

CHAPTER 4 ADMINISTRATORS

Section 1. **Authority**

These regulations governing insurers' relationships with administrators supplement the provisions of W.S. 26-1-102(a)(xxx), W.S. 26-1-103, W.S. 26-2-109(a)(ii), W.S. 26-2-109(a)(v), W.S. 26-2-116, W.S. 26-2-117, W.S. 26-2-118, W.S. 26-2-120, W.S. 26-3-111(e), W.S. 26-3-116(b)(i), W.S. 26-3-116(b)(ii), W.S. 26-3-116(b)(iv), W.S. 26-9-102, W.S. 26-13-101 through W.S. 26-13-202, and W.S. 26-15-101 through W.S. 26-15-134. These are promulgated by authority of and pursuant to the Wyoming Administrative Procedures Act (W.S. 16-3-101 through W.S. 16-3-115) and the Wyoming Insurance Code (W.S. 26-2-109 and W.S. 26-2-110).

Section 2. **Purpose**

The purpose of these 2 is to provide for a regulatory scheme for administrators which will impose order, responsibility and accountability upon the insurers in this growing field of insurance which has lacked control or direction.

Section 3. **Administrator Defined**

Wherever the term "administrator" is used in these regulations, it shall be defined as any person who collects charges or premiums from, or who pays or settles claims on, residents of this state in connection with insurance coverage or annuities other than:

- (a) an employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of such employer,
- (b) a union on behalf of its members,
- (c) a fully self-funded insurance plan meeting the definition of employee benefit plan as set forth in the Employee Retirement Income Security Act of 1974 (ERISA),
- (d) an insurance company which is licensed in this state,
- (e) a prepaid hospital or medical care plan,
- (f) an insurance agent or broker licensed in this state acting as such,
- (g) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors,
- (h) a bank, credit union or other financial institution which is subject to supervision or examination by federal or state banking authorities when acting as a bank, credit union or other financial institution and not as an administrator,
- (i) a credit card issuing company which advances for and collects premiums or charges from

its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims, or

(j) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law or an adjuster licensed in this state and who does not collect charges or premiums in connection with insurance coverage or annuities.

Section 4. **Written Agreement Necessary**

(a) No insurer shall allow an administrator to act as such for the insurer without a written agreement between the administrator and the insurer, and such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and three (3) years thereafter. Such written agreement shall contain provisions which include the requirements of Sections 4 through 13 of these regulations, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) Where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be required by the insurer to be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and three (3) years thereafter.

Section 5. **Payment to Administrator**

Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in Section 4, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured, certificate holder or claimant until such payments are received by the insured, certificate holder or claimant. Nothing herein shall limit any right of the insurer against the administrator resulting from its failure to make payments to the insurer, insureds or claimants.

Section 6. **Maintenance of Information**

The insurer shall require every administrator acting for the insurer to maintain at its principal administrative office for the duration of the written agreement referred to in Section 4 and three (3) years thereafter adequate books and records of all transactions between the administrator, insurers and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping. The commissioner shall have access to such books and records for the purpose of examination, audit and inspection. The insurer shall retain the right to continuing access to such 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 such books and records. Nothing herein shall relieve the insurer of its obligation to maintain books and records of all its insurance transactions for the purpose of examination, audit and inspection by the commissioner.

Section 7. **Approval of Advertising**

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved in writing by such insurer in advance of its use.

Section 8. Underwriting Provision

The agreement shall make provision for and specify the underwriting or other standards pertaining to the business underwritten by such insurer.

Section 9. Premium Collection

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, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled thereto, or shall 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, both insurers shall require the administrator to cause the bank in which such fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The insurer shall require the administrator to promptly obtain and keep copies of all such records and, upon request of an insurer, to furnish such insurer with copies of such records pertaining to deposits and withdrawals on behalf of or for such insurer. The administrator shall not be authorized by the insurer to pay any claim by withdrawals from such fiduciary account. Withdrawals from such account shall be made, as provided in the written agreement between the administrator and the insurer, for:

- (a) remittance to an insurer entitled thereto;
- (b) deposit in an account maintained in the name of such insurer;
- (c) transfer to and deposit in a claims paying account, with claims to be paid as provided in Section 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; or
- (f) remittance of return premiums to the person or persons entitled thereto.

Section 10. Payment of Claims

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

Section 11. Claim Adjustment/Settlement

With respect to any policies where an administrator pays or settles claims, the compensation to the administrator with regard to such policies shall in no way be contingent on claim experience. This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed. Receipt by the administrator of claims, proofs of loss and support-

ing evidence shall be deemed receipt by the insurer.

