or trustee of one or more bona fide employee
30 benefit plans established by an employer or an employee organization,
31 or both, for which the insurance laws of this state are preempted
32 pursuant to the Employee Retirement Income Security Act of 1974; or
- 33 (n) A person licensed as a managing general agent in this state,
34 whose activities are limited exclusively to the scope of activities
35 conveyed under his or her license and is in compliance with the
36 provisions of chapter 48.98 RCW.
- 37 (2) "Affiliate" or "affiliated" means any entity or person who
38 directly or indirectly through one or more intermediaries, controls or

1 is controlled by, or is under common control with, a specified entity
2 or person.

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

4 (4) "Control" has the same meaning as defined in RCW 48.31B.005.

5 (5) "Health carrier" has the same meaning as defined in RCW
6 48.43.005, and means any person undertaking to provide disability
7 insurance coverage or prepaid health plans in this state. For the
8 purposes of this chapter, "health carrier" includes an authorized
9 insurance company, a registered health care service contractor, a
10 registered health maintenance organization, an authorized multiple
11 employer welfare arrangement, or any other person providing a plan of
12 insurance subject to state insurance regulation. "Health carrier" does
13 not include a bona fide employee benefit plan established by an
14 employer or an employee organization, or both, for which the insurance
15 laws of this state are preempted pursuant to the Employee Retirement
16 Income Security Act of 1974.

17 (6) "Insurance," as defined in RCW 48.01.040, or "insurance
18 coverage" means any coverage offered or provided by a health carrier.

19 (7) "Underwrites" or "underwriting" means, but is not limited to,
20 the acceptance of employer or individual applications for coverage of
21 individuals in accordance with the written rules of the health carrier;
22 the overall planning and coordinating of an insurance program; and the
23 ability to procure bonds and excess insurance.

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

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

1 (3) The health carrier or administrator may, with written notice,
2 terminate the written agreement for cause as provided in the agreement.
3 The health carrier may suspend the underwriting authority of the
4 administrator during the pendency of any dispute regarding the cause
5 for termination of the written agreement. The health carrier must
6 fulfill any lawful obligations with respect to policies affected by the
7 written agreement, regardless of any dispute between the health carrier
8 and the administrator.

9 NEW SECTION. **Sec. 3.** If a health carrier utilizes the services of
10 an administrator, the payment to the administrator of any premiums or
11 charges for insurance by or on behalf of the insured party is deemed to
12 have been received by the health carrier, and the payment of return
13 premiums or claim payments forwarded by the health carrier to the
14 administrator is not to be deemed to have been paid to the insured
15 party or claimant until the payments are received by the insured party
16 or claimant. Nothing in this section limits any right of the health
17 carrier against the administrator resulting from the failure of the
18 administrator to make payments to the health carrier, insured parties,
19 or claimants.

20 NEW SECTION. **Sec. 4.** (1) Every administrator shall maintain and
21 make available to the health carrier complete books and records of all
22 transactions performed on behalf of the health carrier. The books and
23 records shall be maintained in accordance with prudent standards of
24 insurance recordkeeping and must be maintained for a period of not less
25 than seven years from the date of their creation, and until the books
26 and records have been examined by the commissioner.

27 (2) The commissioner has access to books and records maintained by
28 an administrator for the purposes of examination, audit, and
29 inspection. Any trade secrets contained in the books and records,
30 including the identity and addresses of policyholders and certificate
31 holders, shall be kept confidential, except that the commissioner may
32 use the information in any proceeding instituted against the
33 administrator.

34 (3) The commissioner may receive documents, materials, or
35 information, including otherwise confidential and privileged documents,
36 materials, or information, from the national association of insurance
37 commissioners, its affiliates or subsidiaries, and from regulatory and

1 law enforcement officials of other states and nations and of the
2 federal government, and shall maintain as confidential or privileged
3 any document, material, or information received with notice or the
4 understanding that it is confidential or privileged under the laws of
5 the jurisdiction that is the source of the document, material, or
6 information, except that the commissioner may use the documents,
7 materials, or information in any proceeding instituted against the
8 administrator. The commissioner may enter into agreements governing
9 the sharing and use of information consistent with this subsection.

10 (4) The health carrier owns the records generated by the
11 administrator pertaining to the health carrier. However, the
12 administrator retains the right to continuing access to books and
13 records to permit the administrator to fulfill all of its contractual
14 obligations to insured parties, claimants, and the health carrier.

15 (5) In the event the health carrier and the administrator cancel
16 their agreement, notwithstanding the provisions of subsection (1) of
17 this section, the administrator may, by written agreement with the
18 health carrier, transfer all records to a new administrator rather than
19 retain them for seven years. In these cases, the new administrator
20 shall acknowledge, in writing, that it is responsible for retaining the
21 records of the prior administrator as required in subsection (1) of
22 this section.

