

3901-8-05

Regulation of third party administrators.**(A) Authority and purpose**

Authority. Section 3901.041 of the Revised Code provides that the superintendent of insurance shall adopt, amend, and rescind rules and make adjudications necessary to discharge his duties and exercise his powers under Title XXXIX of the Ohio Revised Code. This rule is promulgated under authority to provide for the regulation of third party administrators authorized by sections 3959.01 to 3959.16, and 3959.99 of the Revised Code.

Purpose. Sections 3959.01 to 3959.16 and 3959.99 of the Revised Code establish regulatory standards for third party administrators. The purpose of this rule is to define the additional standards and procedures the superintendent of insurance has adopted.

(B) Definitions. As used in this rule:

(1) "Third party administrator" means any person that adjusts or settles claims in connection with life, dental, vision, health or disability insurance plans, self-insurance programs or other benefit plans for a sponsor of a plan if either the sponsor or the plan is domiciled in this state or has its principal headquarters or principal administrative offices in this state.

"Third party administrator" does not include any of the following:

(a) An insurance agent or solicitor licensed in this state whose activities are limited exclusively to the sale of insurance and who does not provide any administrative services;

(b) Any person who administers or operates exclusively the workers' compensation program of an employer who has been granted self-insurance status pursuant to section 4123.35 of the Revised Code;

(c) Any person who administers pension plans for the benefit of its own members or employees or administers pension plans for the benefit of the members or employees of any other person;

(d) Any person that administers an insured plan, a self-insurance program, or other benefit plans in connection with life, vision, dental, health, or disability benefits exclusively for the person's own members or employees; and

(e) Any health insuring corporation organized under Chapter 1751. of the Revised Code, or an insurance company that is authorized to write life or sickness and accident insurance in this state.

(2) "Administrative services" means services to adjust or settle claims.

- (3) "Adjusts or settles claims" means the investigation, adjustment, denial, settlement or payment of claims in connection with life, dental, vision, health or disability insurance plans, self-insurance programs or other benefit plans. For the purpose of this rule, self-insurance programs and benefit plans shall include those plans established under Section 125 of the Internal Revenue Code.
- (4) "Alien corporation" means any corporation whose place of origin is in any country other than the United States and its territories.
- (5) "Benefit plan" or "plan" means any arrangement in written form for the payment of life, dental, vision, health or disability benefits to covered persons as defined by the summary plan description. Government entities, excluding federal government, are considered sponsors of plans and government employee benefit plans are "plans" for the purposes of this rule.
- (6) "Plan participant" means any individual who is eligible to receive benefits through a plan or trust established by a plan sponsor.
- (7) "Person" includes, without limitation, a natural person, a corporation (whether nonprofit or for profit), a partnership, a limited liability company, a sole proprietor, an unincorporated society or association, and two or more third party administrators having a joint or common interest.
- (8) "Self-insurance Program" or "self-insured plan" means a program whereby an employer provides a plan of benefits for its employees without involving an intermediate insurance carrier to assume risk or pay claims. "Self-insurance program" and "self-insured plan" includes, but is not limited to, employer programs that pay claims up to a prearranged limited beyond which they purchase insurance coverage to protect the plan against unpredictable or catastrophic losses.
- (9) Other terms used herein shall have the same meanings prescribed in section 3959.01 of the Revised Code.

(C) Standards for licensing

For the protection of the people of this state, the superintendent shall not issue, nor permit to exist, any third party administrator's license unless the following standards are met to the satisfaction of the superintendent:

- (1) In lieu of testing, the applicant has satisfactorily completed all questions contained in the application for a third party administrator's license;
- (2) If a natural person, the applicant has attained the age of eighteen;

- (3) Neither the applicant nor any of its officers, directors, or partners has been convicted of a financially related felony;
- (4) Neither the applicant nor any of its officers, directors, or partners has had any license or application suspended, revoked, or denied for cause by this or any other state's insurance department;
- (5) The applicant has paid the fees prescribed in sections 3959.06 and 3959.10 of the Revised Code.

