WEST VIRGINIA CODE CHAPTER 33 ARTICLE 46

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§33-46-1. Short title.

This article may be cited as the "Third-Party Administrator Act".

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§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;

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(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.

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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.

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§33-46-3. Written agreement necessary.

(a) No administrator may act as such without a written agreement between the administrator and the insurer and the 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 for ten years thereafter. The agreement shall contain all provisions required by this statute, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) The written agreement shall include a statement of duties that the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the administrator.

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§33-46-4. Payment to administrator.

If an insurer uses the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured party shall be considered to have been received by the insurer and the payment of return premiums or claim payments forwarded by the insurer to the administrator shall not be considered to have been paid to the insured party or claimant until the payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the administrator resulting from the failure of the administrator to make payments to the insurer, insured parties or claimants.

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§33-46-5. Maintenance of information.

(a) An administrator shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and shall be maintained for a period of not less than ten years from the date of their creation.

(b) The commissioner shall have access to books and records maintained by an administrator for the purposes of examination, audit and inspection. Any documents, materials or other information in the possession or control of the commissioner that is furnished by an administrator, insurer, insurance producer or an employee or agent thereof acting on behalf of the administrator, insurer or insurance producer, or obtained by the commissioner in an investigation is confidential by law and privileged, is not subject to chapter twenty-nine-b of this code, is not subject to subpoena and is not subject to discovery or admissible as evidence in any private civil action. However, the commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(c) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (b) of this section.

(d) In order to assist in the performance of his or her duties, the commissioner may:

(1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (b) of this section, with other state, federal and international regulatory agencies, with the national association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) Enter into agreements governing the sharing and use of information consistent with this subsection.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this

section or as a result of sharing as authorized in subsection (d) of this section.

(f) Nothing in this article prohibits the commissioner from releasing final, adjudicated actions, including for cause terminations, that are open to public inspection pursuant to chapter twenty-nine-b of this code to a database or other clearinghouse service maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries.

(g) The insurer owns the records generated by the administrator pertaining to the insurer; however, the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants and the insurer.

(h) In the event the insurer and the administrator cancel their agreement, the administrator may, by written agreement with the insurer, transfer all records to a new administrator rather than retain them for ten years notwithstanding the provisions of subsection (a) of this section. In those cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in subsection (a) of this section.

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§33-46-6. Approval of advertising.

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

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§33-46-7. Responsibilities of the insurer.

(a) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

(b) It is the sole responsibility of the insurer to provide for competent administration of its programs.

(c) In cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one review shall be an on-site audit of the operations of the administrator.

(d) For purposes of this section, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

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§33-46-8. Premium collection and payment of claims.

(a) All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally or state-insured financial institution. The written agreement between the administrator and the insurer shall provide for the administrator to periodically render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer.

(b) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The administrator shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

(c) The administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from the account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address, but not be limited to, the following:

(1) Remittance to an insurer entitled to remittance;

(2) Deposit in an account maintained in the name of the insurer;

(3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided for in subsection (d) of this section;

(4) Payment to a group policyholder for remittance to the insurer entitled to the remittance;

(5) Payment to the administrator of its commissions, fees or charges; and

(6) Remittance of return premium to the person or persons entitled to the return premium.

(d) All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

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§33-46-9. Compensation to the administrator.

(a) An administrator may not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

(b) This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

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§33-46-10. Notice to covered individuals; disclosure of charges and fees.

(a) When the services of an administrator are used, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

(b) When an administrator collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

(c) The administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

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§33-46-11. Delivery of materials to covered individuals.

Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

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§33-46-12. Home state certificate of authority or license.

(a) Prior to conducting business in West Virginia an administrator or third-party administrator must be licensed in accordance with the requirements of this article.

(b) If West Virginia is a person's home state, then the person may apply for licensure in this state by filing a uniform application with the Insurance Commissioner. The application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to the documents;

(2) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

(3) National association of Insurance Commissioners' biographical affidavits for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

(A) Amounts shown on the consolidated audited financial report;

(B) Amounts for each entity stated separately; and

(C) Explanations of consolidating and eliminating entries.

The applicant shall also include any other information required by the commissioner in order to review the current financial condition of the applicant;

(5) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth

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the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping and underwriting; and

(6) Any other pertinent information required by the commissioner.

(c) An administrator licensed or applying for licensure under this section shall make available for inspection by the commissioner copies of all contracts with insurers or other persons using the services of the administrator.

(d) An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs as often as reasonably required by the commissioner.

(e) The commissioner may refuse to issue a certificate of authority or license if the commissioner determines that the administrator, or any individual responsible for the conduct of affairs of the administrator, is not competent, trustworthy, financially responsible or of good personal and business reputation or has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the commissioner determines that any of the grounds set forth in section seventeen of this article exists with respect to the administrator.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended or revoked by the commissioner, for as long as the administrator continues in business in this state and remains in compliance with this article.

(g) An administrator licensed or applying for licensure under this section shall immediately notify the commissioner of any material change in its ownership, control or other fact or circumstance affecting its qualification for a certificate of authority or license in this state.

(h) An administrator licensed or applying for a home state certificate of authority/license that administers or will administer governmental or church self-insured plans in its home state or any other state shall maintain a surety bond for the use and benefit of the home state commissioner and the insurance regulatory authority of any additional state in which the administrator is authorized to conduct business and cover individuals and persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the lessor of the following amounts:

(1) One hundred thousand dollars; or

(2) Ten percent of the aggregate total amount of self-funded coverage under church plans or governmental plans handled in the administrator's home state and all additional states in which the administrator is authorized to conduct business.

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§33-46-13. Registration requirement.

