
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1728

State of Washington

57th Legislature

2001 Regular Session

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

Read first time 03/08/2001. 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 12 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;
- 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; or
- 37 (o) A group of health care providers who adjust or settle the
38 claims of only the providers in the group or under contract with the
39 group.

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

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

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

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

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

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

26 NEW SECTION. **Sec. 2.** Each carrier is accountable for and must
27 oversee any activities performed by an administrator on its behalf to
28 ensure compliance with chapter 5, Laws of 2000. No contract with an
29 administrator may relieve the health carrier of its obligations to any
30 enrollee for the provision of health care services or of its
31 responsibility for compliance with statutes or rules.

32 NEW SECTION. **Sec. 3.** (1) An administrator shall not act as an
33 administrator without a written agreement between the administrator and
34 the health carrier, and the written agreement shall be retained as part
35 of the official records of both the health carrier and the
36 administrator for the duration of the agreement and for seven years
37 thereafter. The agreement shall contain all provisions required by

1 this chapter, except insofar as those requirements do not apply to the
2 functions performed by the administrator.

3 (2) The written agreement shall include a statement of duties that
4 the administrator is expected to perform on behalf of the health
5 carrier and the lines, classes, or types of insurance for which the
6 administrator is to be authorized to administer. The agreement shall
7 make provision with respect to underwriting or other standards
8 pertaining to the business underwritten by the health carrier.

9 (3) The health carrier or administrator may, with written notice,
10 terminate the written agreement for cause as provided in the agreement.
11 The health carrier may suspend the underwriting authority of the
12 administrator during the pendency of any dispute regarding the cause
13 for termination of the written agreement. The health carrier must
14 fulfill any lawful obligations with respect to policies affected by the
15 written agreement, regardless of any dispute between the health carrier
16 and the administrator.

17 NEW SECTION. **Sec. 4.** If a health carrier utilizes the services of
18 an administrator, the payment to the administrator of any premiums or
19 charges for insurance by or on behalf of the insured party is deemed to
20 have been received by the health carrier, and the payment of return
21 premiums or claim payments forwarded by the health carrier to the
22 administrator is not to be deemed to have been paid to the insured
23 party or claimant until the payments are received by the insured party
24 or claimant. Nothing in this section limits any right of the health
25 carrier against the administrator resulting from the failure of the
26 administrator to make payments to the health carrier, insured parties,
27 or claimants.

28 NEW SECTION. **Sec. 5.** (1) Every administrator shall maintain and
29 make available to the health carrier complete books and records of all
30 transactions performed on behalf of the health carrier. The books and
31 records shall be maintained in accordance with prudent standards of
32 insurance recordkeeping and must be maintained for a period of not less
33 than seven years from the date of their creation, and until the books
34 and records have been examined by the commissioner.

35 (2) The commissioner has access to books and records maintained by
36 an administrator for the purposes of examination, audit, and
37 inspection. Any trade secrets contained in the books and records,

1 including the identity and addresses of policyholders and certificate
2 holders, shall be kept confidential, except that the commissioner may
3 use the information in any proceeding instituted against the
4 administrator.

5 (3) The commissioner may receive documents, materials, or
6 information, including otherwise confidential and privileged documents,
7 materials, or information, from the national association of insurance
8 commissioners, its affiliates or subsidiaries, and from regulatory and
9 law enforcement officials of other states and nations and of the
10 federal government, and shall maintain as confidential or privileged
11 any document, material, or information received with notice or the
12 understanding that it is confidential or privileged under the laws of
13 the jurisdiction that is the source of the document, material, or
14 information, except that the commissioner may use the documents,
15 materials, or information in any proceeding instituted against the
16 administrator. The commissioner may enter into agreements governing
17 the sharing and use of information consistent with this subsection.

18 (4) The health carrier owns the records generated by the
19 administrator pertaining to the health carrier. However, the
20 administrator retains the right to continuing access to books and
21 records to permit the administrator to fulfill all of its contractual
22 obligations to insured parties, claimants, and the health carrier.

23 (5) In the event the health carrier and the administrator cancel
24 their agreement, notwithstanding the provisions of subsection (1) of
25 this section, the administrator may, by written agreement with the
26 health carrier, transfer all records to a new administrator rather than
27 retain them for seven years. In these cases, the new administrator
28 shall acknowledge, in writing, that it is responsible for retaining the
29 records of the prior administrator as required in subsection (1) of
30 this section.

31 NEW SECTION. **Sec. 6.** An administrator may use only advertising
32 pertaining to the business underwritten by a health carrier that has
33 been approved in writing by the health carrier in advance of its use.

34 NEW SECTION. **Sec. 7.** (1) If a health carrier utilizes the
35 services of an administrator, the health carrier is responsible for
36 determining the benefits, premium rates, underwriting criteria and
37 claims payment procedures applicable to the coverage and for securing

1 reinsurance, if any. The health carrier must provide the rules
2 pertaining to these matters, in writing, to the administrator. The
3 responsibilities of the administrator as to any of these matters shall
4 be set forth in the written agreement between the administrator and the
5 health carrier.

