CHAPTER 628

INSURANCE MARKETING

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Cross−reference: See definitions in s. 600.03.

NOTE: Chapter 371, laws of 1975, which created this chapter, contains explanatory notes.

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 655.

History: 1975 c. 371; 1979 c. 89; 1989 a. 187 s. 29.

628.02 Definitions. In chs. 600 to 655, 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, employee or other representative of an insurer or licensed intermediary, other than a risk retention group or risk purchasing group, 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 employee of a person seeking to procure insurance, other than for members of a risk purchasing group, 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;

7m. A person who acts solely as an agent, as defined in s. 616.71 (1); or

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

9. A vendor, as defined in s. 632.975 (1) (i), or an employee or authorized representative of a vendor selling or offering portable electronics insurance under s. 632.975.

9m. A person whose activities are limited to marketing, selling, or offering for sale a warranty contract, as defined in s. Ins 15.01 (4) (d), Wis. Adm. Code, maintenance agreement, as defined in s. 616.50 (5), or service contract, as defined in s. 616.50 (11).

NOTE: Subd. 9m. was created as subd. 9. by 2011 Wis. Act 226 and renumbered to subd. 9m. by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(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 or 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.

(4g) MANAGING GENERAL AGENT. An intermediary is a managing general agent if the intermediary does all of the following:

(a) Manages all or a portion of the insurance business of an insurer.

(b) Adjusts claims, negotiates reinsurance for the insurer or is affiliated or associated with a person who adjusts claims or negotiates reinsurance for the insurer.

(4m) REINSURANCE BROKER. A person is a reinsurance broker if the person solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer.

(4p) REINSURANCE MANAGER. A person is a reinsurance manager if the person has authority to bind, or manages, all or a portion of the assumed reinsurance business of an insurer.

(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; 1987 a. 166, 247; 1989 a. 187 s. 29; 1991 a. 269; 2001 a. 38; 2011 a. 225, 226; s. 13.92 (1) (bm) 2.

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. The licensing requirements of this subsection do not apply to a person who solely procures unauthorized insurance, as defined in s. 618.40 (11), that is not surplus lines insurance, as defined in s. 618.40 (10).

(1m) RISK PURCHASING GROUPS. No natural person may solicit, negotiate or obtain insurance on behalf of a risk purchasing group which does business in this state unless the natural person obtains a license under s. 628.04 or 628.09. A risk purchasing group may not allow a natural person to solicit, negotiate or obtain insurance on its behalf if the risk purchasing group knows that the natural person is not licensed as required by this subsection.

(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; 1987 a. 247; 2011 a. 224.

Cross−reference: See also chs. Ins 45 and 47 and ss. Ins 6.50 and 6.58, Wis. adm. code.

628.04 Issuance of license. (1) CONDITIONS AND QUALIFICATIONS. Except as provided in s. 628.095 or 628.097, the commissioner shall issue a license to act as an agent to any applicant who:

(a) Subject to s. 601.31 (2m), 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, partnership or limited liability company, has that intent and has included that purpose in the articles of incorporation, certificate of limited partnership or general partnership agreement or limited liability company operating agreement;

2. That if a natural person, the applicant is competent and trustworthy, or that if a partnership, limited liability company or corporation, all partners, members, 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.

(1c) FINGERPRINTS. The commissioner may by rule require an applicant under sub. (1) who is a resident and a natural person to provide fingerprints as an additional condition for the granting of a license to act as an agent. The commissioner may use the fingerprints, if required, to conduct a state criminal history background investigation of the applicant and a national criminal history background investigation of the applicant with the federal bureau of investigation.

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

(2) SURPLUS LINES AGENTS OR BROKERS. Except as provided in s. 628.095 or 628.097, 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 prelicensing and annual continuing education standards, but may not require a licensed intermediary to complete a course of study requiring more than 30 hours, per license, of approved continuing education, including continuing education programs approved by the commissioner and presented by the insurers, in any 2−year period. The commissioner may approve courses or programs that an applicant for an intermediary's license may attend to fulfill a prelicensing education requirement, or that a licensed intermediary may attend to fulfill a continuing education requirement, and may approve organizations that may offer approved courses or programs. 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.

(5) MANAGING GENERAL AGENTS AND REINSURANCE BROKERS AND MANAGERS. The commissioner may, by rule, require every managing general agent that is not a natural person, every reinsurance broker and every reinsurance manager to obtain a license in order to do business in this state or with an insurer doing business

in this state. The commissioner may, by rule, prescribe classifications for reinsurance brokers and managers, exemptions from the license requirement for managing general agents that are not natural persons, reinsurance brokers and reinsurance managers and grounds for suspension or revocation of a license. The commissioner shall consider the applicable model acts adopted by the National Association of Insurance Commissioners before promulgating rules under this section.

History: 1975 c. 371, 421; 1977 c. 363; 1979 c. 154; 1981 c. 38; 1991 a. 269; 1993 a. 112; 1995 a. 27, 400; 1997 a. 191; 2007 a. 169; 2011 a. 209.

Cross−reference: See also chs. Ins 26, 28, 42, 45, and 47, and s. Ins 6.59, Wis. adm. code.

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 licensing 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; 2011 a. 224.

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 a limited liability company or the principal officers of a corporation licensed as an intermediary, every significant change in management powers in the entity, 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; 1993 a. 112.

628.09 Temporary licenses. (1) ISSUANCE OF LICENSE. Except as provided in s. 628.095 or 628.097, the commissioner may issue a temporary license as an intermediary for a period of not more than 12 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.

(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 not be extended beyond the initial period specified under sub. (1). 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.

(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; 1997 a. 191; 2001 a. 65.

Cross−reference: See also ch. Ins 42, Wis. adm. code.

628.095 Social security and federal employer identification numbers on applications or at time of fee payment. (1) REQUIRED ON APPLICATIONS. An application for a license issued under this subchapter or subch. V, or for registration under s. 628.92 (2), shall contain the applicant's social security number, if the applicant is a natural person unless the applicant does not have a social security number, or the applicant's federal employer identification number, if the applicant is not a natural person.

(2) REFUSAL TO ISSUE LICENSE OR REGISTER. The commissioner may not issue a license, including a temporary license, under this subchapter or subch. V, or register a navigator entity under subch. V, unless the applicant provides his or her social security number, if the applicant is a natural person unless the applicant does not have a social security number, or provides the applicant's federal tax identification number, if the applicant is not a natural person.

