CHAPTER 628

INSURANCE MARKETING

NOTE: Chapter 371, laws of 1975, which created this chapter of the statutes, contains notes explaining the revision.

SUBCHAPTER I

GENERAL PROVISIONS

628.01 Purposes. The purposes of this chapter are:

(1) To encourage improvement in the professional competence of insurance intermediaries;

(2) To provide maximum freedom of marketing methods for insurance, consistent with the interests of the public in this state;

(3) To preserve and encourage competition at the consumer level;

(4) To limit the adverse effects of imperfect competition on the cost of insurance; and

(5) To regulate insurance marketing practices in conformity with the general purposes of chs. 600 to 646.

History: 1975 c. 371; 1979 c. 89.

628.02 Definitions. In chs. 600 to 646, unless the context otherwise requires:

(1) INSURANCE MARKETING INTERMEDIARIES. (a) *Activities constituting intermediary.* Except as provided under par. (b), a person is an "intermediary" if the person does or assists another in doing any of the following:

1. Solicits, negotiates or places insurance or annuities on behalf of an insurer or a person seeking insurance or annuities; or

2. Advises other persons about insurance needs and coverages.

(b) *Exceptions.* The following persons are not intermediaries:

1. A regular salaried officer, employe or other representative of an insurer or licensed intermediary, who devotes substantially all working time to activities other than those in par. (a), and who receives no compensation that is directly dependent upon the amount of insurance business obtained;

2. A regular salaried officer or employe of a person seeking to procure insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage procured, with respect to such insurance;

3. A person who gives incidental advice in the normal course of a business or professional activity other than insurance consulting if neither the person nor the person's employer receives compensation directly or indirectly on account of any insurance transaction that results from that advice;

4. A person who without special compensation performs incidental services for another at the other's request without providing advice or technical or professional services of a kind normally provided by an intermediary;

5. A holder of a group insurance policy, or any other person involved in mass marketing, with respect to administrative activities in connection with such a policy, if he or she receives no compensation therefor beyond actual expenses, estimated on a reasonable basis;

6. A person who provides information, advice or service for the principal purpose of reducing loss or the risk of loss;

7. A person who gives advice or assistance without compensation, direct or indirect; or

8. A representative of a common carrier who sells only over-the-counter, short-term travel accident ticket policies and baggage insurance.

(3) INSURANCE BROKER. An intermediary is an insurance broker if the intermediary acts in the procuring of insurance on behalf of an applicant for insurance of an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts.

(4) INSURANCE AGENT. An intermediary is an insurance agent if the intermediary acts as an intermediary other than as a broker.

(5) SURPLUS LINES AGENT OR BROKER. A surplus lines agent or broker is one licensed to place insurance with unauthorized insurers, under s. 628.04 (2).

History: 1975 c. 371, 421; 1979 c. 89; 1981 c. 38, 314.

SUBCHAPTER II

LICENSING OF INTERMEDIARIES

628.03 Requirement of license. (1) GENERAL. No natural person may perform, offer to perform or advertise any service as an intermediary in this state, unless the natural person obtains a license under s. 628.04 or 628.09, and no person may utilize the services of another as an intermediary if the person knows or should know that the other does not have a license as required by law.

(2) EXEMPTIONS. The commissioner may by rule exempt certain classes of natural persons from the requirement of obtaining a license:

(a) If the functions they perform do not require special competence or trustworthiness or the regulatory surveillance made possible by licensing; or

(b) If other existing safeguards make regulation unnecessary.

(3) VALIDITY OF CONTRACT. No insurance contract is invalid as a result of a violation of this section.

History: 1975 c. 371, 421; 1981 c. 38.