23 NEW SECTION. **Sec. 5.** An administrator may use only advertising
24 pertaining to the business underwritten by a health carrier that has
25 been approved in writing by the health carrier in advance of its use.

26 NEW SECTION. **Sec. 6.** (1) If a health carrier utilizes the
27 services of an administrator, the health carrier is responsible for
28 determining the benefits, premium rates, underwriting criteria and
29 claims payment procedures applicable to the coverage and for securing
30 reinsurance, if any. The health carrier must provide the rules
31 pertaining to these matters, in writing, to the administrator. The
32 responsibilities of the administrator as to any of these matters shall
33 be set forth in the written agreement between the administrator and the
34 health carrier.

35 (2) It is the sole responsibility of the health carrier to provide
36 for competent administration of its programs.

1 (3) In cases where an administrator administers benefits for more
2 than one hundred certificate holders on behalf of a health carrier, the
3 health carrier shall, at least semiannually, conduct a review of the
4 operations of the administrator. At least one such semiannual review
5 shall be an on-site audit of the operations of the administrator.

6 NEW SECTION. **Sec. 7.** (1) All insurance charges or premium,
7 however denominated, collected by an administrator on behalf of or for
8 a health carrier or health carriers, and the return of premium received
9 from that health carrier or health carriers, shall be held by the
10 administrator in a fiduciary capacity. These funds shall be
11 immediately remitted to the person or persons entitled to them or shall
12 be deposited promptly in a fiduciary account established and maintained
13 by the administrator in a federally insured financial institution. The
14 written agreement between the administrator and the health carrier
15 shall provide for the administrator to periodically render an
16 accounting to the health carrier detailing all transactions performed
17 by the administrator pertaining to the business underwritten by the
18 health carrier.

19 (2) If charges or premium deposited in a fiduciary account have
20 been collected on behalf of or for one or more health carriers, the
21 administrator shall keep records clearly recording the deposits in and
22 withdrawals from the account on behalf of each health carrier. The
23 administrator shall keep copies of all the records and, upon request of
24 a health carrier, shall furnish the health carrier with copies of the
25 records pertaining to the deposits and withdrawals.

26 (3) The administrator shall not pay any claim by withdrawals from
27 a fiduciary account in which premium or charges are deposited.
28 Withdrawals from a fiduciary account shall be made as provided in the
29 written agreement between the administrator and the health carrier.
30 The written agreement shall address, but not be limited to, the
31 following:

32 (a) Remittance to a health carrier entitled to remittance;

33 (b) Deposit in an account maintained in the name of the health
34 carrier;

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

37 (d) Payment to the administrator of its commissions, fees, or
38 charges; and

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

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

6 NEW SECTION. Sec. 8. (1) An administrator shall not enter into an
7 agreement or understanding with a health carrier in which the effect is
8 to make the amount of the administrator's commissions, fees, or charges
9 contingent upon savings effected in the adjustment, settlement, and
10 payment of losses covered by the health carrier'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 administrator
18 are utilized, the administrator shall provide a written notice approved
19 by the health carrier to covered individuals advising them of the
20 identity of, and relationship among, the administrator, the
21 policyholder, and the health carrier.

22 (2) When an administrator collects funds, the reason for collection
23 must be identified to the insured party. No additional charges may be
24 made to the insured other than the insurance premium.

25 (3) The administrator shall disclose to the health carrier all
26 charges, fees, and commissions received from all sources in connection
27 with the provision of administrative services for the health carrier,
28 including any fees or commissions paid by insurers providing
29 reinsurance.

30 NEW SECTION. Sec. 10. Any policies, certificates, booklets,
31 termination notices, or other written communications delivered by the
32 health carrier to the administrator for delivery to insured parties or
33 covered individuals shall be delivered by the administrator promptly
34 after receipt of instructions from the health carrier to deliver them.

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

5 (2) Applicants to be an administrator shall make an application to
6 the commissioner upon a form to be furnished by the commissioner. The
7 application shall include or be accompanied by the following
8 information and documents:

9 (a) All basic organizational documents of the administrator,
10 including any articles of incorporation, articles of association,
11 partnership agreement, trade name certificate, trust agreement,
12 shareholder agreement, and other applicable documents and all
13 amendments to those documents;

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

16 (c) The names, addresses, official positions, and professional
17 qualifications of the individuals who are responsible for the conduct
18 of affairs of the administrator, including all members of the board of
19 directors, board of trustees, executive committee, or other governing
20 board or committee; the principal officers in the case of a corporation
21 or the partners or members in the case of a partnership, association,
22 or limited liability company; shareholders or members holding directly
23 or indirectly ten percent or more of the voting stock, voting
24 securities, or voting interest of the administrator; and any other
25 person who exercises control or influence over the affairs of the
26 administrator;

27 (d) Audited annual financial statements or reports for the two most
28 recent years that prove that the applicant is solvent and any
29 information the commissioner may require in order to review the current
30 financial condition of the applicant;

31 (e) A statement describing the business plan including information
32 on staffing levels and activities proposed in this state and
33 nationwide. The plan must provide details setting forth the
34 administrator's capability for providing a sufficient number of
35 experienced and qualified personnel in the areas of claims processing,
36 recordkeeping, and underwriting;

37 (f) If the applicant will be managing the solicitation of new or
38 renewal business, proof that it employs or has contracted with an agent
39 licensed by this state for solicitation and taking of applications.

