

CHAPTER 26.1-27

ADMINISTRATORS OF LIFE OR HEALTH INSURANCE OR ANNUITIES

26.1-27-01. Administrator defined.

In this chapter, "administrator" means any person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than:

1. An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations or limited liability companies of the employer.
2. A union on behalf of its members.
3. An insurance company, health maintenance organization, or nonprofit health service corporation either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or prepaid health care plan, including its sales representatives licensed in this state when engaged in the performance of their duties as such.
4. A life or health insurance producer licensed in this state, whose activities are limited exclusively to the sale of insurance.
5. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.
6. A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186.
7. A trust exempt from taxation under section 501(a) of the federal Internal Revenue Code of 1954, as amended, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the federal Internal Revenue Code of 1954, as amended.
8. A financial institution subject to supervision or examination by federal or state banking authorities.
9. A credit card issuing company that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided the company does not adjust or settle claims.
10. A person who adjusts or settles claims in the normal course of practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

26.1-27-01.1. Pharmacy benefits manager.

A pharmacy benefits manager, as defined under section 26.1-27.1-01, is an administrator for purposes of this chapter.

26.1-27-02. Insurer defined.

In this chapter, "insurer" means any person, including a self-insurer, engaged as a principal in the business of annuities or life or health insurance.

26.1-27-03. Certificate of authority required - Penalty.

1. A person, including a person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health coverage provided by a self-funded plan, may not act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a certificate of authority issued by the commissioner. Any person violating this subsection is guilty of a class C felony.
2. All applications must be accompanied by a filing fee of one hundred dollars.
3. The commissioner shall issue a certificate unless the commissioner after due notice and hearing determines that the administrator is not competent, trustworthy, financially

responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.

4. The administrator shall pay an annual renewal fee of fifty dollars to maintain the certificate.
5. After notice and hearing, the commissioner may revoke a certificate or fine the administrator not more than ten thousand dollars, or both, or the commissioner may suspend a certificate, or fine the administrator not more than five thousand dollars, or both, upon finding that either the administrator violated section 26.1-27-05 and subsection 4 of section 26.1-27-06 and also violated subsection 1, 2, or 3 of section 26.1-27-06 or section 26.1-27-07, 26.1-27-08, 26.1-27-10, 26.1-27-11, or 26.1-27-12, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

26.1-27-03.1. Bond or insurance requirement.

An administrator that administers or will administer self-insured plans in this state shall maintain a surety bond or proof of insurance satisfactory to the commissioner for the use and benefit of the commissioner for covered persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the greater of the following amounts:

1. One hundred thousand dollars; or
2. Ten percent of the aggregate total amount of administered coverage under the plans handled in this state.

26.1-27-04. Waiving of registration requirements.

Repealed by S.L. 2005, ch. 268, § 3.

26.1-27-05. Written agreement required - Trust agreement - Retention.

No person may act as an administrator without a written agreement between the administrator and the insurer. The administrator and the insurer shall retain the written agreement as part of their official records for the duration of the agreement and five years thereafter. When a policy is issued to a trustee or trustees, the administrator shall furnish a copy of the trust agreement and any amendments thereto to the insurer. The administrator and the insurer shall retain a copy of the trust agreement, with amendments, as part of their official records for the duration of the policy and five years thereafter.

26.1-27-06. Contents of agreement - Requirements.

The agreement between the administrator and the insurer must contain:

1. A provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.
2. A provision that the administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.
3. A provision that withdrawals from the fiduciary account may be made only for:
 - a. Remittance to an insurer entitled thereto.
 - b. Deposit in an account maintained in the name of the insurer.
 - c. Transfer to and deposit in a claims paying account, with claims to be paid as provided in section 26.1-27-10.
 - d. Payment to a group policyholder for remittance to the insurer entitled thereto.
 - e. Payment to the administrator of its commission, fees, or charges.
 - f. Remittance of return premiums to the person or persons entitled thereto.
4. Provisions which include the requirements of sections 26.1-27-08, 26.1-27-10, 26.1-27-11, and 26.1-27-12 except insofar as those requirements do not apply to the functions performed by the administrator.

26.1-27-07. Notification required.

When the services of an administrator are used, the administrator shall provide a written notice approved by the insurer, to insureds, advising them of the identity of and relationship among the administrator, the policyholder, and the insurer. When an administrator collects funds, it shall identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for the insurance coverage.

26.1-27-08. Premium collection - Fiduciary account required.

All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers, and return premiums received from such insurer or insurers, must be held by the administrator in a fiduciary capacity. The funds must be immediately remitted to the person or persons entitled thereto, or must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of such records pertaining to deposits and withdrawals on behalf of or for the insurer. The administrator may not pay any claim by withdrawals from the fiduciary account.

26.1-27-09. Payment to administrator.

Whenever an insurer uses the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator is not deemed payment to the insured or claimant until the payment is received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from its failure to make payments to the insurer, insureds, or claimants.

26.1-27-10. Payment of claims.

All claims paid by the administrator from funds collected on behalf of the insurer may be paid only on drafts of and as authorized by the insurer.

26.1-27-11. Claim adjustment or settlement.

With respect to any policies when an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies may not be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

26.1-27-12. Maintenance of information.

Every administrator shall maintain at its principal administrative office for the duration of the written agreement and five years thereafter adequate books and records of all transactions between it, insurers, and insureds. The books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained therein, including the identity and addresses of policyholders and certificate holders, are confidential, except the commissioner may use such information in any proceedings instituted against the administrator. The insurer shall retain the right to continuing access to the books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the books and records.