628.04 Issuance of license. (1) CONDITIONS AND QUALIFICATIONS. The commissioner shall issue a license to act as an agent to any applicant who:

(a) Pays the applicable fee;

(b) Shows to the satisfaction of the commissioner:

1. That if a natural person, the applicant has the intent in good faith to do business as an intermediary or, if a corporation or partnership, has that intent and has included that purpose in the articles of incorporation or association;

2. That if a natural person, the applicant is competent and trustworthy, or that if a partnership or corporation, all partners, directors or principal officers or persons in fact having comparable powers are competent and trustworthy, and that it will transact business in such a way that all acts that may only be performed by a licensed intermediary are performed exclusively by natural persons who are licensed under this section; and

3. That the applicant intends to comply with s. 628.51 with reference to compensation for effecting insurance upon the applicant's own property or other risk; and

(c) If a nonresident, executes in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and the courts of this state on any matter related to the applicant's insurance activities in this state, on the basis of service of process under ss. 601.72 and 601.73.

(1m) AGENT MAY ACT AS BROKER. A licensed agent may act as an agent or as a broker.

(2) SURPLUS LINES AGENTS OR BROKERS. The commissioner may issue a license as an agent or broker authorized to place business under s. 618.41 if the applicant shows to the satisfaction of the commissioner that in addition to the qualifications necessary to obtain a general license under sub. (1), the applicant has the competence to deal with the problems of surplus lines insurance. The commissioner may by rule require an agent or broker authorized to place business under s. 618.41 to supply a bond not larger than $100,000, conditioned upon proper performance of obligations as a surplus lines agent or broker.

(3) CLASSIFICATION AND EXAMINATION. The commissioner may by rule prescribe classifications of intermediaries in addition to agent and surplus lines agent or broker, by kind of authority, or kind of insurance, or in other ways, and may prescribe different standards of competence, including examinations and educational prerequisites, for each class. The commissioner may by rule set annual continuing education standards, but may not require a licensed intermediary to complete a course of study requiring more than 15 hours, per license, of approved continuing education, including continuing education programs approved by the commissioner and presented by the insurers, in any one-year period. The commissioner may, by rule, exempt any class of intermediaries from the continuing education requirements. So far as practicable, the commissioner shall issue a single license to each individual intermediary for a single fee.

(4) INTERMEDIARIES REPRESENTING NONPROFIT SERVICE PLANS. Intermediaries dealing with or representing nonprofit service plans must be licensed under ss. 628.03 and 628.04, and are subject to all provisions of this chapter.

History: 1975 c. 371, 421; 1977 c. 363; 1979 c. 154; 1981 c. 38.

628.05 Licensing of town mutual agents. (1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by rule promulgated by the commissioner, persons engaged in soliciting insurance exclusively for town mutuals are not subject to the requirements of s. 628.03 (1).

(2) AGENTS SOLICITING INSURANCE REQUIRING REINSURANCE. No person may solicit any application for a contract providing coverage of the kind specified in s. 612.31 (3) unless the person first obtains a license to do so under this chapter. The license need be only for those coverages the town mutual is authorized to write and any examination of applicants shall be appropriately limited.

History: 1975 c. 371, 421.

628.06 Licensing of fraternal agents. (1) GENERAL PROVISION. Subject to sub. (2), an agent of a fraternal is subject to the same licensing requirements as an agent for any other insurer doing the same lines of business, unless the agent was an agent for a fraternal immediately prior to October 2, 1963, and is still such an agent on June 19, 1976. The agent's authority under this exception ceases upon ceasing, for however short a period, to be an agent for a fraternal.

(2) PART-TIME FRATERNAL AGENTS. An agent for one or more fraternals who devotes or intends to devote less than half-time to the solicitation of insurance business is not subject to the requirements of sub. (1). A person is presumed to have devoted half-time to the solicitation of insurance business if in the preceding calendar year the person procured life insurance contracts in a face amount in excess of $50,000, or, in the case of other kinds of insurance, on the persons of more than 25 individuals, and if the person received compensation therefor.

History: 1975 c. 373, 421.

Legislative Council Note, 1975: These subsections continue the general thrust of s. 208.21. The grandfather clause is considerably restricted. The part-time exception in sub. (2) reflects the informal and nonprofessional nature of some of the marketing methods of the smaller fraternals; some question may be raised about the merits of the exception, but it reflects strongly held views. It clearly permits nonprofessional solicitation of new members by existing members, when no compensation is involved. [Bill 643-S]

628.07 Licensing of nonresidents. The commissioner may waive the requirement of an examination for a nonresident applicant under s. 628.04 if the jurisdiction of the applicant's residence has imposed upon the applicant requirements substantially as rigorous as those of this state and has enforced them with comparable rigor.