Section 12. **License Requirements**

(a) No administrator shall solicit applications for insurance or annuities for an insurer, negotiate insurance or annuities on its behalf, or carry out and countersign insurance policies unless licensed in this state as an agent.

(b) No administrator shall, on behalf of any insured, for compensation or fee, solicit, negotiate, or procure insurance or the renewal or continuance thereof for insureds or prospective insureds unless licensed in this state as a broker.

(c) No administrator shall adjust claims in this state for an insurer by investigating and negotiating settlements unless licensed in this state as an attorney at law, an adjuster, or an agent or broker who adjusts or assists in adjustment of losses arising under policies issued by the insurers represented by that agent or through that broker. Nothing herein shall be interpreted as to prohibit an administrator from engaging in ministerial or clerical activities relating to the payment of claims.

Section 13. **Notification Required**

Where the services of an administrator are utilized, the insurer shall require the administrator to provide a written notice approved by the insurer, to insured individuals, advising them of the identity of and relationship among the administrator, the policyholder and the insurer. Where an administrator collects funds, it must be required by the insurer to 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 such insurance coverage.

Section 14. **Certificate of Registration; Required**

No insurer shall transact the business of insurance in this state through an administrator unless such administrator has been registered and appointed by the insurer with the insurance department and the commissioner has issued a certificate of registration to said administrator.

Section 15. **Same; Filing**

(a) Every insurer transacting the business of insurance in this state through an administrator shall register and appoint said administrator with the insurance department on forms provided by the insurance department. In registering and appointing an administrator the insurer shall certify to the commissioner that:

- (i) the administrator is competent, trustworthy, financially responsible and of good reputation;
- (ii) the administrator is the insurer's representative and is authorized to perform those functions which the insurer shall describe in writing to the insurance commissioner;
- (iii) the insurer agrees that any violation of the Wyoming Insurance Code, any lawful

rule or final order of the commissioner or any final judgment or decree made by any court committed by the administrator while acting within its apparent scope of authority for the insurer shall be deemed to be a violation of said code by the insurer.

(b) Every insurer transacting business through an administrator shall file with the commissioner a copy of the bond or certificate of deposit required in Section 17.

(c) After completion of the registration, if the commissioner finds the administrator meets the requirements of the Wyoming Insurance Code and these regulations, he shall promptly issue to the administrator a certificate of registration and shall provide a copy of said certificate to the insurer.

Section 16. **Same; Continuation**

(a) A certificate of registration issued under these regulations shall continue in force until expired, suspended, revoked or otherwise terminated, if the insurer's written request for continuation is received by the commissioner on or before March 31 annually.

(b) Any certificate of registration referred to in subsection (a) of this section is considered expired if the commissioner does not receive the request for continuation by midnight March 31.

Section 17. **Same; Bond**

(a) Every insurer shall post a bond (not in an affiliated company), in a form acceptable to the commissioner, or a cash deposit in this state for each administrator it registers. The amount of the bond or deposit shall be not less than ten (10) per centum of the amount of total funds handled. No bond or deposit may be for less than one thousand dollars (\$1,000) nor more than five hundred thousand dollars (\$500,000) unless a larger amount is deemed by the commissioner to be necessary for the protection of the insurer's policyholders in this state. For purposes of fixing the amount of such bond or deposit, the amount of funds handled shall be determined by the total funds handled by the administrator during the preceding year, or if no funds were handled during the preceding year, the amount of funds reasonably estimated to be handled during the current licensing year by the administrator. Such bond or deposit shall provide protection to the insurer's policyholders or insureds in this state against loss by reason of acts of fraud or dishonesty and negligence by the administrator.

(b) The commissioner may waive the requirement that an insurer post a bond or deposit for any insurer if he deems such bond or deposit unnecessary for the protection of the insurer's policyholders in this state. The commissioner may consider the insurer's financial status, the administrator's experience or any other relevant factor in determining whether he shall waive the requirements for a bond or deposit.

Section 18. **Penalties**

Any violation of these regulations shall be punishable under the provisions of W.S. 26-1-107, W.S. 26-3-116 and W.S. 26-9-136.

Section 19. **Severability**

If any provision of these regulations or the application thereof to any person or circumstance is for

any reason held to be invalid, the remainder of these regulations and the application of such provision to other persons and circumstances shall not be affected thereby.

Section 20. **Effective Date**

These regulations become effective on November 1, 1984.