CHAPTER 633

EMPLOYEE BENEFIT PLAN ADMINISTRATORS, PRINCIPALS, AND PHARMACY BENEFIT MANAGERS

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Cross-reference: See definitions in ss. 600.03 and 628.02.
Cross-reference: See also s. Ins 8.20, Wis. adm. code.

633.01 Definitions. In this chapter:

(1) "Administrator" means a person who directly or indirectly solicits or collects premiums or charges or otherwise effects coverage or adjusts or settles claims for an employee benefit plan, but does not include the following persons if they perform these acts under the circumstances specified for each:

(a) An employer on behalf of its employees or the employees of a subsidiary or affiliated employer.

(b) A union on behalf of its members.

(c) A creditor on behalf of its debtor, if to obtain payment, reimbursement or other method of satisfaction from an employee benefit plan for any part of a debt owed to the creditor by the debtor.

(d) A financial institution that is subject to supervision or regulation in performing these acts by federal or other state authorities.

(e) A company that issues credit cards and provides advances for, or collects premiums or charges from, its credit card holders, if the company does not adjust or settle claims.

(f) An attorney who adjusts or settles claims in the normal course of practice or employment as an attorney, if the attorney does not collect charges or premiums.

(g) An agent licensed in this state whose activities are limited to the sale of insurance.

(h) An insurer authorized to do an insurance business in this state if the insurer performs these acts in the normal course of its insurance business.

(2) "Employee" means any of the following or a family member or dependent of any of the following:

(a) An active or retired wage or salary earner whose services are or were used by an employer.

(b) A member of a union, trust or association.

(c) A college or university student.

(d) A person receiving continued group coverage under s. 632.897.

(2g) "Employee benefit plan" means an insured or wholly or partially self-insured employee benefit plan which by means of direct payment, reimbursement or other arrangement provides to one or more employees who are residents of this state benefits or services that include, but are not limited to, benefits for medical, surgical or hospital care, benefits in the event of sickness, accident, disability or death, or benefits in the event of unemployment or retirement.

(2r) "Enrollee" has the meaning given in s. 632.861 (1) (b).

(3) "Insured employee" means an employee who is a resident of this state and who is covered under an employee benefit plan.

(4g) "Pharmacy benefit manager" has the meaning given in s. 632.865 (1) (c).

(4r) "Prescription drug benefit" has the meaning given in s. 632.865 (1) (e).

(5) "Principal" means a person, including an insurer, that uses the services of an administrator to provide an employee benefit plan.

(6) "Self-insured health plan" has the meaning given in s. 632.85 (1) (c).

History: 1991 a. 39; 2021 a. 9.

633.04 Written agreement required. An administrator may not administer an employee benefit plan in the absence of a written agreement between the administrator and a principal. The administrator and principal shall each retain a copy of the written agreement for the duration of the agreement and for 5 years thereafter. The written agreement shall contain the following terms:

(1) That the administrator and principal shall each retain a copy of the written agreement as provided under this section.

(2) If a policy is issued to a trust, that the administrator shall retain a copy of the trust agreement for the duration of the trust agreement and for 5 years thereafter.

(3) If the principal is an insurer, that payments to an administrator shall be treated as provided in s. 633.05.

(4) That the administrator shall maintain and retain books and records pertaining to a principal dating back 5 years at all times or until delivered to the principal by the administrator, with the right of examination and audit as provided in s. 633.06 (1), and the right of inspection and any restrictions on the right of inspection, as provided in s. 633.06 (2).

(5) If the principal is an insurer, that advertising shall be approved as provided in s. 633.07.

(6) If the principal is an insurer, that the terms, as required by s. 633.08, specify any underwriting responsibilities which the insurer has delegated to the administrator.

(7) That funds shall be collected and received as provided in s. 633.09 (1), that funds shall be paid and deposited as provided in s. 633.09 (1), that fiduciary account records shall be maintained and provided as provided in s. 633.09 (2), that interest shall be treated as provided in s. 633.09 (3) or that other terms shall specify treatment of interest, that withdrawals for payments of claims are not permitted as provided in s. 633.09 (4) (a), and that other withdrawals are permitted only as provided under s. 633.09 (4) (b).

(8) That claims are to be paid as provided in s. 633.10.

(9) That compensation to an administrator shall be paid as provided in s. 633.11.

(10) That notification shall be given as provided in s. 633.12.

(11) That an administrator has been licensed as provided in s. 633.13 (1) or need not be licensed as provided in s. 633.13 (2).

History: 1991 a. 39; 2021 a. 9.