(3) REQUIRED WHEN ANNUAL FEE PAID. At the time that the annual fee is paid under s. 601.31 (1) (m), (nm) 2., or (np) 2., an intermediary or navigator who is a natural person shall provide his or her social security number unless the intermediary [or navigator] does not have a social security number, and an intermediary or navigator that is not a natural person shall provide its federal employer identification number, if the social security number or federal employer identification number was not provided on the application for the license or registration or previously when the annual fee was paid.

NOTE: Missing text is shown in brackets. Corrective legislation is pending.

(4) DISCLOSURE. (a) The commissioner shall disclose a social security number obtained under sub. (1) or (3) to the department of children and families in the administration of s. 49.22, as provided in a memorandum of understanding entered into under s. 49.857.

(b) The commissioner may disclose any information received under sub. (1) or (3) to the department of revenue for the purpose

of requesting certifications under s. 73.0301 and to the department of workforce development for the purpose of requesting certifications under s. 108.227.

(5) IF APPLICANT OR INTERMEDIARY OR NAVIGATOR HAS NO SOCIAL SECURITY NUMBER. If an applicant who is a natural person does not have a social security number, the applicant shall provide to the commissioner, along with the application for a license and on a form prescribed by the department of children and families, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. If an intermediary or navigator who is a natural person does not have a social security number, the intermediary or navigator shall provide to the commissioner, each time that the annual fee is paid under s. 601.31 (1) (m) or (nm) 2. and on a form prescribed by the department of children and families, a statement made or subscribed under oath or affirmation that the intermediary or navigator does not have a social security number.

History: 1997 a. 191, 237; 1999 a. 9; 2007 a. 20; 2013 a. 20, 36.

628.097 Refusal to issue license; failure to pay support or to comply with subpoena or warrant; tax or unemployment insurance contribution delinquency. (1m) FOR FAILURE TO PAY SUPPORT OR TO COMPLY WITH SUBPOENA OR WARRANT. The commissioner shall refuse to issue to a natural person a license, including a temporary license, under this subchapter or subch. V if the natural person is delinquent in court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or if the natural person fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857.

(2m) FOR LIABILITY FOR DELINQUENT TAXES OR UNEMPLOYMENT INSURANCE CONTRIBUTIONS. The commissioner shall refuse to issue a license, including a temporary license, under this subchapter or subch. V, or to register a navigator entity under subch. V, if the department of revenue certifies under s. 73.0301 that the applicant for the license or registration is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the applicant for the license is liable for delinquent unemployment insurance contributions.

NOTE: Sub. (2m) is shown as affected by 2013 Wis. Acts 20 and 36 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

History: 1997 a. 191, 237; 2001 a. 65; 2007 a. 20; 2013 a. 20, 36; s. 13.92 (2) (i).

628.10 Termination of license. (1) GENERAL. An intermediary's license issued under s. 628.04, or an individual navigator's license issued under s. 628.92 (1), remains in force until it is revoked or limited under sub. (2), until it is suspended under sub. (2) or s. 227.51 (3), until it is surrendered, or until the licensee dies or is in this state adjudicated incompetent.

(2) REVOCATION, SUSPENSION, AND LIMITATION OF LICENSES. (a) *For failure to comply with continuing education or annual training requirements.* The license of any intermediary or individual navigator who fails to produce evidence of compliance with continuing education standards set by the commissioner or with annual training requirements is revoked, effective on the date on which the evidence of compliance is due. At least 60 days before that date, the commissioner shall send by 1st class mail to the intermediary's or navigator's address that is on file with the commissioner notice of the date by which the evidence of compliance is due and that the intermediary's or navigator's license will be revoked if the evidence is not received by that date. An intermediary or navigator whose license is revoked under this paragraph may have his or her license reinstated, or may be relicensed, as provided in sub. (5).

(am) *Nonpayment of fees.* The license of an intermediary or individual navigator who fails to pay a fee when due is revoked, effective on the date on which the fee is due. At least 60 days before that date, the commissioner shall send by 1st class mail to the intermediary's or navigator's address that is on file with the commissioner notice of the date by which the fee is due and that the intermediary's or navigator's license will be revoked if timely payment is not made. An intermediary who is a natural person, or an individual navigator, whose license is revoked under this paragraph may have his or her license reinstated, or may be relicensed, as provided in sub. (5).

(b) *For other reasons.* Except as provided in pars. (c) to (d), after a hearing, the commissioner may revoke, suspend, or limit in whole or in part the license of any intermediary or individual navigator if the commissioner finds that the licensee is unqualified as an intermediary or navigator, is not of good character, or has 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 or navigator'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. Nothing in this paragraph limits the authority of the commissioner to suspend summarily an intermediary's or individual navigator's license under s. 227.51 (3).

(c) *For failure to pay support or to comply with subpoena or warrant.* The commissioner shall suspend or limit the license of an intermediary who is a natural person, the license of an individual navigator, or a temporary license of a natural person under s. 628.09, if the natural person is delinquent in court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or if the natural person fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. A natural person whose license or temporary license is suspended under this paragraph who satisfies the requirements under this paragraph for which the license was suspended may have his or her license or temporary license reinstated by satisfactorily completing a reinstatement application and paying the application fee for original licensure as specified by rule.

(cm) *For liability for delinquent taxes or unemployment insurance contributions.* The commissioner shall revoke the license of an intermediary or individual navigator, including a temporary license under s. 628.09, if the department of revenue certifies under s. 73.0301 that the intermediary or navigator is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the intermediary is liable for delinquent unemployment insurance contributions. An intermediary who is a natural person, or an individual navigator, whose license is revoked under this paragraph may have his or her license reinstated, or may be relicensed, as provided in sub. (5).

NOTE: Par. (cm) is shown as affected by 2013 Wis. Acts 20 and 36 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(cr) *For providing false information in statement.* The commissioner shall revoke the license of an intermediary or individual navigator, including a temporary license under s. 628.09, if the commissioner determines, after a hearing, that the intermediary or navigator provided false information in a statement provided under s. 628.095 (5) with the intermediary's or navigator's application or at the time that the annual fee was paid under s. 601.31 (1) (m) or (nm) 2.

