

Committee Substitute for Senate Bill No. 1432

An act relating to insurance administrators; amending s. 626.88, F.S.; redefining the term “administrator” and defining the terms “affiliate,” “control,” and “GAAP”; amending s. 626.8805, F.S.; requiring additional information to accompany an application for a certificate of authority to act as an administrator; amending s. 626.8817, F.S.; detailing the responsibilities of an insurance company in its dealings with an administrator; amending s. 626.89, F.S.; prescribing information that must be submitted in an administrator’s annual report; authorizing the Financial Services Commission to require electronic submission of annual reports; creating s. 626.8991, F.S.; authorizing the commission to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 626.88, Florida Statutes, is amended to read:

626.88 Definitions of “~~administrator~~” and “~~insurer~~”.—

(4) For the purposes of this part, the term:

(1) ~~an~~ “Administrator” is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1) or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, other than any of the following persons:

(a) An employer or wholly owned direct or indirect subsidiary of an employer, on behalf of such employer’s employees or the employees of one or more subsidiary or affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

(e) An entity that is affiliated with an insurer and that only performs the contractual duties, between the administrator and the insurer, of an admin-

istrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

(f) A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

(g)(e) An insurance agent licensed in this state whose activities are limited exclusively to the sale of insurance.

(h) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

(i)(f) An adjuster licensed in this state whose activities are limited to the adjustment of claims.

(j)(g) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(k)(h) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. s. 186.

(l)(i) A trust exempt from taxation under s. 501(a) of the Internal Revenue Code, a trust satisfying the requirements of ss. 624.438 and 624.439, or any governmental trust as defined in s. 624.33(3), and the trustees and employees acting pursuant to such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of s. 401(f) of the Internal Revenue Code.

(m)(j) A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

(n)(k) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

(o)(l) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage.

~~(p)(m)~~ A person approved by the department who administers only self-insured workers' compensation plans.

~~(q)(n)~~ A service company or service agent and its employees, authorized in accordance with ss. 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

~~(r)(o)~~ Any provider or group practice, as defined in s. 456.053, providing services under the scope of the license of the provider or the member of the group practice.

~~(s)(p)~~ Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and providing services under the scope of its license.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with the provisions of ss. 627.6131, 641.3155, and 641.51(4).

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

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership or voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person.

(4) "GAAP" means United States generally accepted accounting principles consistently applied.

~~(5)(2) For the purposes of this part, an "Insurer" includes an authorized commercial self-insurance fund and includes any person undertaking to provide life or health insurance coverage or coverage of any of the other expenses described in s. 624.33(1).~~

Section 2. Subsection (2) of section 626.8805, Florida Statutes, is amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(a) All basic organizational documents of the administrator, such as the articles of incorporation, articles of association, partnership agreement,

trade name certificate, trust agreement, shareholder agreement, and other applicable documents, and all amendments to those documents.

(b) The bylaws, rules, and regulations or similar documents regulating the conduct or the internal affairs of the administrator.

(c) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association, and any other person who exercises control or influence over the affairs of the administrator.

(d) Audited annual financial statements for the 2 most recent fiscal years which prove that the applicant has a positive net worth. If the applicant has been in existence for less than 2 fiscal years, the application must include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial statement or report prepared on a consolidated basis must include a columnar consolidating or combining worksheet that shall be filed with the report and must comply with the following:

1. Amounts shown on the consolidated audited financial report must be shown on the worksheet;

2. Amounts for each entity shall be stated separately; and

3. Explanations of consolidating and eliminating entries.

~~The applicant shall also include such other information as the office requires in order to review the current financial condition of the applicant. Annual statements or reports for the 3 most recent years, or such other information as the office may require in order to review the current financial condition of the applicant.~~

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

~~(f)~~(e) If the applicant is not currently acting as an administrator, a statement of the amounts and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other principals.

Section 3. Section 626.8817, Florida Statutes, is amended to read:

626.8817 Responsibilities of insurance company with respect to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

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

(3) In cases in which an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an on-site audit of the operations of the administrator.

(4) For purposes of this section, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic. As to the administration of coverage insured by an insurance company, the insurance company, and not the administrator, shall be responsible for determining the benefits, rates, underwriting criteria, and claims payment procedures applicable to such coverage and for securing reinsurance, if any.

Section 4. Section 626.89, Florida Statutes, is amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before March 1 or within such extension of time therefor as the office for good cause may have granted and shall be for the preceding calendar year. The statement shall be in such form and contain such matters as the commission prescribes and shall be verified by at least two officers of such administrator.

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office on or before June 1 for the preceding calendar year ending December 31. An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:

(a) Amounts shown on the consolidated audited financial statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

(3)(2) At the time of filing its annual statement, the administrator shall pay a filing fee in the amount specified in s. 624.501 for the filing of an annual statement by an insurer.

(4)(3) In addition, the administrator shall immediately notify the office of any material change in its ownership.

(5) The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with the electronic-data format specified by the commission.

Section 5. Section 626.8991, Florida Statutes, is created to read:

626.8991 Adoption of rules.—The commission may adopt rules necessary to administer this part.

Section 6. This act shall take effect October 1, 2005.

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.