633.05 Payment to administrator. If a principal is an insurer, payment to the administrator of a premium or charge by or on behalf of an insured employee is payment to the insurer, but payment of a return premium or claim by the insurer to the administrator is not payment to an insured employee until the payment is received by the insured employee. This section does not limit any right of the insurer against the administrator for failure to make payments to the insurer or an insured employee.

History: 1991 a. 39; 2021 a. 9.

633.06 Examination and inspection of books and records. (1) The commissioner may examine, audit or accept an audit of the books and records of an administrator or pharmacy benefit manager as provided for examination of licensees under s. 601.43 (1), (3), (4) and (5), to be conducted as provided in s. 601.44, and with costs to be paid as provided in s. 601.45.

(2) A principal that uses an administrator may inspect the books and records of the administrator, subject to any restrictions set forth in ss. 146.81 to 146.835 and in the written agreement required under s. 633.04, for the purpose of enabling the principal to fulfill its contractual obligations to insured employees.

History: 1991 a. 39; 2021 a. 9.

633.07 Approval of advertising. An administrator may not use any advertising for an employee benefit plan underwritten by an insurer unless the insurer approves the advertising in advance.

History: 1991 a. 39; 2021 a. 9.

633.08 Underwriting responsibilities. If a principal is an insurer, any underwriting responsibilities regarding eligibility that the insurer has delegated to an administrator shall be set forth in the written agreement required under s. 633.04.

History: 1991 a. 39.

633.09 Accounts. (1) MONEYS HELD IN FIDUCIARY CAPACITY. An administrator shall hold in a fiduciary capacity all moneys that the administrator collects or receives on behalf of other persons. Within 2 business days after collection or receipt of such moneys, the administrator either shall pay the moneys to the persons entitled to them or shall deposit the moneys in a fiduciary account established and maintained by the administrator in a financial institution.

(2) FIDUCIARY ACCOUNT RECORDS. An administrator shall maintain fiduciary account records in accordance with generally accepted accounting principles. The administrator shall retain the fiduciary account records pertaining to a principal for at least 5 years beginning on the date of creation of the records. If an administrator deposits in a fiduciary account moneys that the administrator has collected on behalf of more than one principal, the administrator shall keep records of the account that clearly indicate deposits made under sub. (1) and withdrawals made under sub. (4) on behalf of each principal. Upon request by a principal, the administrator shall provide the principal copies of those portions of the records pertaining to deposits and withdrawals made on behalf of the principal and shall otherwise permit inspection by the principal as provided under s. 633.06 (2).

(3) INTEREST ON DEPOSITS. Interest earned on moneys deposited in a fiduciary account is the property of the principal unless otherwise provided in the written agreement required under s. 633.04.

(4) WITHDRAWALS FROM FIDUCIARY ACCOUNT. (a) An administrator may not pay any claim by withdrawal from a fiduciary account.

(b) An administrator may make the following payments from a fiduciary account:

1. To a principal, the funds belonging to the principal.

2. To an employee benefit plan policyholder for payment to a principal, the funds belonging to the principal.

3. To an insured employee, the funds belonging to the insured employee.

4. To another account maintained in the name of a principal, the funds belonging to the principal.

5. To a claims paying account, the funds belonging to a principal for payment of claims owed by the principal.

6. To the administrator, commissions, fees or charges owed the administrator by a principal.

History: 1991 a. 39; 2021 a. 9.

633.10 Payment of claims. An administrator shall pay claims from funds paid to the claims paying account under s. 633.09 (4) (b) 5. on drafts or checks authorized in advance by the principal.

History: 1991 a. 39.

633.11 Claim adjustment compensation. If an administrator adjusts or settles claims under an employee benefit plan, the commission, fees or charges that the principal pays the administrator may not be based on the employee benefit plan's loss experience. This section does not prohibit compensation based on the number or amount of premiums or charges collected, or the number or amount of claims paid or processed by the administrator.

History: 1991 a. 39; 2021 a. 9.

633.12 Notification required. (1) An administrator shall prepare sufficient copies of a written notice approved in advance by the principal for distribution to all insured employees of the principal and either shall distribute the copies to the insured employees or shall provide the copies to the principal for distribution to the insured employees. The written notice shall contain all of the following:

(a) The names and addresses of the administrator and the principal.

(b) An explanation of the respective rights and responsibilities of the administrator, the principal and the insured employees.

(c) A statement of the extent to which the employee benefit plan is insured or self-insured, and an explanation of the terms "insured" and "self-insured".

(2) If an administrator collects premiums or charges from a person on behalf of a principal, at least once in every year, prior to collecting the premiums or charges, the administrator shall provide written notice to the person stating the amount of the premiums or charges.