(d) *For failure to provide social security number, federal employer identification number or statement.* If an intermediary or individual navigator fails to provide a social security number or federal employer identification number as required under s. 628.095 (3) or a statement as required under s. 628.095 (5), the commissioner shall suspend or limit the license of the intermediary or navigator, effective the day following the last day on which the annual fee under s. 601.31 (1) (m) or (nm) 2. may be paid, if the commissioner has given the intermediary or navigator reason-

able notice of when the fee must be paid to avoid suspension or limitation. If the intermediary or navigator provides the social security number, federal employer identification number, or statement within 60 days from the effective date of the suspension, the commissioner shall reinstate the intermediary's or navigator's license effective as of the date of suspension.

(e) *For changing state of residence.* The license of an intermediary or individual navigator who changes residence from one state to another is revoked 60 days after the change of residence. The intermediary or navigator may be relicensed only after satisfying any requirements under s. 628.04 or 628.92 that are specified by the commissioner by rule.

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

(5) REINSTATEMENT OR RELICENSING AFTER CERTAIN REVOCATIONS. (a) *Reinstatement within 12 months.* An intermediary who is a natural person, or an individual navigator, whose license is revoked under sub. (2) (a), (am), or (cm) may have his or her license reinstated within 12 months after the date on which the license was revoked without having to satisfy any prelicensing education or examination requirements under s. 628.04 or any prelicensing training or examination requirements under s. 628.92 (7). To have his or her license reinstated, the intermediary or navigator must satisfy the requirement under sub. (2) (a), (am), or (cm) for which the license was revoked, satisfactorily complete a reinstatement application, and pay twice the amount of the applicable license renewal fee. The reinstatement is effective on the date on which the commissioner actually reinstates the license. If the intermediary or navigator is also a resident who is required to complete continuing education or annual training, the intermediary or navigator must have satisfied all previous continuing education or annual training requirements to have his or her license reinstated under this paragraph.

(b) *Relicensing required after 12 months.* An intermediary or individual navigator specified in par. (a) whose license has been revoked for more than 12 months is not eligible to have his or her license reinstated under par. (a) but may apply for relicensing at any time after 12 months have elapsed from the date of revocation. To be relicensed, the intermediary or navigator must satisfy any requirements under s. 628.04 or 628.92 that are specified by the commissioner by rule.

(c) *Applicability.* This subsection applies to all of the following:

1. Intermediaries whose licenses were revoked under sub. (2) (a), (am), or (cm) before April 9, 2008, regardless of whether an order under sub. (3) applies to the intermediary.

2. Intermediaries whose licenses are revoked under sub. (2) (a), (am), or (cm) on or after April 9, 2008.

3. Individual navigators whose licenses were revoked under sub. (2) (a), (am), or (cm) on or after July 2, 2013.

History: 1975 c. 371, 421; 1977 c. 363; 1979 c. 102; 1981 c. 38; 1991 a. 214; 1995 a. 27; 1997 a. 191, 237; 1999 a. 9, 30; 2005 a. 387; 2007 a. 20, 169; 2009 a. 180, 342; 2013 a. 20, 36; s. 13.92 (2) (i).

628.11 Appointment of agents. An insurer shall report to the commissioner at such intervals as the commissioner establishes by rule all appointments, including renewals of 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); 1995 a. 27; 2007 a. 169.

Cross−reference: See also s. Ins 6.57, Wis. adm. code.

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. (1) An intermediary may not accept compensation from an insured or from both an insured and another source due to the insured's purchase of insurance or for advice regarding the insured's insurance needs or coverage unless the intermediary, before the insured incurs an obligation to pay compensation, clearly and conspicuously and in writing discloses to the insured all of the following:

(a) The amount of compensation to be paid by the insured, excluding commissions paid by the insurer to the intermediary.

(b) If compensation will be paid by another source, the fact that the intermediary will also receive compensation from the other source.

(2) The commissioner may promulgate rules prescribing the form for disclosure under sub. (1).

History: 1975 c. 371, 421; 1981 c. 38; 1987 a. 247.

628.34 Unfair marketing practices. (1) MISREPRESENTATION. (a) *Conduct forbidden.* No person who is or should be licensed under chs. 600 to 646, no employee 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 that contains false or misleading information, including information that is misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or willfully 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. No intermediary may provide a misleading certificate of insurance.

(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 employee 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, subject to ss. 632.365, 632.746 and 632.748. 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, subject to ss. 632.746 to 632.7495.

(4) RESTRAINT OF COMPETITION. No person who is or should be licensed under chs. 600 to 646, no employee 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 employee 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.

(13) MARKETING OF WELLNESS PROGRAMS. (a) In this subsection, "wellness program" means a program that is designed to promote health or prevent disease through a reward to insured individuals and that meets the qualifications of 45 CFR 146.121 (f) (1) or (2).

(b) Notwithstanding subs. (2) (a), (3), (7), and (11) and any rules promulgated under sub. (12), it is not a violation of this section for an insurer to advertise, market, offer, or operate a wellness program.

History: 1975 c. 371, 421; 1979 c. 89, 109, 313, 355; 1991 a. 279; 1995 a. 289; 1997 a. 27, 237; 2009 a. 275; 2011 a. 224.

Cross−reference: See also ss. Ins 2.07, 3.27, 6.19 6.67, 6.68, and 6.90, Wis. adm. code.

Any administrative rule requiring dissemination of cost disclosure information that is misleading due to incompleteness is beyond the scope of the insurance commissioner's authority in that it violates sub. (1) (a). Aetna Life Insurance Co. v. Mitchell, 101 Wis. 2d 90, 303 N.W.2d 639 (1981).

There is no private right of action to enforce sub. (3). NAACP v. American Family Mutual Insurance Co. 978 F.2d 287 (1992).

628.345 Prohibited practices during license revocation or surrender. (1) In this section:

(a) "Disciplinary period" means the period of time beginning on the effective date of the termination of the license of an intermediary under par. (b) 1. and ending on the date on which a new license is issued to the intermediary. The "disciplinary period" of a person under par. (b) 2., 3. or 4. is the disciplinary period of the intermediary under par. (b) 1. through which the person attains the status of "disciplined person".

