

# WEST VIRGINIA CODE: §33-46-2

## §33-46-2. Definitions.

(a) "Administrator" or "third-party administrator" means a person who directly or indirectly underwrites or collects charges or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity or accident and sickness coverage offered or provided by an insurer, except any of the following:

(1) An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer;

(2) A union on behalf of its members;

(3) An insurer that is licensed to transact insurance in this state with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state or another state including:

(A) A health service corporation licensed under article twenty-four of this chapter;

(B) A health care corporation licensed under article twenty-five of this chapter;

(C) A health maintenance organization licensed under article twenty-five-a of this chapter; and

(D) A prepaid limited health service organization licensed under article twenty-five-d of this chapter.

(4) An insurance producer licensed to sell life, annuities or health coverage in this state whose activities are limited exclusively to the sale of insurance;

(5) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(6) A trust and its trustees, agents and employees acting pursuant to the trust established in conformity with 29 U.S.C. Section 186;

(7) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

(8) A credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and

remit premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments;

(9) A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection;

(10) A person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life, annuity or accident and sickness coverage;

(11) An adjuster licensed by this state whose activities are limited to adjustment of claims;

(12) A person licensed as a managing general agent in this state whose activities are limited exclusively to the scope of activities conveyed under that license; or

(13) An administrator who is affiliated with an insurer and who only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Insurance Commissioner, upon a request from the Insurance Commissioner. For purposes of this subdivision, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

(b) "Affiliate or affiliated" means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(c) "Commissioner" means the Insurance Commissioner of this state.

(d) "Control", "controlling", "controlled by" and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by the West Virginia insurance holding company systems act that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

(e) "GAAP" means United States generally accepted accounting principles consistently applied.

(f) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated, nor the state in which it maintains its principal place of business has adopted the national association of Insurance Commissioners' model third party administrator act or a substantially similar law governing administrators, the administrator may declare another state, in which it conducts business, to be its "home state".

(g) "Insurance producer" means a person who sells, solicits or negotiates a contract of insurance as those terms are defined in this article.

(h) "Insurer" means a person undertaking to provide life, annuity or accident and sickness coverage or self-funded coverage under a governmental plan or church plan in this state. For the purposes of this article, insurer includes an employer, a licensed insurance company, a prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

(i) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(j) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(k) "Person" means an individual or a business entity.

(l) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(m) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(n) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan; and the overall planning and coordinating of a benefits program.

(o) "Uniform application" means the current version of the national association of Insurance Commissioners uniform application for third-party administrators.