WEST VIRGINIA CODE CHAPTER 33 ARTICLE 64

WV Legislature

§33-64-1. Definitions.

As used in this article:

"Broker" means an independent health insurance agent licensed in this state.

"Commissioner" means the Insurance Commissioner of West Virginia.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit corporation, unincorporated organization, government, or governmental subdivision or agency.

"Wellness reimbursement program, arrangement, or benefit plan" means a plan offered to an employer or employee that provides reimbursement or other wellness-related benefits intended to promote health or wellness, including but not limited to employer-sponsored wellness reimbursement arrangements or other wellness benefit structures offered through insurance or similar benefit models that:

(1) Have issued a contract to provide services and pay claims pertaining to reimbursements of qualified medical expenses relating to §26 U.S.C. 213 of the Internal Revenue Code; and

(2) Are intended, created, marketed, and sold as an ancillary product to an individual or group health insurance coverage or self-insured group health plan.

"Wellness reimbursement program, arrangement, or benefit plan" does not include any underlying individual or group health insurance coverage or a self-insured group health plan.

"Wellness reimbursement program administrator" means any person who manages the operation of a wellness reimbursement program.

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§33-64-2. Wellness reimbursement program, arrangement, or benefit plan administrator to be licensed.

(a) No wellness reimbursement program, arrangement, or benefit plan administrator may sell, offer, market, promote, or operate a wellness reimbursement program, arrangement, or benefit plan as that term is defined in this article without first being licensed by the commissioner.

(b) Application for a license shall be on forms prescribed by the commissioner and shall be accompanied by an initial license fee of $5,000, annual financial statements or reports for the two preceding calendar years, and any other documents that the commissioner may require to ensure that the wellness reimbursement program, arrangement, or benefit plan administrator meets the requirements for licensure set forth in this article. Thereafter, an application fee for a renewal offering shall be $500. These fees shall be retained by the commissioner to offset the costs of administering this article.

(c) In addition to the documents required under subsection (b) of this section, a wellness reimbursement program, arrangement, or benefit plan administrator shall comply with federal ERISA requirements or submit a letter or document from the Internal Revenue Service or the U.S. Department of Labor approving of the specific wellness reimbursement program, arrangement, or benefit plan in question.

(d) A wellness reimbursement program, arrangement, or benefit plan administrator shall make and keep a full and correct record of its business and affairs, and the commissioner shall inspect these records at least every three years. The information from these records shall be furnished to the commissioner on demand, and the original books or records shall be open to examination by the commissioner when demanded. The cost of the examination shall be borne by the wellness reimbursement program, arrangement, or benefit plan administrator.

(e) A wellness reimbursement program, arrangement, or benefit plan administrator shall file and maintain with the commissioner a surety bond in favor of the state executed by a surety company authorized to transact business in this state. The commissioner may set the requirements of the surety bond as necessary.

(f) Before granting any license, the commissioner or his designee shall be satisfied that the wellness reimbursement program, arrangement, or benefit plan administrator is competent, trustworthy, financially responsible, has a good personal and business reputation, has not had an insurance license revoked, suspended, or denied in any jurisdiction within the preceding five years, and has not been convicted of a crime that bears a rational nexus to the activities licensed under this article in any jurisdiction. For purposes of this section, "convicted" includes a plea of guilty or a plea of nolo contendere.

(g) The commissioner may revoke or suspend any license issued to a wellness reimbursement program, arrangement, or benefit plan administrator when he or she finds

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that any condition exists which would have prohibited issuance of the original license, that the wellness reimbursement program, arrangement, or benefit plan administrator has violated any provision of this article, or that the wellness reimbursement program, arrangement, or benefit plan administrator has deceived or dealt unjustly with the citizens of this state. In lieu of revocation or suspension of license, the commissioner may impose a civil penalty not to exceed $1,000 for each offense.

(h) Any wellness reimbursement program, arrangement, or benefit plan administrator who fails to obtain a license is subject to the penalties under §33-64-5 of this code and is subject to revocation of any licenses issued by the commissioner.

(i) Any proprietary information required by this article to be provided to, filed with, or available for review by the commissioner is confidential and is not subject to public disclosure, including disclosure pursuant to §29B-1-1 *et seq*. of this code.

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§33-64-3. Compliance with federal and state laws.

(a) A wellness reimbursement program, arrangement, or benefit plan administrator shall attest to the commissioner and to the employer or employee that the wellness reimbursement program, arrangement, or benefit plan complies with all federal and state laws.

(b) A wellness reimbursement program, arrangement, or benefit plan administrator may not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(c) If the wellness reimbursement program, arrangement, or benefit plan results in a taxable event for either the employer or the employee associated with the wellness reimbursement program, arrangement, or benefit plan, the wellness reimbursement program, arrangement, or benefit plan administrator shall defend the employer and its employees against any and all claims or suits that arise out of or by virtue of the wellness reimbursement program, arrangement, or benefit plan and shall indemnify the employer and its employees for a loss or judgment incurred by them as a result of the claim or suit.

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§33-64-4. Brokers; commissions.

(a) A broker is not required to register as a wellness reimbursement program, arrangement, or benefit plan administrator to acquire commissions paid by such a company.

(b) A broker is not an employee of the wellness reimbursement program, arrangement, or benefit plan administrator and is only necessary to facilitate the partnership of the wellness reimbursement program, arrangement, or benefit plan administrator and the respective employee group enrolling in the wellness reimbursement program, arrangement, or benefit plan being that the services of the wellness reimbursement program, arrangement, or benefit plan are not straight-to-market services.

(c) Notwithstanding any provision of subsections (a) or (b) of this section to the contrary, a broker may not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(d) A broker shall exercise good faith and fair dealing to a person when offering, selling, marketing, or promoting a wellness reimbursement program, arrangement, or benefit plan.

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§33-64-5. Enforcement of this article.

(a) The commissioner shall enforce this article.

(b) A person who violates any part of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $20,000 or confined in jail not more than one year, or both fined and confined, for each violation, and is subject to revocation of any license issued by the commissioner.

(c) The commissioner may propose for promulgation legislative rules and regulations as he or she considers necessary to implement this article.

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§33-64-6. Wellness reimbursement programs, arrangements, or benefit plans do not apply to individual or group health plans.

Nothing in this article applies to any health or wellness programs or activities offered by an individual or group health coverage or self-insured group health plan to its enrollees.

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§33-64-7. Insurance Commissioner to file report with Legislature.

Every three years after the effective date of this article, the Insurance Commissioner shall prepare and file a report with the Legislature addressing the implementation of this article, as it relates to the requirements for the programs outlined in this article, and any other information requested by the Legislature to be included within the report.

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