(b) "Disciplined person" means any of the following:

1. An intermediary whose license is revoked under s. 628.10 (2) (b) or surrendered under a stipulation.

2. An affiliate of an intermediary under subd. 1.

3. A person in which an intermediary under subd. 1. has, directly or indirectly, more than a 10% ownership interest.

4. An agent or employee of a person described in subd. 1., 2. or 3.

(2) During the disciplinary period of a disciplined person, the disciplined person may not be employed by, act as agent for, or be affiliated with, a person engaged in the business of an insurance intermediary.

(3) No person may do any of the following with respect to activities performed in this state:

(a) Pay consideration to, or expenses of, a disciplined person that directly or indirectly relate to services performed as an intermediary by the disciplined person during the disciplinary period of the disciplined person.

(b) Pay consideration to, or expenses of, a disciplined person that directly or indirectly relate to services performed as an intermediary by the person making the payment, or by an agent, employee or affiliate of that person, during the disciplinary period of the disciplined person.

(c) Pay consideration to, or expenses of, a disciplined person for information directly or indirectly provided by the disciplined person during the disciplinary period of the disciplined person for the purpose of assisting in the sale of insurance.

(d) Seek to obtain information from, or use information directly or indirectly provided by, a disciplined person during the disciplinary period of the disciplined person for the purpose of assisting in the sale of insurance.

(e) During the disciplinary period of a disciplined person, permit the disciplined person to be present during solicitation of the sale of insurance, or knowingly solicit the sale of insurance with the assistance of the disciplined person, regardless of whether the disciplined person acts as an intermediary.

(f) During the disciplinary period of a disciplined person, use or refer to an endorsement or referral by the disciplined person for the purpose of soliciting the sale of insurance.

(4) (a) Except as provided in par. (b), this section applies to all of the following:

1. A disciplined person for whom the disciplinary period is in effect on or after January 1, 1997.

2. That portion of a disciplinary period in effect on or after January 1, 1997, that occurs on and after January 1, 1997.

(b) This section does not apply to an obligation incurred before January 1, 1997, for the payment of consideration to, or expenses of, a disciplined person related to services performed or information provided during the disciplinary period of the disciplined person but before January 1, 1997.

History: 1995 a. 396.

628.347 Suitability in annuity transactions. (1) DEFINITIONS. In this section:

(a) "Annuity" means a fixed or variable annuity that is an insurance product that is individually solicited, whether the product is classified as an individual or group annuity.

(am) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(b) "Recommendation" means advice provided by an insurance intermediary, or an insurer if no intermediary is involved, to an individual consumer that results in the purchase, exchange, or replacement of an annuity in accordance with that advice.

(d) "Replacement" means a transaction in which a new annuity is to be purchased and it is known, or should be known to the proposing insurance intermediary, or to the proposing insurer if no intermediary is involved, that by reason of the transaction an existing policy or contract has been or is to be any of the following:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated.

2. Converted to reduced paid−up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values.

3. Amended so as to effect either a reduction in benefits or a reduction in the term for which coverage would otherwise remain in force or for which benefits would otherwise be paid.

4. Reissued with a reduction in cash value.

5. Used in a financed purchase.

(e) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including all of the following:

1. Age.

2. Annual income.

3. Financial situation and needs, including the financial resources used for the funding of the annuity.

4. Financial experience.

5. Financial objectives.

6. Intended use of the annuity.

7. Financial time horizon.

8. Existing assets, including investment and life insurance holdings.

9. Liquidity needs.

10. Liquid net worth.

11. Risk tolerance.

12. Tax status.

(2) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH REGARD TO RECOMMENDATIONS AND ISSUANCE OF ANNUITIES. (a) In recommending to a consumer the purchase of an annuity, or the exchange of an annuity that results in an insurance transaction or series of insurance transactions, an insurance intermediary, or insurer if no intermediary is involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer on the basis of facts disclosed by the consumer as to his or her investments, other insurance products, and financial situation and needs, including the consumer's suitability information, and that all of the following are true:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax−deferred growth, annuitization, or death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration all of the following:

a. Whether the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

b. Whether the consumer would benefit from product enhancements and improvements.

c. Whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(b) Before making a recommendation described in par. (a), an insurance intermediary, or insurer if no intermediary is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(bm) Except as permitted under par. (c), an insurer may not issue an annuity that is recommended by the insurer or its insurance intermediary to a consumer unless it is reasonable to believe that the annuity is suitable based on the consumer's suitability information.

(c) 1. Subject to subd. 2., neither an insurance intermediary nor an insurer has any obligation to a consumer under par. (a) or (bm) related to any annuity transaction if any of the following applies:

a. Neither the insurance intermediary nor the insurer made a recommendation.

b. The insurance intermediary or insurer made a recommendation but the recommendation was later found to have been prepared based on inaccurate material information provided by the consumer.

c. The consumer refuses to provide relevant suitability information and the annuity transaction is not recommended.

d. The consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance intermediary.

2. An insurer's issuance of an annuity under circumstances specified in subd. 1. a. to d. shall be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.

(dm) An insurance intermediary, or insurer if no intermediary is involved, shall at the time of sale do all of the following:

1. Make a record of any recommendation subject to par. (a).

2. Obtain a customer−signed statement documenting a customer's refusal, if any, to provide suitability information.

3. If a customer decides to enter into an annuity transaction that is not based on the insurance intermediary's or insurer's recommendation, obtain a customer−signed statement acknowledging that the annuity transaction is not recommended by the intermediary or insurer.

(3) INSURER'S SUPERVISORY RESPONSIBILITY. (a) An insurer shall establish a supervision system that is reasonably designed to

achieve the insurer's and its insurance intermediaries' compliance with this section. Under the system, the insurer shall do at least all of the following:

1. Maintain reasonable procedures to inform its insurance intermediaries of the requirements of this section and incorporate the requirements of this section into relevant insurance intermediary training manuals.

2. Establish standards for insurance intermediary product training and maintain reasonable procedures to require its insurance intermediaries to comply with the requirements of sub. (4m).

3. Provide product−specific training and training materials that explain all material features of its annuity products to its insurance intermediaries.

4. Maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. An insurer's procedures may apply a screening system for the purpose of identifying selected transactions for additional review. An insurer's procedures may be accomplished electronically or through other means, including physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

5. Maintain reasonable procedures to detect recommendations that are not suitable, which may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity, or both.

6. Annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, that is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b) 1. Nothing in this subsection restricts an insurer from contracting for the performance of a function required under par. (a), including maintenance of procedures. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under subs. (5) and (6), regardless of whether the insurer contracts for the performance of a function and regardless of the insurer's compliance with subd. 2.

2. An insurer's supervision system under par. (a) shall include supervision of any contractual performance under this subsection, including all of the following:

a. Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed.

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to include in its system of supervision an insurance intermediary's recommendations to consumers of products other than the annuities offered by the insurer.

(3m) PROHIBITED ACTS OF INTERMEDIARY. An insurance intermediary may not dissuade, or attempt to dissuade, a consumer from doing any of the following:

(a) Truthfully responding to an insurer's request for confirmation of suitability information.

(b) Filing a complaint.

(c) Cooperating with the investigation of a complaint.

(4) FINANCIAL INDUSTRY REGULATORY AUTHORITY RULES. (a) Subject to pars. (b) and (c), sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions satisfy the requirements under this section. Nothing in this subsection, however, limits the commissioner's ability to enforce this section, including conducting any investigation necessary for that enforcement.

(b) For par. (a) to apply, an insurer must do all of the following:

1. Monitor the FINRA member broker−dealer using information collected in the normal course of an insurer's business.

2. Provide to the FINRA member broker−dealer information and reports that are reasonably appropriate to assist the FINRA member broker−dealer to maintain its supervision system.

(c) This subsection applies to FINRA broker−dealer sales of variable annuities and fixed annuities if the suitability and supervision are similar to those applied to variable annuity sales.

(4m) INSURANCE INTERMEDIARY TRAINING. (a) An insurance intermediary may not solicit the sale of an annuity product unless the insurance intermediary has adequate knowledge of the product to recommend the annuity and the insurance intermediary is in compliance with the insurer's standards for product training. An insurance intermediary may rely on insurer−provided product−specific training standards and materials to comply with this paragraph.

(b) 1. a. An insurance intermediary who engages in the sale of annuity products shall complete a one−time training course approved by the commissioner and provided by an education provider approved by the commissioner.

b. Insurance intermediaries who hold a life insurance line of authority on May 1, 2011, and who desire to sell annuities must complete the requirements of this paragraph within 6 months after May 1, 2011. Individuals who obtain a life insurance line of authority on or after May 1, 2011, may not engage in the sale of annuities until they have completed the annuity training course required under this paragraph.

2. The minimum length of the training required under this paragraph shall be sufficient to qualify for at least 4 continuing education credits, but may be longer.

3. The training required under this paragraph shall include information on all of the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How fixed, variable, and indexed annuity contract provisions affect consumers.

d. The application of income taxation of qualified and non−qualified annuities.

e. The primary uses of annuities.

f. Appropriate sales practices and replacement and disclosure requirements.

4. Providers of annuity training courses intended to comply with this paragraph shall cover all of the topics listed under subd. 3. and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those listed under subd. 3.

5. A provider of an annuity training course intended to comply with this paragraph shall register as a continuing education provider in this state and comply with the rules and guidelines applicable to insurance intermediary continuing education courses as set forth in rules of the office governing intermediary continuing education requirements.

6. Annuity training courses may be conducted and completed by classroom or self−study methods in accordance with rules of the office governing intermediary continuing education requirements.

7. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with rules of the office governing intermediary continuing education requirements.

8. Satisfaction of the training requirements of another state that are substantially similar to the requirements of this paragraph satisfies the training requirements of this paragraph in this state.

9. An insurer shall verify that an insurance intermediary has completed the annuity training course required under this paragraph before allowing the intermediary to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subdivision by obtaining certificates of completion of the training course or obtaining reports provided by commissioner−sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(5) COMPLIANCE; REMEDIAL MEASURES. An insurer is responsible for compliance with this section. If a violation occurs, either because of the action or inaction of the insurer or its insurance intermediary, the commissioner may do any of the following:

(a) Order an insurer to take reasonably appropriate corrective action for any consumer harmed by a violation of this section by the insurer or the insurer's insurance intermediary.

(b) Order an insurance intermediary to take reasonably appropriate corrective action for any consumer harmed by a violation of this section by the insurance intermediary.

(c) Order a general agent or independent agency that employs or contracts with an insurance intermediary to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by a violation of this section by the insurance intermediary.

(d) Impose any appropriate penalties or sanctions.

(6) PENALTIES; MITIGATION. (a) Any person who violates this section is subject to the penalties provided under s. 601.64, suspension or revocation of a license or certificate of authority, and an order under s. 601.41 (4).

(c) The commissioner may by rule provide for the reduction or elimination of a penalty under par. (a) for a violation of this section if corrective action is taken for the consumer promptly after the violation is discovered or the violation is not part of a pattern or practice.

(7) RECORD KEEPING. (a) An insurer and an insurance intermediary, including a general agent and an independent agency, shall maintain, or be able to make available to the commissioner, records of the information collected from a consumer and other information used in making a recommendation that was the basis for an insurance transaction for 6 years after the insurance transaction is completed by the insurer, except as otherwise permitted by the commissioner by rule. An insurer may, but is not required to, maintain records on behalf of an insurance intermediary, including a general agent and an independent agency.

(b) Records that are required to be maintained under this section may be maintained in paper, photographic, microprocess, magnetic, or electronic media or by any process that accurately reproduces the actual document.

(8) EXEMPTIONS. This section does not apply to any of the following:

(a) Direct response solicitations in which no recommendation is made based on information collected from the consumer.

(b) Recommendations related to contracts used to fund any of the following:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act.

2. A plan described in section 401 (a) or (k), 403 (b), or 408 (k) or (p) of the Internal Revenue Code, if the plan is established or maintained by an employer.

3. A government or church plan as defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

5. A settlement or assumption of liability associated with personal injury litigation or any dispute or claim resolution process.

6. A formal prepaid funeral or burial contract.

History: 2003 a. 261; 2007 a. 168; 2009 a. 343; 2011 a. 260.