History: 1975 c. 371, 421.

628.08 Changes in status of intermediaries. Every change in the members of a partnership or the principal officers of a corporation licensed as an intermediary, every significant change in management powers in either, and so far as it relates to competency or trustworthiness as an intermediary, every change in the status and relationships of a natural person licensed as an intermediary, shall be reported to the commissioner promptly by the intermediary, in such detail and form as the commissioner by rule prescribes.

History: 1975 c. 371.

628.09 Temporary licenses. (1) ISSUANCE OF LICENSE. The commissioner may issue a temporary license as an intermediary for a period of not more than 3 months to the personal representative of a deceased or mentally disabled intermediary, or to a person designated by an intermediary who is otherwise disabled or has entered active duty in the U.S. armed forces, in order to give time for more favorable sale of the goodwill of a business owned by the intermediary, for the recovery or return of the intermediary, or for the orderly training and licensing of new personnel for the intermediary's business. This subsection does not apply to life insurance agents.

(2) LIMITATION ON AUTHORITY. The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed intermediary or insurer and who assumes full legal responsibility for all acts and omissions of the temporary licensee, may impose special bonding requirements and may impose other similar requirements designed to protect insureds and the public.

(3) EXAMINATIONS. The commissioner may administer an examination as a prerequisite to the issuance of a temporary license.

(4) DURATION OF LICENSE. The commissioner may by order revoke a temporary license if the interests of insureds or the public are endangered. A temporary license may be extended beyond the initial period specified under sub. (1), for additional periods of not more than 3 months each, with the total period not to exceed 12 months in the aggregate. A temporary license may not continue after the owner or the

personal representative disposes of the business.

(5) FEES. The fees for a temporary license are the same as for a permanent license. No additional fee may be charged for extensions under sub. (4), nor for the issuance of a subsequent license under s. 628.04 if that license is issued while the temporary license remains in effect.

(6) STATUS OF TEMPORARY LICENSEE. A temporary licensee is a fully qualified intermediary for all purposes other than the process of licensing, the duration of the license and the limits imposed under sub. (2).

History: 1975 c. 371, 421; 1981 c. 38.

628.10 Termination of license. (1) GENERAL. An intermediary's license issued under s. 628.04 remains in force until revoked, suspended or limited under sub. (2), until it is surrendered, until the licensee dies or is adjudicated incompetent as defined in s. 880.01 (4) or until the commissioner finds, after a hearing, that the licensee is unqualified as an intermediary or is not of good character.

(2) REVOCATION, SUSPENSION, AND LIMITATION OF LICENSES. (a) *For failure to comply with continuing education requirements.* The commissioner may by order suspend the license of any intermediary who fails to produce evidence of compliance with continuing education standards set by the commissioner.

(am) *Nonpayment of fees.* The license of an intermediary who fails to pay a fee when due is suspended on and after the date when the fee is due, if the commissioner gave the intermediary reasonable notice that the fee was due and the license would be suspended if timely payment was not made. If the intermediary pays the fee within 60 days after the date it is due, the license is reinstated effective on the date of suspension. If payment is not made within 60 days, the license is revoked and the intermediary may be relicensed only after satisfying all requirements under s. 628.04.

(b) *For other reasons.* After a hearing, the commissioner may revoke, suspend or limit in whole or in part the license of any intermediary found to be unqualified as an intermediary or to have repeatedly or knowingly violated an insurance statute or rule or a valid order of the commissioner under s. 601.41 (4), or if the intermediary's methods and practices in the conduct of business endanger, or financial resources are inadequate to safeguard, the legitimate interests of customers and the public.

(3) DELAY FOR NEW APPLICATION. An order revoking an intermediary's license under sub. (2) may specify a time not to exceed 5 years within which the former intermediary may not apply for a new license. If no time is specified, the intermediary may not apply for 5 years. An intermediary whose license is revoked under sub. (2) (am) may immediately reapply.