History: 1991 a. 39; 2021 a. 9.

633.13 License required. (1) GENERAL. Except as provided in sub. (2), a person may not perform, offer to perform or advertise any service as an administrator or a pharmacy benefit manager unless the person has obtained a license under s. 633.14. A pharmacy benefit manager that also performs services as an administrator need only obtain an administrator license under s. 633.14.

(2) EXEMPTIONS. The commissioner may exempt by rule certain classes of administrators from the requirement of sub. (1) if the commissioner determines any of the following:

(a) That the functions that the administrators perform do not require special competence or trustworthiness or otherwise do not require the regulatory surveillance of a licensing requirement.

(b) That other safeguards make a licensing requirement unnecessary.

(3) RESPONSIBILITIES OF PRINCIPAL. A principal may not use the services of an administrator unless the administrator furnishes proof of licensure under s. 633.14 or exemption under sub. (2). An insurer or a self-insured health plan may not use the services of a pharmacy benefit manager unless the pharmacy benefit manager furnishes proof of licensure under s. 633.14.

History: 1991 a. 39; 2021 a. 9.

633.14 Issuance of license. (1) The commissioner shall issue a license to act as an administrator to an individual who does all of the following:

(a) Subject to s. 601.31 (2m), pays the fee under s. 601.31 (1) (w).

(b) Supplies a bond meeting the specifications established under sub. (3).

(c) Shows to the satisfaction of the commissioner all of the following:

1. That the person intends in good faith to act as an administrator in compliance with applicable laws of this state and rules and orders of the commissioner.

2. That the person is competent and trustworthy.

3. That the person is licensed to act as an agent.

4. If a nonresident, that the person has executed in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and the courts of this state and rules and orders of the commissioner, with service of process as provided under ss. 601.72 and 601.73.

(d) Provides his or her social security number, unless the individual does not have a social security number.

(e) If an individual who does not have a social security number, provides on a form prescribed by the department of children and families a statement made or subscribed under oath or affirmation that he or she does not have a social security number.

(2) The commissioner shall issue a license to act as an administrator or pharmacy benefit manager to a corporation, limited liability company or partnership that does all of the following:

(a) Pays the fee under s. 601.31 (1) (w).

(b) Supplies a bond meeting the specifications established under sub. (3).

(c) Shows to the satisfaction of the commissioner all of the following:

1. That the corporation, limited liability company or partnership intends in good faith to act as an administrator or pharmacy benefit manager through individuals designated under subd. 3. in compliance with applicable laws of this state and rules and orders of the commissioner.

2. That each officer, director, member, partner or other individual having comparable responsibilities in the corporation, limited liability company or partnership is competent and trustworthy.

3. That for each employee benefit plan or prescription drug benefit to be administered, the corporation, limited liability company or partnership has designated or will designate an individual in the corporation, limited liability company or partnership to directly administer the employee benefit plan or prescription drug benefit.

4. If not organized under the laws of this state, that the corporation, limited liability company or partnership has executed in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and the courts of this state and rules and orders of the commissioner, with service of process as provided under ss. 601.72 and 601.73.

(d) Provides its federal employer identification number.

(2c) (a) The commissioner shall disclose a social security number obtained under sub. (1) (d) 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) (d) or (2) (d) or s. 633.15 (1m) 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.

(2m) (a) Notwithstanding sub. (1), the commissioner may not issue a license under this section if the individual applying for the license 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 individual 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.

(b) Notwithstanding subs. (1) and (2), the commissioner may not issue a license under this section if the department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions.

(3) The commissioner shall promulgate rules establishing the specifications that a bond supplied by an administrator or pharmacy benefit manager under sub. (1) (b) or (2) (b) must satisfy to guarantee faithful performance of the administrator or pharmacy benefit manager.

History: 1991 a. 39; 1993 a. 112; 1997 a. 191, 237; 1999 a. 9; 2007 a. 20; 2011 a. 209; 2013 a. 36; 2021 a. 9.

Cross-reference: See also s. Ins 8.28, Wis. adm. code.

633.15 License; renewal, suspension, limitation, revocation, penalty. (1) ANNUAL RENEWAL FEE. (a) *Payment.* An administrator or pharmacy benefit manager shall pay the annual renewal fee under s. 601.31 (1) (w) for each annual renewal of a license by the date specified by a schedule established under par. (b).

(b) *Schedule by rule.* The commissioner shall promulgate rules establishing a schedule for payment of the annual renewal fee.