628.348 Sale of long−term care insurance. (1) TRAINING REQUIREMENT. On and after January 1, 2009, no person may solicit, negotiate, or sell long−term care insurance unless the person is a licensed intermediary and he or she has completed the initial training portion of the training program under s. 49.45 (31) (c) and completes the ongoing training under s. 49.45 (31) (c) every 24 months after completing the initial training.

(2) INSURER VERIFICATION. Insurers providing long−term care insurance shall do all of the following:

(a) Obtain from intermediaries selling long−term care insurance on behalf of the insurer verification that the intermediary is in compliance with the training requirements under sub. (1).

(b) Maintain records related to the verifications obtained under par. (a).

(c) Make the records under par. (b) available to the commissioner upon request.

History: 2007 a. 20, 226.

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 employee 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) 1. Except for health maintenance organizations, preferred provider plans and limited service health organizations, 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.

2. No provider may be required to participate exclusively in a health care plan as a condition of participation in it.

3. Except as provided in subd. 4., no provider may be denied the opportunity to participate in a health care plan, other than a health maintenance organization, a limited service health organization or a preferred provider plan, under the terms of the plan.

4. Any health care plan may exclude a provider from participation in the health care plan for cause related to the practice of his or her profession.

5. All health care plans, including health maintenance organizations, limited service health organizations and preferred provider plans are subject to s. 632.87 (3).

(2m) PHARMACEUTICAL SERVICES. (a) In this subsection:

1. "Health maintenance organization" has the meaning given in s. 609.01 (2).

2. "Limited service health organization" has the meaning given in s. 609.01 (3).

2m. "Pharmaceutical services" do not include the administration of a drug product or device or vaccine under s. 450.035.

3. "Preferred provider plan" has the meaning given in s. 609.01 (4).

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

2. Except as provided in subd. 3., subd. 1. applies to health maintenance organizations on and after May 10, 1984. Except as provided in subd. 4., subd. 1. applies to limited service health organizations and preferred provider plans on or after April 28, 1990.

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 the health maintenance organization shall comply with the requirements of subd. 1.

4. If compliance with the requirements of subd. 1. during the period specified in subd. 2. would impair any provision of a contract between a limited service health organization or preferred provider plan and any other person, and if the contract was in existence prior to April 28, 1990, then immediately after the expiration of all such contract provisions the limited service health organization or preferred provider plan shall comply with the requirements of subd. 1.

(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.

(4) FACILITATING COST−EFFECTIVE PROVISION OF HEALTH CARE SERVICES. (a) The commissioner shall provide information and assistance to the department of employee trust funds, employers and their employees, providers of health care services and members of the public, as provided in par. (b), for the following purposes:

1. To facilitate the development and implementation of health care plans that provide innovative approaches to the delivery of health care services or that are designed to contain health care costs.

2. To increase the awareness and understanding among employers and their employees, providers of health care services and members of the public regarding the availability and nature of innovative or cost−effective health care plans.

(b) The commissioner's responsibilities in accomplishing the purposes set forth in par. (a) shall include all of the following:

1. Assisting the department of employee trust funds in the development of health care plans under s. 40.51 (7).

2. Providing employers and their employees with information regarding the availability and nature of health care coverage that may be obtained under s. 40.51 (7).

3. Providing information to employers regarding how to proceed under s. 40.51 (7) to obtain health care coverage for their employees.

4. Providing information to employers and their employees and members of the public regarding the availability and nature of various kinds of health care plans, including their distinct and contrasting characteristics.

5. Providing information to employers and their employees, providers of health care services and members of the public regarding the relative effectiveness of various kinds of health care plans in containing health care costs.

History: 1975 c. 223, 371, 422; 1983 a. 27, 192, 321, 396; 1985 a. 29; 1987 a. 27; 1989 a. 31, 215; 1991 a. 250; 1997 a. 27, 68; 1997 a. 237 s. 727m.

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 installment 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 over-

due 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.

(2m) (a) Notwithstanding subs. (1) and (2) and except as provided in par. (b), a claim for payment for chiropractic services is overdue if not paid within 30 days after the insurer receives clinical documentation from the chiropractor that the services were provided unless, within those 30 days, the insurer provides to the insured and to the chiropractor the written statement under s. 632.875 (2).

(b) Paragraph (a) does not apply to any of the following:

1. Worker's compensation insurance.

2. Any line of property and casualty insurance except disability insurance. In this subdivision, "disability insurance" does not include uninsured motorist coverage, underinsured motorist coverage, or medical payment coverage.

(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; Stats. 1981 s. 628.46; 2001 a. 16, 65.

Receipt of a legally binding offer to settle a claim against the insured is not required for the insured to have a claim against the insurer for bad−faith failure to settle. Alt v. American Family Mutual Insurance Co. 71 Wis. 2d 340, 237 N.W.2d 706 (1976).

An insured may bring a tort action against an insurer for failure to exercise good faith in settling the insured's claim. This section is unrelated to such a tort action. Anderson v. Continental Insurance Co. 85 Wis. 2d 675, 271 N.W.2d 368 (1978).

The tort of bad faith handling of a claim is discussed. Davis v. Allstate Ins. Co. 101 Wis. 2d 1, 303 N.W.2d 596 (1981).

A third−party claimant cannot assert a bad faith claim against an insurer. Kranzush v. Badger State Mutual Casualty Co. 103 Wis. 2d 56, 307 N.W.2d 256 (1981).

This section applies to service insurance corporations. Physicians Service Insurance Corp. v. Mitchell, 114 Wis. 2d 338, 338 N.W.2d 326 (Ct. App. 1983).

A jury's imposition of punitive damages and finding of bad faith is adequate to show that the insurer did not have reasonable proof that it was not responsible for a claim and supports an award of prejudgment interest under sub. (1). Upthegrove v. Lumbermans Mutual Insurance Co. 146 Wis. 2d 470, 431 N.W.2d 689 (Ct. App. 1988).

Interest under s. 807.01 (4) is not in addition to interest under sub. (1). Upthegrove v. Lumbermans Insurance Co. 152 Wis. 2d 7, 447 N.W.2d 367 (Ct. App. 1989).

This section makes no distinction between the payment of claims based on judgments and all other claims; a claim may be due under sub. (2) far in advance of a judgment or award. Fritsche v. Ford Motor Credit Co. 171 Wis. 2d 280, 491 N.W.2d 119 (Ct. App. 1992).