(4) PENALTIES. Any intermediary whose license is suspended or revoked shall, when the suspension ends or a new license is issued, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the fees.

History: 1975 c. 371, 421; 1977 c. 363; 1979 c. 102; 1981 c. 38.

628.11 Listing of insurance agents. An insurer shall report to the commissioner at such intervals as the commissioner establishes by rule all appointments and all terminations of appointments of insurance agents to do business in this state, and shall pay the fees prescribed under s. 601.31 (1) (n).

History: 1975 c. 371, 421; 1979 c. 102 s. 237; 1981 c. 20 s. 2202 (26) (a).

628.12 Liability of surplus lines insurer. If a surplus lines insurer has assumed a risk and if the premium therefor has been received by the surplus lines agent or broker who placed the insurance, then as between the insurer and the insured the insurer is deemed to have received the premium due to it for the coverage; and the insurer is liable to the insured for losses covered by the insurance and for unearned premiums upon cancellation of the insurance, whether or not the surplus lines agent or broker is indebted to the insurer. Each surplus lines insurer assuming a surplus lines risk under this section thereby subjects itself to the terms of this section.

History: 1975 c. 371.

SUBCHAPTER III

MARKETING PRACTICES

628.31 Sale of insurance through vending machines. No insurance policies may be sold by a vending machine except policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death.

History: 1975 c. 371, 421; 1979 c. 102 s. 237; 1981 c. 20, 38.

628.32 Disclosure required. An intermediary may not accept compensation due to an insured's purchase of insurance from the insured and another source unless the intermediary, before the insured incurs an obligation to pay compensation, clearly and conspicuously and in writing discloses to the insured that the intermediary will also receive compensation from the

other source. The commissioner may adopt rules prescribing the form for disclosure under this section.

History: 1975 c. 371, 421; 1981 c. 38.

628.33 Unfair methods of competition and unfair or deceptive act or practices defined. It is defined as an unfair method of competition and unfair or deceptive act or practice in the business of insurance to refuse, with respect to all insurance policies issued or renewed after June 16, 1974, to offer inclusion of coverage for services of chiropractors or physicians, as defined in s. 990.01 (28), lawfully rendered in this state when writing a policy providing accident and health benefits for treatment encompassing such services, if the policy provides payment for services performed by such a physician or chiropractor, all at the option of the assured, including policies under plans under s. 148.03 (1).

History: 1975 c. 371; 1977 c. 339 s. 21; 1979 c. 75.

See note to Art. I, sec. 12, citing Reserve Life Ins. Co. v. La Follette, 108 W (2d) 637, 323 NW (2d) 173 (Ct. App. 1982).

628.34 Unfair marketing practices. (1) MISREPRESENTATION. (a) *Conduct forbidden.* No person who is or should be licensed under chs. 600 to 646, no employe or agent of any such person, no person whose primary interest is as a competitor of a person licensed under chs. 600 to 646, and no person on behalf of any of the foregoing persons may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary which contains false or misleading information, including information misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or wilfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No intermediary or insurer may use any business name, slogan, emblem or related device that is misleading or likely to cause the intermediary or insurer to be mistaken for another insurer or intermediary already in business.

(b) *Presumption of insurer's violation.* If an insurance agent distributes cards or documents, exhibits a sign or publishes an advertisement which violates par. (a), having reference to a particular insurer that the agent represents, the agent's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) UNFAIR INDUCEMENTS. (a) *General.* No insurer, no employe of an insurer, and no insurance intermediary may seek to induce any person to enter into an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy, nor may any insurer make any agreement of insurance that is not clearly expressed in the policy to be issued. This subsection does not preclude the reduction of premiums by reason of expense savings, including commission reductions, resulting from any form of mass marketing.

(b) *Absorption of tax.* No agent, broker or insurer may absorb the tax under s. 618.43 (2).

(3) UNFAIR DISCRIMINATION. (a) No insurer may unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket or franchise policy, and terms are not unfairly discriminatory merely because they are more favorable than in a similar individual policy.