(D) Licensing requirements

- (1) No person, or domestic, foreign or alien corporation shall be, act as, or hold itself out to be a third party administrator in this state unless licensed as such by the superintendent. Only alien corporations that have established a domicile within the United States and its territories may be issued an Ohio third party administrator license.
- (2) If a foreign or alien corporation's or foreign person's United States state of domicile provides for licensing of third party administrators under statutes similar to Chapter 3959, such person must be licensed as such in its state of domicile and must satisfy the licensing requirements and all applicable Ohio statutes and regulations in order to receive a license in Ohio.
- (3) If a foreign or alien corporation's or foreign person's United States state of domicile does not provide for licensing of third party administrators, such person must provide proof from the domicile state that third party administrators are not required to be licensed in that state, and must satisfy the licensing requirements and all applicable Ohio statutes and regulations in order to receive a license in Ohio.
- (4) Any person in which a health insuring corporation or insurer holds an ownership interest or which is under common control with the health insuring corporation or insurer as defined in section 3901.32(B) of the Revised Code, any joint venture relationship, or any other arrangement through which the person provides administrative services on behalf of the health insuring corporation or insurer to residents of this state, or to a sponsor or plan that is domiciled in, or has its principal administrative offices within this state, shall not operate in this state as a third party administrator unless licensed as such by the superintendent.
- (5) All third party administrators shall demonstrate, to the satisfaction of the superintendent, that they have procured and maintained insurance and bonds in compliance with the requirements of section 3959.11(C) of the Revised Code. All third party administrators shall notify the superintendent of each renewal of required insurance policies and bonds and shall provide to the

superintendent satisfactory proof that all required coverage is in force.

(6) Any change of officers, directors, partners, members, or trustees, and any change of shareholders or other owners or members holding five per cent or more of ownership of a third party administrator, or any change of the business address of any third party administrator shall be reported on a form provided by the department of insurance and filed with the department of insurance within 15 days after the end of the month in which the change occurs.

(7) Requisition forms for all third party administrator licenses shall be available upon request from the department of insurance.

(8) The effective date of a third party administrator's license is that date on which the third party administrator is issued a license by the department.

(E) Application for license

The application for a third party administrator's license shall be accompanied by the following:

(1) A certificate of good standing from the Ohio secretary of state if a domestic corporation;

(2) A certificate of good standing from the secretary of state of the state of domicile, if a foreign or alien corporation;

(3) A statement that the third party administrator and its officers shall be responsible for the supervision of the actions of any and all personnel and subcontractors who adjust or settle claims on behalf of the third party administrator;

(4) A nonrefundable filing fee as described in section 3959.06 of the Revised Code; and

(5) Such other information as the superintendent may request.

(F) License renewal

In support of the application for license renewal, the third party administrator shall submit:

(1) Proof that all insurance and bonds required by section 3959.11(C) have been procured and are maintained continuously in force.

(2) A nonrefundable fee as described in section 3959.10 of the Revised Code.

- (3) If a foreign or alien corporation or foreign person, a copy of the current home state certification or its equivalent, dated within 90 days of the application, or a copy of the current license issued in the third party administrator's United States state of domicile;
- (4) If a foreign or alien corporation or a foreign person's United States state of domicile does not provide for licensing of third party administrators, such person must provide with each renewal application proof from the domicile state that third party administrators are not required to be licensed in that state. Renewal applicants with no home state license requirements must satisfy the licensing requirements and all applicable Ohio statutes and regulations in order to receive a license in Ohio.
- (5) If any change of officers, directors, partners, members, or trustees, or any change of shareholders or other owners or members holding five per cent or more of ownership of a third party administrator, or any change of the business address of any third party administrator has occurred and has not been previously reported to the department as set forth in section (D)(5) above, the third party administrator shall include the completed form provided by the superintendent.

(G) Service of legal process

Foreign or alien third party administrators are deemed to have irrevocably appointed the Ohio Secretary of State as agent for the acceptance of service of process issued in Ohio in any action or proceeding against the nonresident third party administrator arising out of such licensing or out of such transactions under the license.