Whether to assess 12% interest is dependent on whether the insurer had reasonable proof establishing that it was not responsible for payment. U.S. Fire Insurance Co. v. Good Humor Corp. 173 Wis. 2d 804, 496 N.W.2d 730 (Ct. App. 1993).

This section applies to the insurance company of a negligent tortfeasor and, thus, allows the recovery of interest by a 3rd−party claimant. When there is clear liability, a sum certain owed, and written notice of both, the plain language of this section, incorporating by reference s. 646.31 (2), imposes 12% simple interest on overdue payments to 3rd−party claimants. Kontowicz v. American Standard Insurance Co. of Wisconsin, 2006 WI 48, 290 Wis. 2d 302, 714 N.W.2d 105, 03−2177.

An insurer's subrogation interest did not permit it to step into the insured's shoes to assert a 12% interest claim under the facts and circumstances of the case. Legal subrogation gives indemnity only, and an insurer who possesses a cause of action for subrogation cannot recover beyond the amount actually dispersed by it. Zurich American Insurance Company v. Wisconsin Physicians Services Insurance Corporation, 2007 WI App 259, 306 Wis. 2d 617, 743 N.W.2d 710, 06−2320.

"Reasonable proof" in sub. (1) means that amount of information that is sufficient to allow a reasonable insurer to conclude that it may not be responsible for payment of a claim. Generally, reasonable proof is equated with whether coverage is considered "fairly debatable." An insurer should not have been penalized for exercising its right to litigate when policy language was ambiguous, the court of appeals was divided on the question of coverage, the issue of coverage was one of 1st impression in this state, and administrative rules were subsequently modified to clarify required coverage. Froedtert Memorial Lutheran Hospital, Inc. v. National States Insurance Company, 2009 WI 33, 317 Wis. 2d 54, 765 N.W.2d 251, 07−0934.

This section applies to all insurers. Allison v. Ticor Title Ins. Co. 979 F.2d 1187 (1992).

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

628.48 Risk retention groups. (1) PROHIBITED MARKETING. A risk retention group may not do any of the following:

(a) Solicit or sell insurance to any person who is not eligible for membership in the risk retention group.

(b) Solicit or sell insurance or otherwise operate if the risk retention group is in a hazardous financial condition or is financially impaired.

(2) NOTICE IN POLICIES. A risk retention group may not issue an insurance policy unless the following notice, in 10−point type, is included on the front page and declarations page of the policy:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

History: 1987 a. 247.

628.49 Regulation of managing general agents, reinsurance brokers and managers and controlling producers. After considering the applicable model acts adopted by the National Association of Insurance Commissioners, the commissioner may promulgate rules that are reasonably necessary to regulate the business practices and transactions of the following:

(1) Managing general agents.

(2) Reinsurance brokers.

(3) Reinsurance managers.

(4) Intermediaries that control an insurer.

History: 1991 a. 269.

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.

Cross−reference: See also s. Ins 6.66, Wis. adm. code.

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 com-

missioner 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.

SUBCHAPTER V

REGULATION OF NAVIGATORS

628.90 Definitions. In this subchapter:

(1) "Exchange" means the American health benefit exchange, as described in 42 USC 18031.

(2) "Health benefit plan" has the meaning given in s. 632.745 (11).

(3) (a) Except as provided in par. (b), "navigator" means a natural person, or an entity that supervises or employs a natural person, who does all of the following:

1. Performs any of the activities and duties identified in 42 USC 18031 (i) and 45 CFR 155.210 on behalf of the exchange.

2. Receives funding to perform any of the activities and duties identified in 42 USC 18031 (i) and 45 CFR 155.210 on behalf of the exchange.

(b) "Navigator" does not include a person acting as an insurance intermediary licensed under subch. II, but an insurance intermediary may apply to be licensed as a navigator under this subchapter.

(4) "Nonnavigator assister" means a natural person who has been designated by the exchange, or could reasonably be described as working at the behest of the exchange, as a nonnavigator assister, including an in−person assister, enrollment assister, application assister, or certified application counselor.

History: 2013 a. 20.

628.91 Requirement of licensure or registration. No natural person or entity may act as a navigator in this state unless licensed or registered as a navigator under s. 628.92.

History: 2013 a. 20.

628.92 Issuance of license and registration. (1) INDIVIDUAL LICENSE. A natural person applying for a navigator license shall make application to the commissioner on a form developed by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the person satisfies all of the following:

(a) Is at least 18 years of age.

(b) Resides in this state or maintains his or her principal place of business in this state.

(c) Has completed the training and course of study requirements under sub. (7) and any training and course of study requirements mandated by the exchange.

(d) Has successfully passed a written examination approved by the commissioner under sub. (7) that tests the applicant's knowledge concerning the duties and responsibilities of a navigator, the insurance laws and regulations of this state, and state public assistance programs and eligibility.

(e) Has submitted a full set of fingerprints to the commissioner and successfully completed a regulatory and criminal history background investigation in a manner prescribed by the commissioner under sub. (6).

(f) Possesses the requisite character, integrity, competency, and trustworthiness as determined in accordance with the criteria under the rules promulgated under s. 628.04.

(g) Has not committed any act that the commissioner finds would warrant the denial, suspension, or revocation of a license under this subchapter.

(h) Has identified the entity with which he or she is, or will be, affiliated and by which he or she is, or will be, supervised, if any.

(i) Has paid the applicable licensing fee as set forth in s. 601.31 (1) (nm).

(2) ENTITY REGISTRATION. An entity that acts or intends to operate as a navigator, supervises the activities of individual navigators, or receives funding to perform such activities shall first register as a navigator entity with the commissioner. This registration shall be on an application form developed by the commissioner, which shall include such documentation as the commissioner determines is necessary and appropriate. Before the commissioner may register the entity, the entity must establish to the satisfaction of the commissioner that it satisfies all of the following:

(a) The entity has policies and procedures in place to ensure that all acts that may be performed only by a navigator or licensed intermediary are performed by persons who are appropriately licensed under this subchapter or subch. II, or both.

(b) The entity will assume full legal responsibility for the acts of the individual navigators that it employs, supervises, or is affiliated with that are performed in this state and that are within the scope of the navigator's apparent authority.

(c) The entity is sound, reliable, and entitled to public confidence.