(b) No insurer may refuse to insure or refuse to continue to insure, or limit the amount, extent or kind of coverage available to an individual, or charge an individual a different rate for the same coverage because of a mental or physical disability except when the refusal, limitation or rate differential is based on either sound actuarial principles supported by reliable data or actual or reasonably anticipated experience.

(4) RESTRAINT OF COMPETITION. No person who is or should be licensed under chs. 600 to 646, no employe or agent of any such person, no person whose primary interest is as a competitor of a person licensed under chs. 600 to 646, and no one acting on behalf of any of the foregoing persons, may commit or enter into any agreement to participate in any act of boycott, coercion or intimidation tending to unreasonable restraint of the business of insurance or to monopoly in that business.

(5) FREE CHOICE OF INSURER. No person may restrict in the choice of an insurer or insurance intermediary another person required to pay the cost of insurance coverage whenever the procurement of insurance coverage is required as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. However, the person requiring the coverage may reserve the right to disapprove on reasonable grounds the insurer or the coverage selected. The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify that additional grounds are not reasonable.

(6) EXTRA CHARGES. No person may make any charge other than premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) INFLUENCING EMPLOYERS. No insurer or insurance intermediary or employe or agent of either may, in connection with an insurance transaction, encourage, persuade or attempt to influence any employer to refuse employment to or to discharge any person arbitrarily or unreasonably.

(8) USE OF OFFICIAL POSITION. No person holding an elective, appointive or civil service position in federal, state or local government may use decision-making power or influence in that position to coerce the placement of insurance for any prospective policyholder through any particular intermediary or with any particular insurer.

(9) REFUSAL TO RETURN INDICIA OF AGENCY. No agent may refuse or fail to return promptly all indicia of agency to the principal on demand.

(10) INSURANCE SECURITY FUND. No insurer or insurance intermediary may make use in any manner of the protection given policyholders by ch. 646 as a reason for buying insurance from the insurer or intermediary.

(11) OTHER UNFAIR TRADE PRACTICES. No person may engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined under sub. (12).

(12) RULES DEFINING UNFAIR TRADE PRACTICES. The commissioner may define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably.

History: 1975 c. 371, 421; 1979 c. 89, 109, 313, 355.

Rule requiring dissemination of cost disclosure information that is misleading due to incompleteness violates (1) (a). Aetna Life Ins. Co. v. Mitchell, 101 W (2d) 90, 303 NW (2d) 639 (1981).

628.35 Prohibition of exclusive contracts. No insurer may make, enforce or participate in any contract or other arrangement for exclusive services of a health care provider that prevents or materially inhibits any other insurer authorized to do business in this state from entering into a contract or other arrangement with any health care provider of services that the other insurer has contracted to supply or for which it has promised indemnity under its insurance contracts, unless:

(1) The health care provider is an individual who is an employe of the insurer;

(2) The health care provider is a corporation owned by the insurer;

(3) The health care provider uses the insurer's name under a franchise arrangement; or

(4) The case is within a class for which the commissioner by rule establishes an exception after a finding that the contract or other arrangement does not seriously impede the effective operation of a legitimate insurance business by other insurers.

History: 1975 c. 223, 371, 422.

628.36 Limitations on corporations supplying health care services. (1) PAYMENT METHODS. Any corporation operating a voluntary health care plan may pay health care professionals on a salary, per patient or fee-for-service basis to provide health care to policyholders or beneficiaries of the corporation.

(2) DISCRIMINATION AGAINST PROFESSIONALS. (a) In this section:

1. "Health care plan" means an insurance contract providing coverage of health care expenses.

2. "Provider" means a health care professional, a health care facility or a health care service or organization.

(b) Except as provided in subs. (2a) to (3), no health care plan may prevent any person covered under the plan from choosing freely among providers who have agreed to participate in the plan and abide by its terms, except by requiring the person covered to select primary providers to be used when reasonably possible. No provider may be required to participate exclusively in the plan as a condition of participation in it, nor may any provider be denied the opportunity to participate in the plan under its terms, except for cause related to the practice of his or her profession.

