 definitions of a subsidiary or affiliated employer. If a policy is issued to a trust, that the administrator shall specify any underwriting responsibilities which the insurer has delegated to the administrator.

(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).


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, 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).


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 admin-
istrator 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.


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.


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.


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.


633.09 Accounts. (1) MONEY 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 enti-
tled 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 admin-
istrator deposits in a fiduciary account moneys that the adminis-
trator has collected on behalf of more than one principal, the
administrator shall keep records of the account that clearly indi-
cate deposits made under sub. (1) and withdrawals made under sub.
(4) on behalf of each principal. Upon request by the principal,
the administrator shall provide the principal copies of those por-
tions 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 depos-
it 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 adminis-
trator 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 princi-
      pal for payment of claims owed by the principal.

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


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.


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


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 distribu-
tion to the insured employees. The written notice shall contain all
of the following:
   (a) The names and addresses of the administrator and the prin-
cipal.
   (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 pro-
vide written notice to the person stating the amount of the pre-
miums or charges.


633.13 License required. (1) GENERAL. Except as pro-
vided 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.

(2) EXEMPTIONS. The commissioner may exempt by rule cer-
tain 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 requiremen-
      t.
   (b) That other safeguards make a licensing requirement unnec-
      essary.

(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 man-
ger furnishes proof of licensure under s. 633.14.


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).

EMPLOYEE BENEFIT PLANS 633.15

(a) 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.


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 or revoke 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 as required under subd. 1., 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.

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).

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).