(1m) SOCIAL SECURITY NUMBER, FEDERAL EMPLOYER IDENTIFICATION NUMBER OR STATEMENT. At an annual renewal, an administrator or pharmacy benefit manager shall provide his or her social security number, if the administrator is an individual unless he or she does not have a social security number, or its federal employer identification number, if the administrator or pharmacy benefit manager is a corporation, limited liability company or partnership, if the social security number or federal employer identification number was not previously provided on the application for the license or at a previous renewal of the license. If an administrator who is an individual does not have a social security number, the individual shall provide to the commissioner, at each annual renewal and on a form prescribed by the department of children and families, a statement made or subscribed under oath or affirmation that the administrator does not have a social security number.

(2) REVOCATION, SUSPENSION, LIMITATION. (a) *Nonpayment of annual renewal fee or failure to provide social security number or federal employer identification number.* 1. If an administrator or pharmacy benefit manager fails to pay the annual renewal fee as provided under sub. (1) or fails to provide a social security number, federal employer identification number or statement made or subscribed under oath or affirmation as required

under sub. (1m), the commissioner shall suspend the administrator's or pharmacy benefit manager's license effective the day following the last day when the annual renewal fee may be paid, if the commissioner has given the administrator or pharmacy benefit manager reasonable notice of when the fee must be paid to avoid suspension.

2. If, within 60 days from the effective date of suspension under subd. 1., an administrator or pharmacy benefit manager pays the annual renewal fee or provides the social security number, federal employer identification number or statement made or subscribed under oath or affirmation, or both if the suspension was based upon a failure to do both, the commissioner shall reinstate the administrator's or pharmacy benefit manager's license effective as of the date of suspension.

3. If payment is not made or the social security number, federal employer identification number or statement made or subscribed under oath or affirmation is not provided within 60 days from the effective date of suspension under subd. 1., the commissioner shall revoke the administrator's or pharmacy benefit manager's license.

4. A person whose license has been revoked under subd. 3. may apply for a new license under s. 633.14 at any time.

(b) *Other reasons.* 1. Except as provided in pars. (c) to (e), the commissioner may revoke, suspend or limit the license of an administrator or pharmacy benefit manager after a hearing if the commissioner makes any of the following findings:

a. That the administrator or pharmacy benefit manager is unqualified to perform the responsibilities of an administrator or pharmacy benefit manager.

b. That the administrator or pharmacy benefit manager has repeatedly or knowingly violated an applicable law, rule or order of the commissioner.

c. If the licensee is an administrator, that the administrator's methods or practices in administering an employee benefit plan endanger the interests of insured employees or the public, or that the financial resources of the administrator are inadequate to safeguard the interests of insured employees or the public.

d. If the licensee is a pharmacy benefit manager, that the pharmacy benefit manager's methods or practices in administering a prescription drug benefit endanger the interests of enrollees or the public, or that the financial resources of the pharmacy benefit manager are inadequate to safeguard the interests of enrollees or the public.

2. A person whose license has been revoked under subd. 1. may apply for a new license under s. 633.14 only after the expiration of 5 years from the date of the order revoking the administrator's or pharmacy benefit manager's license, unless the order specifies a lesser period.

(c) *Failure to pay support or to comply with subpoena or warrant.* The commissioner shall suspend, limit or refuse to renew a license issued under this section to an individual if the individual 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 individual 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.

(d) *For liability for delinquent taxes or unemployment insurance contributions.* The commissioner shall revoke or refuse to renew a license issued under s. 633.14 if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions.

(e) *For providing false information in statement.* The commissioner shall revoke a license issued under s. 633.14 (1) if the commissioner determines, after a hearing, that the licensee provided false information in a statement provided under sub. (1m) or s. 633.14 (1) (e).

(f) The commissioner, after ordering a suspension or revocation under this subsection, may allow a pharmacy benefit manager to continue to provide services for the purpose of providing continuity of care in prescription drug benefits to existing enrollees.

History: 1991 a. 39; 1997 a. 191, 237; 1999 a. 9; 2007 a. 20; 2013 a. 36; 2021 a. 9.

633.16 Regulation. Nothing in this chapter gives the commissioner the authority to impose requirements on an employee benefit plan that is exempt from state law under 29 USC 1144 (b).

History: 1991 a. 39; Stats. 1991 s. 633.16; 2021 a. 9.

The commissioner lacks authority to regulate administrators of self-funded or self-insured employee benefit plans. 80 Atty. Gen. 290.

633.17 Rule-making authority. The commissioner shall promulgate rules necessary for the implementation of this chapter, in addition to the rules permitted under s. 633.13 (2) and required under ss. 633.14 (3) and 633.15 (1) (b).

History: 1991 a. 39.