(2a) PREFERRED PROVIDER PLANS. (a) In this subsection:

1. "Preferred provider plan" means a health care plan as defined in sub. (2) (a) 1 which limits participation in it to providers selected by the health care plan and which covers or provides physician's services, hospital services, podiatrist's services or chiropractic services, but which does not cover or provide vision care services, procedures or materials other than vision-related surgery and the treatment of vision-related disease.

2. "Open panel plan" means a health care plan as defined in sub. (2) (a) 1 which does not limit participation in it except to providers who have agreed to participate in the plan and abide by its terms.

(b) Subject to chs. 600 to 646, except sub. (2) (b), any insurer may establish or operate a preferred provider plan.

(c) Subject to conditions of the preferred provider plan, any person may elect to enroll in a preferred provider plan. No preferred provider plan may prevent any person from choosing among providers participating in the plan, except by requiring the covered person to select primary providers to be used when reasonably possible.

(d) An employer may not offer to its employes a preferred provider plan unless it also offers at least one open panel plan which provides at least substantially equivalent benefits. The employer shall give its employes the opportunity to choose between the plans at least once annually, adequate notice of the opportunity to choose between the plans and complete and understandable information regarding the differences between the plans.

(e) 1. Subject to subd. 2, a person enrolled in a preferred provider plan may obtain covered health care services from a provider not selected by the preferred provider plan.

2. The preferred provider plan may limit coverage of health care services obtained under subd. 1 to health care services performed by a provider not selected by the plan but who is willing to participate in the plan and abide by its terms.

3. Subject to subds. 2 and 5 to 7, the preferred provider plan shall pay for covered health care services obtained under subd. 1. The plan shall provide that the total payment made to a provider not selected by the plan shall be any amount agreed to by that provider, if the amount is less than the total payment that would be made under the plan for comparable services performed by a provider selected by the plan. The plan may not require that the total payment shall be less than the total payment that would be made under the plan for comparable services performed by a provider selected by the plan if the lesser payment is unacceptable to the provider not selected by the plan.

5. Subject to subd. 7, the preferred provider plan may require a person obtaining covered services under subd. 1 to pay, in addition to any applicable deductible, up to 20% of the total payment to be made to the provider not selected by the plan.

6. Notwithstanding subd. 5, the amount a person enrolled in a preferred provider plan may be required to pay to a provider selected by the plan with respect to consultation regarding surgery shall be the most the person may be required to pay a provider not selected by the plan for additional consultation regarding surgery.

7. A preferred provider plan may require that, if a person enrolled in the plan receives health care services from providers not selected by the plan, the person shall pay, in addition to any applicable premium or deductible, an amount determined by the commissioner which may not be more than $2,500 per year for individual coverage nor more than $5,000 per year for family coverage.

(f) The commissioner shall adopt rules applicable to preferred provider plans which:

1. Ensure that patients are not forced to travel excessive distances to receive services.

2. Ensure that continuity of patient care is not disrupted.

3. Define substantially equivalent benefits for purposes of par. (d).

4. Ensure that employes offered a choice of health care plans under par. (d) are given adequate notice of the opportunity to choose among plans and complete and understandable information on the differences among plans, the providers available under the plans and any special limitations or requirements imposed by an institutional provider because of its affiliation with a religious organization.

5. Determine the amounts under par. (e) 7.

(g) This subsection does not prevent a person other than an insurer from establishing or operating a preferred provider plan.

(i) This subsection does not apply to a plan sponsored by a health maintenance organization as defined in sub. (2m) (a).

(2m) HEALTH MAINTENANCE ORGANIZATIONS. (a) In this subsection, "health maintenance organization" means an organization organized under the laws of this state, including ch. 185, which makes available to enrolled participants, in consideration of predetermined periodic fixed payments, comprehensive health care services provided by providers who are selected by the organization and who are employes or partners of the organization or who have entered into a referral or contractual arrangement with the organization.

(b) Subject to chs. 600 to 646, except sub. (2) (b), or subject to ch. 185, any person may establish or operate a health maintenance organization.

