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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 5A. Administrators [1759 - 1759.10] (*Chapter 5A added by Stats. 1977, Ch. 998.*)

1759. For purposes of this chapter, "administrator" means any person who collects any charge or premium from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities or coverage described in Section 740 other than any of the following:

- (a) An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of that employer.
- (b) A union on behalf of its members.
- (c) An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or prepaid hospital or health care service plan (including their sales representatives licensed in this state when engaged in the performance of their duties).
- (d) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.
- (e) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.
- (f) A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. Sec. 186.
- (g) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code.
- (h) A bank, credit union or other financial institution which is subject to supervision or examination by federal or state regulatory authorities.
- (i) A company which advances for and collects any premium or charge from its credit card holders who have authorized it to do so, provided the company does not adjust or settle claims.
- (j) A person who adjusts or settles claims in the normal course of his or her practice or employment as an attorney at law, and who does not collect any charge or premium in connection with life or health insurance coverage or annuities.
- (k) An adjuster licensed by the Insurance Commissioner when engaged in the performance of his or her duties.
- (l) A nonprofit agricultural association.
- (m) Any person or entity subject to regulation under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(Amended by Stats. 1984, Ch. 947, Sec. 4. Effective September 10, 1984.)

1759.1. No administrator shall act as such without a written agreement between the administrator and the insurer, and such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and five years thereafter. Such written agreement shall contain provisions which include the requirements of Sections 1759.2 to 1759.8, inclusive, except insofar as those requirements do not apply to the functions performed by the administrator.

Where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and five years thereafter.

(Added by Stats. 1977, Ch. 998.)

1759.2. Whenever an insurer utilizes the services of an administrator under the terms of a written contract as required in Section 1759.1, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured or claimant until such payments are received by the insured or claimant. Nothing herein shall limit any right of the insurer against the administrator resulting from its failure to make payments to the insurer, insureds or claimants.

(Added by Stats. 1977, Ch. 998.)

1759.3. (a) Every administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in Section 1759.1 and five years thereafter adequate books and records of all transactions between it, and insurers and insured persons. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The insurer shall retain the right to continuing access to the books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the books and records.

(b) The commissioner shall have access to the books and records for the purpose of examination, audit, and inspection. Any information contained in the books and records, including, but not limited to, the identity and addresses of policyholders and certificateholders, shall be confidential, except the commissioner may use the information in any proceedings instituted against the administrator.

(c) The commissioner may, after notice and hearing, promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by administrators.

(d) Every administrator shall keep and maintain the books and records required by this section and the regulations promulgated pursuant to this section. Failure to keep or maintain the books and records as required shall be grounds for the suspension or revocation of the certificate of registration of the administrator. The proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1984, Ch. 563, Sec. 4.)

1759.4. An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by such insurer in advance of its use.

(Added by Stats. 1977, Ch. 998.)

1759.5. The agreement shall make provision with respect to the underwriting or other standards pertaining to the business underwritten by such insurer.

(Added by Stats. 1977, Ch. 998.)

1759.6. All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers, and return premiums received from such insurer or insurers, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled thereto, or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall keep copies of all such records and, upon request of an insurer, shall furnish such insurer with copies of such records pertaining to deposits and withdrawals on behalf of or for such insurer. The administrator shall not pay any claim on behalf of or for such insurer by withdrawals from such fiduciary account. Withdrawals from such account shall be made, as provided in the written agreement between the administrator and the insurer, for (1) remittance to an insurer entitled thereto; (2) deposit in an account maintained in the name of such insurer; (3) transfer to and deposit in a claims paying account, with claims on behalf of or for such insurer to be paid as provided in Section 1759. 7; (4) payment to a group policyholder for remittance to the insurer entitled thereto; (5) payment to the administrator of its commission, fees or charges; or (6) remittance of return premiums to the person or persons entitled thereto.

(Amended by Stats. 1978, Ch. 280.)

1759.7. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on checks or drafts of, or, with the consent of the insured, by an electronic funds transfer from, and as authorized by the insurer.

(Amended by Stats. 2009, Ch. 433, Sec. 12. (AB 328) Effective January 1, 2010.)

1759.8. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to such policies shall in no way be contingent on claim experience.

(Added by Stats. 1977, Ch. 998.)

1759.9. Where the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer, to insured individuals, advising them of the identity of and relationship among the administrator, the policyholder and the insurer. Where an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

(Added by Stats. 1977, Ch. 998.)

1759.10. A person shall not act as, or hold himself or herself out to be, an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which he or she is acting as an administrator, unless he or she holds a certificate of registration as an administrator issued by the commissioner. The certificate shall be issued, renewed, and held in accordance with, and subject to, all the provisions applicable to a life agent contained in Article 6 (commencing with Section 1666), excluding Section 1672, Article 10 (commencing with Section 1708), Article 11 (commencing with Section 1716), and Article 13 (commencing with Section 1737), excluding Section 1741, of, and subject to the fees applicable to resident life agents as set forth in Article 14 (commencing with Section 1750) of, Chapter 5. Every administrator shall also comply with Section 1724.5.

(Amended by Stats. 2012, Ch. 786, Sec. 34. (AB 2303) Effective January 1, 2013.)