(H) Prohibited activities

In addition to the prohibitions found in section 3959.14 of the Revised Code, the following will apply:

- (1) No third party administrator shall commingle among its personal assets, or draw against for its own purposes, any monies or contributions of a plan sponsor or plan participant. All monies of plan sponsors held by the third party administrator must be held in a separate trust account.
- (2) No third party administrator shall fail to remit insurance company premiums collected from the plan sponsor within the required policy period agreed to in writing between the insurance company or plan sponsor and the third party administrator;
- (3) No third party administrator shall place any insurance or reinsurance coverage on behalf of a plan sponsor with an insurer that is not licensed or an approved

surplus lines carrier in Ohio; and

- (4) No third party administrator shall advertise any of its insured business underwritten by an insurer unless approved in writing by such insurer in advance of its use.
- (5) No third party administrator shall withhold from a plan sponsor any claim data, information or statistics pertaining to the plan sponsor, or refuse to provide such claim information for any reason within a reasonable period of time not to exceed 14 days from the date of request.

(I) Solicitation and proposal documents

- (1) In addition to requirements found in division (B) of section 3959.14 of the Revised Code, any written proposal material provided to a prospective or existing plan sponsor shall include, but not be limited to, the following information:
- (a) In relation to any specific excess insurance or aggregate excess insurance, identification of all key terms of the policy, including but not limited to:
- (i) The name of the insurer.
- (ii) The amount of specific stop loss deductible and maximum benefit.
- (iii) The projected annual aggregate stop loss deductible, including monthly deductible factors per employee.
- (iv) The type of contract covering claims, including all provisions relevant to the period during which covered claims are to be incurred by the plan participants and the period during which covered claims must be paid by the plan claims administrator.
- (v) Any special contract provisions relevant to specified covered persons.
- (vi) Conditions under which the claims of any plan participants would not be covered by the contract at the date of issue or at some future date.
- (b) Identification by name, and description of the relationship and rate of compensation to be paid by the third party administrator to any outside individual or organization for services to be provided as a result of the third party administrator's relationship with the plan sponsor; and
- (c) Disclosure of any ownership interest or material business relationship that the third party administrator or any of its corporate officers, directors,

shareholders, partners or trustees have in any insurance, reinsurance, ultimate risk bearer, or any other business entity with which the third party administrator proposes to contract as a result of the third party administrator's relationship with the plan sponsor.

(2) The information outlined in paragraph (I)(1) of this rule must be provided in advance of each plan year that the third party administrator provides administrative services for a plan sponsor.

(J) Written agreements

(1) In addition to the requirements of section 3959.11 of the Revised Code, all written agreements must also contain, at a minimum, the following information:

(a) The types of books and records the third party administrator will keep on behalf of the plan sponsor;

(b) A statement to the effect that all records and files belong to the plan sponsor;

(c) A representation of the existence of the required fidelity bond as noted in paragraph (D)(5) of this rule;

(d) Disclosure of the existence of any stop loss insurance and the party responsible for procuring such insurance;

(e) Disclosure of any ownership interest or material business relationship between the third party administrator or its officers, directors, shareholders, partners, or trustees, and any insurance, reinsurance, other ultimate risk bearer, or any other business entity with which the third party administrator proposes to contract as a result of the third party administrator's relationship with the plan sponsor; and

(f) The method of collecting and holding any plan sponsor funds.

(2) Where a policy or contract is issued to a trust, trustee or trustees of a benefit plan, a copy of the trust agreement and any amendments thereto shall be furnished to the plan sponsor by the third party administrator and shall be retained as part of the official records of the third party administrator for the duration of the contract and at least five years thereafter.

(K) Written notice to plan participants when third party administrator's services are utilized

When the services of a third party administrator are utilized, the third party administrator shall provide a written notice to plan participants advising them of the

identity of and the relationship between the third party administrator, the plan sponsor, plan participant and any direct insurer.