(c) Subject to conditions of the health care plan, any person may elect to enroll in a health care plan as defined in sub. (2) (a) 1 which is sponsored by a health maintenance organization.

(d) An employer may offer its employes a health care plan as defined in sub. (2) (a) 1 which is sponsored by a health maintenance organization if it also offers at least one open panel plan as defined in sub. (2a) (a) 2 which provides at least substantially equivalent bene-

fits. The employer shall give its employes the opportunity to choose between the plans at least once annually, adequate notice of the opportunity to choose between the plans and complete and understandable information regarding the differences between the plans. The commissioner may by rule determine what constitutes adequate advance notice and complete and understandable information.

(e) 1. A plan sponsored by a health maintenance organization that provides coverage of pharmaceutical services when performed by one or more pharmacists who are selected by the organization but who are not full-time salaried employes or partners of the organization shall provide an annual period of at least 30 days during which any pharmacist registered under ch. 450 may elect to participate in the plan under its terms as a selected provider for at least one year.

2. Except as provided in subd. 3, subd. 1 applies to plans on and after May 10, 1984, and before July 1, 1986.

3. If compliance with the requirements of subd. 1 during the period specified in subd. 2 would impair any provision of a contract between a health maintenance organization and any other person, and if the contract provision was in existence prior to May 10, 1984, then immediately after the expiration of all such contract provisions, if before July 1, 1986, the plan operated by the health maintenance organization shall comply with the requirements of subd. 1, and if on or after July 1, 1986, the plan shall provide one period of at least 30 days during which any pharmacist may elect to participate in the plan, as provided in subd. 1, for at least one year.

(3) EXEMPTION BY RULE. By rule the commissioner may exempt from the application of any part of subs. (1) to (2m) plans which provide innovative approaches to the delivery of health care or which are designed to contain health care costs, and which cannot operate successfully consistent with all of the provisions in subs. (1) to (2m). The commissioner may promulgate such a rule only if on a finding that the interests of the public require such plans as an experiment, to supply health care services that are not otherwise available in adequate quantity or quality, or to contain health care costs. The promulgated rule shall be as narrow as is compatible with the success of the plans.

History: 1975 c. 223, 371, 422; 1983 a. 27, 192, 321, 396.

628.37 Preservation of professional relationships in professional services. No insurance plan related to or providing health care, legal or other professional services may alter the direct relationship and responsibility of professional persons to their patients or clients for the professional services rendered. All professional relationships are subject to the same rules of contract and tort law and professional ethics as if no insurance plan were involved.

History: 1975 c. 223, 371, 422.

628.38 Disclosure requirements. The commissioner may by rule require insurers to deliver to prospective buyers of life or disability insurance, at a time specified in the rule, information consistent with ss. 601.01 and 628.34 that will improve their ability to select appropriate coverage.

History: 1981 c. 82.

628.39 Extension of credit on premiums. The extension of credit to the insured upon a premium without interest for not exceeding 60 days from the effective date of the policy, or after that time with interest at not less than the legal rate nor more than 18% per year on the unpaid balance, is permissible. The payment of premiums on policies issued under a mass marketing program on an instalment basis through payroll deductions is not an extension of credit.

History: 1975 c. 371; 1979 c. 110 s. 60 (13); 1983 a. 215.

628.40 Effect of agent's appointment on insurer. Every insurer is bound by any act of its agent performed in this state that is within the scope of the agent's apparent authority, while the agency contract remains in force and after that time until the insurer has made reasonable efforts to recover from the agent its policy forms and other indicia of agency. Reasonable efforts shall include a formal demand in writing for return of the indicia, and notice to the commissioner if the agent does not comply with the demand promptly.

History: 1975 c. 371, 421.

628.46 Timely payment of claims. (1) Unless otherwise provided by law, an insurer shall promptly pay every insurance claim. A claim shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after written notice is furnished to the insurer. Any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding

that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any claim is overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the U.S. mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of 12% per year.