1 Any applicant that intends to directly solicit insurance contracts or
2 to otherwise act as an insurance agent must provide proof that it has
3 a license as an insurance agent in this state;

4 (g) Any other pertinent information as may be required by the
5 commissioner; and

6 (h) An application fee of two hundred fifty dollars which shall be
7 deposited to the insurance commissioner's regulatory account under RCW
8 48.02.190.

9 (3) The applicant shall make available for inspection by the
10 commissioner copies of all contracts with health carriers or other
11 persons utilizing the services of the administrator.

12 (4) The administrator shall produce its accounts, records, and
13 files for examination, and make its officers available to give
14 information with respect to its affairs, as often as reasonably
15 required by the commissioner. An examination of an administrator by
16 the commissioner or by examiners designated by the commissioner shall
17 be at the expense of the administrator being examined. The
18 administrator examined and liable therefore shall reimburse the state
19 upon presentation of an itemized statement thereof, for the actual
20 travel expenses of the commissioner's examiners, their reasonable
21 living allowance, and their per diem compensation, including salary and
22 the employer's cost of employee benefits, at a reasonable rate approved
23 by the commissioner, incurred on account of the examination.

24 (5) The commissioner may refuse to issue a certificate of authority
25 if the commissioner determines that the administrator, or any
26 individual responsible for the conduct of affairs of the administrator
27 under subsection (2)(c) of this section, is not competent, trustworthy,
28 financially responsible, or of good personal and business reputation,
29 or has had an insurance or an administrator license denied or revoked
30 for cause by any state, or if the commissioner determines that any of
31 the grounds set forth in section 14 of this act exist with respect to
32 the administrator.

33 (6) A certificate of authority issued under this section shall
34 remain valid, unless surrendered, suspended, or revoked by the
35 commissioner, for so long as the administrator continues in business in
36 this state and remains in compliance with this chapter.

37 (7) An administrator is not required to hold a certificate of
38 authority as an administrator in this state if all of the following
39 conditions are met:

1 (a) The administrator has its principal place of business in
2 another state;

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

5 (c) In the case of any group policy or plan of insurance serviced
6 by the administrator, fewer than one hundred certificate holders reside
7 in this state.

8 (8) A person is not required to hold a certificate of authority as
9 an administrator in this state if the person exclusively provides
10 services to one or more bona fide employee benefit plans each of which
11 is established by an employer or an employee organization, or both, and
12 for which the insurance laws of this state are preempted by the
13 Employee Retirement Income Security Act of 1974. These persons shall
14 register with the commissioner annually, verifying their status.

15 (9) An administrator shall notify the commissioner within fifteen
16 days of any material change in its ownership, control, or other fact or
17 circumstance affecting its qualification for a certificate of authority
18 in this state.

19 NEW SECTION. **Sec. 12.** Upon request from an administrator, the
20 commissioner may waive the application requirements of section 11(2) of
21 this act if the administrator has a valid certificate of authority as
22 an administrator issued in a state that has standards for
23 administrators that are at least as stringent as those contained in
24 this act.

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

31 (2) The annual report shall include the complete names and
32 addresses of all health carriers with which the administrator had an
33 agreement during the preceding fiscal year.

34 (3) At the time of filing its annual report, the administrator
35 shall pay a filing fee of two hundred dollars, which shall be deposited
36 to the insurance commissioner's regulatory account under RCW 48.02.190.

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

4 (a) Is in an unsound financial condition;

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

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

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

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

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

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

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

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

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

36 (g) Has had any of its principal directors or officers convicted
37 of, or has entered a plea of guilty or nolo contendere to, a felony
38 without regard to whether adjudication was withheld;

39 (h) Is under suspension or revocation in another state; or

1 (i) Has failed to timely file its annual report and pay its annual
2 filing fee under section 13 of this act.

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

7 (a) The administrator is insolvent or impaired;

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

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

14 (4) If the commissioner finds that one or more grounds exist for
15 the suspension or revocation of an administrator's certificate of
16 authority, the commissioner may, in lieu of suspension or revocation,
17 impose a fine upon the administrator.

18 NEW SECTION. **Sec. 15.** The commissioner may adopt rules to
19 implement and administer this chapter.

20 NEW SECTION. **Sec. 16.** This act takes effect January 1, 2002.

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

25 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
26 constitute a new chapter in Title 48 RCW.

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