(L) Books and records maintained by third party administrator

- (1) Every third party administrator shall maintain within its principal office or branch office, the customary books and records of all transactions and information relative to covered persons or beneficiaries as prescribed in section 3959.15 of the Revised Code.
- (2) The superintendent shall have access to the general business books, records and other information of the third party administrator, but not of the plan sponsor unless the plan sponsor is itself subject to the superintendent's jurisdiction for the purpose of examination, audit and inspection.
- (3) An insurer or plan sponsor who enters into a written agreement with a third party administrator shall have access to such books and records of the third party administrator as is reasonably necessary to permit the insurer or plan sponsor to fulfill all of its contractual obligations to insureds or plan participants.

(M) Annual reporting by third party administrator to plan sponsor; disclosures

- (1) All third party administrators shall prepare an annual report to be filed with the plan sponsor within ninety days following the end of the fiscal year of the plan. Annual reports must include:
 - (a) All information required in division (B) of section 3959.14 and division (I) of section 3959.15 of the Revised Code;
 - (b) Any additional information required by the written agreement; and
 - (c) The names of all insurance carriers providing any type of insurance coverage to the plan sponsor.
- (2) The third party administrator must list in such report any income received from any insurance, reinsurance or ultimate risk bearer, or any other business entity with which the third party administrator proposes to contract as a result of the third party administrator's relationship with the plan sponsor.
- (3) A copy of the annual report shall be retained as part of the official records of the third party administrator for at least five years.

(N) Audit by superintendent

- (1) A third party administrator shall, at the request of the superintendent, respond in

writing within fifteen working days to any complaint received by the superintendent concerning the third party administrator. Such complaint shall include those pertaining to improper adjudication of claims. If the superintendent determines, within the superintendent's discretion, that the frequency or severity of such complaints or infractions justify an examination of the third party administrator's practices and procedures, any such examination by the superintendent, or any persons designated by him, shall be at the expense of the third party administrator. In addition to any other remedy available to the superintendent, failure by the third party administrator to willingly and fully cooperate with this paragraph of the rule may result in either suspension, revocation or refusal to renew a license by the superintendent.

(2) Nothing in this paragraph shall limit or abridge any other investigatory powers of the superintendent vested in him by Title XXXIX of the Revised Code.

(O) Defined unfair practices

(1) No third party administrator, officer, director, partner, trustee, agent or employee shall engage in any trade practice which is defined in sections 3901.19 to 3901.22 of the Revised Code as, or determined pursuant to these sections to be an unfair or deceptive act or practice. All relevant provisions of sections 3901.19 to 3901.22 of the Revised Code apply to third party administrators and their officers, directors, partners, trustees, agents or employees.

(2) In addition to the practices deemed unfair and deceptive in sections 3901.19 to 3901.22 of the Revised Code, it shall be deemed an unfair or deceptive practice for any agent, broker, or third party administrator to commit or perform any of the following:

(a) Misrepresenting or withholding any data or information that has been provided by the plan sponsor, or obtained by the third party administrator for the plan sponsor pursuant to its contract, or that is pertinent to underwriting conditions for a contract of insurance between the plan sponsor and any insurer, reinsurer or ultimate risk bearer;

(b) Misrepresenting the existence or the terms of any actual or proposed insurance or reinsurance policy;

(c) Failing to make an appropriate reply within fifteen working days to any inquiries of the department of insurance as they pertain to this rule or sections 3959.01 to 3959.16 and 3959.99 of the Revised Code; and

(d) Failing to submit requested documentation to the department of insurance as it applies to any complaints or inquiries regarding the business practices of a third party administrator.

(P) Violations

- (1) If any third party administrator violates section 3959.05 of the Revised Code, such third party administrator is subject to penalties described within section 3959.99 of the Revised Code.
- (2) Nothing in this paragraph shall limit the power of the superintendent to impose any other penalties on a third party administrator who violates this rule pursuant to the authority vested in him by the Title XXXIX of the Revised Code.

(Q) Severability

Each paragraph of this rule and every part of each paragraph is an independent paragraph and part of a paragraph, and the holding of any paragraph or a part thereof to be unconstitutional, void, or ineffective for any cause does not affect the validity or constitutionality of any other paragraph or part thereof. The provisions of this rule do not apply to an employer's self-insurance plan to the extent that federal law supersedes, preempts, prohibits or otherwise precludes the application of any provision of those sections to such plan.

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