(2) Notwithstanding sub. (1), the payment of a claim shall not be overdue until 30 days after the insurer receives the proof of loss required under the policy or equivalent evidence of such loss. The payment of a claim shall not be overdue during any period in which the insurer is unable to pay such claim because there is no recipient who is legally able to give a valid release for such payment, or in which the insurer is unable to determine who is entitled to receive such payment, if the insurer has promptly notified the claimant of such inability and has offered in good faith to promptly pay said claim upon determination of who is entitled to receive such payment.

(3) This section applies only to the classes of claims enumerated in s. 646.31 (2).

History: 1975 c. 375; 1979 c. 109 s. 16; 1979 c. 110 s. 60 (13); 1981 c. 38 s. 24.

Submission of legally binding offer from claimant is not necessary condition antecedent to maintenance of bad-faith excess liability action against insurer. Alt v. American Family Mut. Ins. Co. 71 W (2d) 340, 237 NW (2d) 706 (1976).

Insured may bring tort action against insurer for failure to exercise good faith in settling insured's claim. This section is unrelated to such tort action. Anderson v. Continental Ins. Co. 85 W (2d) 675, 271 NW (2d) 368 (1978).

Tort of bad faith handling of claim discussed. Davis v. Allstate Ins. Co. 101 W (2d) 1, 303 NW (2d) 596 (1981).

Third party claimant cannot assert bad faith claim against insurer. Kranzush v. Badger State Mut. Cas. Co. 103 W (2d) 56, 307 NW (2d) 256 (1981).

This section applies to service insurance corporations. Physicians Serv. Ins. Corp. v. Mitchell, 114 W (2d) 338, 338 NW (2d) 326 (Ct. App. 1983).

Excess liability insurance. Griffin. 62 MLR 375 (1979).

SUBCHAPTER IV

COMPENSATION OF INTERMEDIARIES

628.51 Controlled business. No intermediary may receive any compensation from an insurer for effecting insurance upon the intermediary's property, life or other risk unless during the preceding 12 months the intermediary had effected other insurance with the same insurer with aggregate premiums exceeding the premiums on the intermediary's risks.

History: 1975 c. 371, 421.

628.61 Sharing commissions. (1) PROHIBITION. No intermediary or insurer may pay any consideration, nor reimburse out-of-pocket expenses, to any natural person for services performed within this state as an intermediary if he or she knows or should know that the payee is not licensed under s. 628.04 or 628.09. No natural person may accept compensation for service performed as an intermediary unless the natural person is licensed under s. 628.04 or 628.09.

(2) EXCEPTIONS. This section does not prohibit:

(a) The payment of deferred commissions to formerly licensed agent and broker intermediaries or their assignees; or

(b) The proper exchange of business between agent and broker intermediaries lawfully licensed in this state.

History: 1975 c. 371, 421; 1979 c. 102; 1981 c. 38.

628.77 Bonuses prohibited. (1) GENERAL. No life insurer or representative of a life insurer may provide any bonus, prize or award or similar additional compensation on insurance business transacted in this state, as a result of a contest or competition among intermediaries, except that awards may be given not primarily as compensation but as recognition of merit, if no such award has a cost in excess of $150 and if the aggregate cost of all such awards in any calendar year does not exceed 1.5% of the insurer's total first year life insurance premium income derived from sales in this state, excluding single premium income.

(2) BUSINESS OR EDUCATIONAL CONFERENCES. Payment may be made to cover reasonable actually incurred expenses in connection with any educational conference, meeting or training course of an insurer or intermediary held for bona fide business or educational purposes.

History: 1975 c. 371.

628.78 Benefit plans for agents. A domestic insurer may establish retirement, insurance and other benefit plans for agents on an actuarial basis approved by the commissioner.

History: 1975 c. 371.

628.81 Filing of commission rates paid to agents and brokers. Every insurer shall at or prior to the filing of its application for a certificate of authority file such information as the commissioner requests about the percentages and kinds of commissions paid to agents and brokers within this state, as well as the amounts of any fixed salaries if they are supplemented by commissions. It shall supply amended information promptly after any major change, and whenever the commissioner requests by rule or by order.

History: 1975 c. 371.