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

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

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

26 (2) If charges or premium deposited in a fiduciary account have
27 been collected on behalf of or for one or more health carriers, the
28 administrator shall keep records clearly recording the deposits in and
29 withdrawals from the account on behalf of each health carrier. The
30 administrator shall keep copies of all the records and, upon request of
31 a health carrier, shall furnish the health carrier with copies of the
32 records pertaining to the deposits and withdrawals.

33 (3) The administrator shall not pay any claim by withdrawals from
34 a fiduciary account in which premium or charges are deposited.
35 Withdrawals from a fiduciary account shall be made as provided in the
36 written agreement between the administrator and the health carrier.
37 The written agreement shall address, but not be limited to, the
38 following:

- 1 (a) Remittance to a health carrier entitled to remittance;
2 (b) Deposit in an account maintained in the name of the health
3 carrier;
4 (c) Transfer to and deposit in a claims-paying account, with claims
5 to be paid as provided for in subsection (4) of this section;
6 (d) Payment to the administrator of its commissions, fees, or
7 charges; and
8 (e) Remittance of a return premium to the person or persons
9 entitled to such return premium.

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

13 NEW SECTION. **Sec. 9.** (1) An administrator shall not enter into an
14 agreement or understanding with a health carrier in which the effect is
15 to make the amount of the administrator's commissions, fees, or charges
16 contingent upon savings effected in the adjustment, settlement, and
17 payment of losses covered by the health carrier's obligations. This
18 provision shall not prohibit an administrator from receiving
19 performance-based compensation for providing hospital or other auditing
20 services.

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

24 NEW SECTION. **Sec. 10.** (1) When the services of an administrator
25 are utilized, the administrator shall provide a written notice approved
26 by the health carrier to covered individuals advising them of the
27 identity of, and relationship among, the administrator, the
28 policyholder, and the health carrier.

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

32 (3) The administrator shall disclose to the health carrier all
33 charges, fees, and commissions received from all sources in connection
34 with the provision of administrative services for the health carrier,
35 including any fees or commissions paid by insurers providing
36 reinsurance.

1 NEW SECTION. **Sec. 11.** Any policies, certificates, booklets,
2 termination notices, or other written communications delivered by the
3 health carrier to the administrator for delivery to insured parties or
4 covered individuals shall be delivered by the administrator promptly
5 after receipt of instructions from the health carrier to deliver them.

6 NEW SECTION. **Sec. 12.** (1) A person shall not act, or offer to act
7 as, or hold himself or herself out to be an administrator in this state
8 or with residents of this state without a valid certificate of
9 authority as an administrator issued by the commissioner.

10 (2) Applicants to be an administrator shall make an application to
11 the commissioner upon a form to be furnished by the commissioner. The
12 application shall include or be accompanied by the following
13 information and documents:

14 (a) All basic organizational documents of the administrator,
15 including any articles of incorporation, articles of association,
16 partnership agreement, trade name certificate, trust agreement,
17 shareholder agreement, and other applicable documents and all
18 amendments to those documents;

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

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

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

36 (e) A statement describing the business plan including information
37 on staffing levels and activities proposed in this state and
38 nationwide. The plan must provide details setting forth the

1 administrator's capability for providing a sufficient number of
2 experienced and qualified personnel in the areas of claims processing,
3 recordkeeping, and underwriting;

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

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

12 (h) An application fee of two hundred fifty dollars which shall be
13 deposited to the insurance commissioner's regulatory account under RCW
14 48.02.190.

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

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

30 (5) The commissioner may refuse to issue a certificate of authority
31 if the commissioner determines that the administrator, or any
32 individual responsible for the conduct of affairs of the administrator
33 under subsection (2)(c) of this section, is not competent, trustworthy,
34 financially responsible, or of good personal and business reputation,
35 or has had an insurance or an administrator license denied or revoked
36 for cause by any state, or if the commissioner determines that any of
37 the grounds set forth in section 15 of this act exist with respect to
38 the administrator.

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

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

8 (a) The administrator has its principal place of business in
9 another state;

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

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

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

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

26 NEW SECTION. **Sec. 13.** Upon request from an administrator, the
27 commissioner may waive the application requirements of section 12(2) of
28 this act if the administrator has a valid certificate of authority as
29 an administrator issued in a state that has standards for
30 administrators that are at least as stringent as those contained in
31 this act.

32 NEW SECTION. **Sec. 14.** (1) Each administrator shall file an annual
33 report for the preceding calendar year with the commissioner before
34 March 1st of each year, or within an extension of time the commissioner
35 for good cause may grant. The report shall be in the form and contain
36 those matters the commissioner prescribes and shall be verified by at
37 least two officers of the administrator.

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

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

7 NEW SECTION. **Sec. 15.** (1) The certificate of authority of an
8 administrator shall be denied, nonrenewed, suspended, or revoked if the
9 commissioner finds that the administrator:

10 (a) Is in an unsound financial condition;

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

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

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

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

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

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

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

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

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

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

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

8 (i) Has failed to timely file its annual report and pay its annual
9 filing fee under section 14 of this act.

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

14 (a) The administrator is insolvent or impaired;

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

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

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

25 NEW SECTION. **Sec. 16.** The commissioner may adopt rules to
26 implement and administer this chapter.

27 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2002.

28 NEW SECTION. **Sec. 18.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 19.** Sections 1 through 18 of this act
33 constitute a new chapter in Title 48 RCW.

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