A person who directly or indirectly underwrites, 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 provided by a self-funded plan other than a governmental or church plan shall register with the commissioner annually, verifying its status as in this article described.

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§33-46-14. Nonresident administrator.

(a) Unless an administrator has obtained a home state license in this state under section twelve of this article, any administrator who performs administrator duties in this state shall obtain a nonresident administrator license in accordance with this section by filing with the commissioner the uniform application, accompanied by a letter of certification. In lieu of requiring an administrator to file a letter of certification with the uniform application, the commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries.

(b) An administrator is not eligible for a nonresident administrator license under this section if it does not hold a certificate of authority or license as a resident in a home state that has adopted the national association of Insurance Commissioners' model third-party administrator act or a substantially similar law governing administrators.

(c) Except as provided in subsections (b) and (h) of this section, the commissioner shall issue to the administrator a nonresident administrator license promptly upon receipt of a complete application and the application fee.

(d) Unless notified by the commissioner that the commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries, each nonresident administrator shall annually file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.

(e) At the time of filing the statement required under subsection (d) of this section or, if the commissioner has notified the nonresident administrator that the commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, on or before October 1, the nonresident administrator shall pay the fee set forth in section fifteen of this article.

(f) An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs as often as reasonably required by the commissioner.

(g) A nonresident administrator is not required to hold a nonresident administrator license in this state if the administrator's duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of one hundred lives for all plans reside in this state. This subsection applies only to multistate administrators. The administrator must be licensed in its home state regardless of the number of lives under a group policy or plan.

(h) The commissioner may refuse to issue a nonresident administrator license, or may delay

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the issuance of a nonresident administrator license, if the commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the administrator, the nonresident administrator cannot satisfy the requirements of this article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. In that event, the commissioner shall give written notice of its determination to the commissioner of the home state and the commissioner may delay the issuance of a nonresident administrator license to the nonresident administrator until such time, if at all, that the commissioner determines that the administrator can satisfy the requirements of this article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license.

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§33-46-15. Fees and charges.

Except where it is otherwise specially provided, the commissioner shall assess third-party administrators the following fees: For annual fee for each license, $200; for receiving and filing annual reports, $100; for filing a certified copy of articles of incorporation, $50; for filing a copy of its charter, $50; for filing statements preliminary to admission, $100; for filing any additional paper required by law or furnishing copies of the additional paper, $1; and for every copy of a report or certificate of condition of administrator to be filed in any other state, $25. The commissioner may by rule set reasonable charges for printed forms for the annual statements required by law. He or she may sell at cost publications purchased by, or printed on behalf of the commissioner. All fees and moneys collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

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§33-46-16. Annual report and filing fee.

(a) Each administrator licensed under section twelve of this article shall file an annual report for the preceding calendar year with the commissioner on or before July 1, of each year or within an extension of time granted by the commissioner for good cause. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

(1) Amounts shown on the consolidated audited financial report;

(2) Amounts for each entity stated separately; and

(3) Explanations of consolidating and eliminating entries.

The report shall be in the form and contain any matters prescribed by the commissioner and shall be verified by at least two officers of the administrator.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay the filing fee provided in section fifteen of this article.

(d) The commissioner shall review the most recently filed annual report of each administrator on or before September 1, of each year. Upon completion of its review, the commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in that annual report and financial statements; or

(2) Update any electronic database maintained by the national association of Insurance Commissioners, its affiliates or subsidiaries, indicating the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report.

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§33-46-17. Grounds for denial, suspension or revocation of license.

(a) The license of an administrator shall be denied, suspended or revoked if the commissioner finds that the administrator:

(1) Is in an unsound financial condition;

(2) Is using methods or practices in the conduct of its business that render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final.

(b) The commissioner may deny, suspend or revoke the license of an administrator if the commissioner finds that the administrator:

(1) Has violated any lawful rule or order of the commissioner or any provision of the insurance laws of this state;

(2) Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the administrator, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the administrator; has refused to give information with respect to its affairs; or has refused to perform any other legal obligation as to an examination, when required by the commissioner;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of their claims;

(4) At any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony

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without regard to whether the adjudication was withheld;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to section sixteen of this article, if a resident administrator, or its statement and filing fee, as applicable, pursuant to subsections (d) and (e), section fourteen of this article if a nonresident administrator.

(c) The commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the license of an administrator if the commissioner finds that one or more of the following circumstances exist:

(1) The administrator is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state; or

(3) The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(d) If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this article, in any case except where that action is not mandatory, the commissioner may, in lieu of suspension or revocation, by order require the administrator to pay to the State of West Virginia a penalty in a sum not exceeding $10,000 and upon the failure of the administrator to pay the penalty within thirty days after notice of the penalty, the commissioner may revoke or suspend the license of the administrator.

(e) When any license has been revoked or suspended or renewal of the license refused, the commissioner may reissue, terminate the suspension or renew the license when he or she is satisfied that the conditions causing the revocation, suspension or refusal to renew have ceased to exist and are unlikely to recur.

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§33-46-18. Exemption for administrators of public health programs.

Programs supervised by the Department of Human Services, pursuant to chapter nine of this code; the Public Employees Insurance Agency, pursuant to articles sixteen and sixteen-c, chapter five of this code; and the Department of Administration, pursuant to article sixteen-b, chapter five of this code, are exempted from the provisions of this article. Third-party administrators who administer the above-referenced programs are exempt from the provisions of this article with respect to these specific programs only.

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§33-46-19. Unauthorized business.

The unauthorized conduct of the business of an administrator shall be treated as unauthorized insurance business and shall be subject to the same criminal and civil penalties as provided in article forty-four for violation of the unauthorized insurers act.

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§33-46-20. Commissioner authorized to propose rules.

The Insurance Commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary to effectuate this article.

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