(d) The entity has paid the applicable registration fee as set forth in s. 601.31 (1) (np).

(e) The entity has identified on the registration form a designated responsible individual navigator who is licensed under this subchapter.

(3) DOCUMENTATION. The commissioner may require any documents necessary to verify the information contained in an application submitted under sub. (1) or (2).

(4) LIST OF INDIVIDUAL NAVIGATORS. Upon initial registration, navigator entities shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators that it employs, supervises, or is affiliated with. Thereafter, the navigator entity shall provide updates, if any, to the list of individual navigators on a monthly basis. A navigator entity is bound by the acts of each individual navigator who has been, or should have been, reported under this subsection that are performed in this state and that are within the scope of the individual navigator's apparent authority.

(5) FINANCIAL RESPONSIBILITY REQUIREMENT. (a) Each entity that is a navigator shall furnish a bond in an amount no less than $100,000 from an insurer authorized to do business in this state or provide other evidence of financial responsibility capable of protecting all persons against the wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator.

(b) An individual navigator not affiliated with an entity shall furnish a bond in an amount no less than $100,000 from an insurer authorized to do business in this state or provide other evidence of financial responsibility capable of protecting all persons against the wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator.

(c) The commissioner may by rule define the amount of the financial responsibility requirement and alternative requirements for complying with this section.

(6) FINGERPRINTS AND CRIMINAL AND REGULATORY BACKGROUND CHECK. Each applicant for licensure as an individual navigator shall provide fingerprints in a format specified by the commissioner and complete a criminal and regulatory background check as a condition for being granted a license to act as a navigator. The commissioner shall use the fingerprints to conduct a state criminal history background investigation of the applicant and a national criminal history background investigation of the applicant with the federal bureau of investigation.

(7) TRAINING AND EXAMINATION. An individual navigator shall complete at least 16 hours of prelicensing training and satisfactorily complete an approved written examination for navigators before applying for an individual navigator's license. After licensure, an individual navigator shall complete a course of study of at least 8 hours of approved training every one−year period. The commissioner may approve and designate courses and programs that an applicant for a navigator's license may complete to fulfill the prelicensing training requirement or that a licensed navigator may complete to fulfill the annual training requirement. The commissioner may make arrangements, including contracting with an outside testing service or other appropriate entity, to administer examinations and collect fees.

History: 2013 a. 20.

628.93 Other applicable provisions. (1) SOCIAL SECURITY AND FEDERAL EMPLOYER IDENTIFICATION NUMBERS ON APPLICATIONS OR AT TIME OF FEE PAYMENT. Applicants for individual navigator licensure and navigator entity registration are subject to s. 628.095.

(2) REFUSAL TO ISSUE LICENSE; FAILURE TO PAY SUPPORT OR TO COMPLY WITH SUBPOENA OR WARRANT; TAX DELINQUENCY. Applicants for individual navigator licensure and navigator entity registration are subject to s. 628.097.

(3) TERMINATION OF LICENSE. Individual navigator licenses are subject to s. 628.10.

History: 2013 a. 20.

628.95 Navigator and nonnavigator assister conduct. (1) GENERAL. For purposes of this subchapter, a navigator or nonnavigator assister, in the performance of its duties, shall be considered to be transacting the business of insurance.

(2) PROHIBITED PRACTICES. A navigator or nonnavigator assister may not do any of the following:

(a) Receive compensation from an insurer who offers a health benefit plan or stop loss insurance or from a 3rd−party administrator.

(b) Provide any information or services related to enrollment in health benefit plans or other insurance products not offered in the exchange.

(c) Make or cause to be made any communication relating to the exchange, health benefit plans, an insurance contract, the insurance business, any insurer, any navigator, any nonnavigator assister, or any intermediary that contains false, deceptive, or misleading information, including information that is misleading because of incompleteness.

(d) Provide advice about which health benefit plan is better or worse for a particular individual or employer.

(e) Recommend a particular health benefit plan or insurer or advise consumers about which health benefit plan to choose.

(f) Engage in any unfair method of competition or any other unfair, fraudulent, deceptive, or dishonest act or practice.

(g) Receive compensation that is dependent, in whole or in part, on whether an individual enrolls in or renews a health benefit plan.

(3) RESTITUTION. The commissioner may require that any person that violates this subchapter make restitution to any individual who suffers financial injury because of the violation of this subchapter.

History: 2013 a. 20.

628.96 Nonnavigator assisters. (1) REGISTRATION REQUIRED. Any entity that employs one or more nonnavigator assisters shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all nonnavigator assisters that it employs, supervises, or is affiliated with upon the nonnavigator assisters first becoming authorized by the exchange to provide nonnavigator assistance. Thereafter, the entity shall provide updates, if any, to the list of nonnavigator assisters on a monthly basis. No nonnavigator assister may act as a nonnavigator assister in this state until registered with the commissioner. The commissioner may refuse to register any nonnavigator assister to which any of the following applies:

(a) The nonnavigator assister does not possess the requisite character, integrity, competency, and trustworthiness as determined in accordance with the criteria under the rules promulgated under s. 628.04.

(b) The nonnavigator assister has committed any act that the commissioner finds would warrant the denial, suspension, or revocation of a license or registration under this subchapter.

(2) APPLICATION COUNSELORS. In addition to the requirements of this section, certified application counselors, as established by 45 CFR 155.225, shall be required to meet the training and examination requirements set forth in s. 628.92 (7). Certified application counselors may also become licensed as individual navigators.

(3) ENTITY LIABILITY. An entity that employs, supervises, or is formally affiliated with a nonnavigator assister assumes legal responsibility for the acts of the nonnavigator assister that are performed in this state and that are within the scope of the nonnavigator assister's apparent authority to act as a nonnavigator assister on behalf of that entity.

(4) EXEMPTION FOR GOVERNMENT ENTITIES. This section does not apply to any government entity or any person acting on behalf of a government entity.

History: 2013 a. 20.

628.98 Rules. The commissioner may promulgate any rules necessary to carry out the purposes of this subchapter. Notwithstanding s. 227.24 (1) (a) and (3), the commissioner may promulgate rules under this section as emergency rules under s. 227.24 without providing evidence that promulgating a rule under this section as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and without a finding of emergency.

History: 2013 a. 20.