

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 676
SENATE BILL 512

AN ACT TO PROVIDE FOR THE REGISTRATION AND REGULATION OF
THIRD PARTY ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. General Statute Chapter 58 is amended by adding a new Article to read:

"Article 41.

"Third Party Administrators.

"§ 58-525. **Definitions.**—As used in this Article, unless the context clearly indicates otherwise:

- (1) 'Administrator' means any person who:
 - a. Collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with the kinds of insurance specified in G.S. 58-72(1) through 58-72(3); or
 - b. For another person and for a fee or other valuable consideration, provides claims or administrative services through a service contract with any person that provides a benefit plan to its employees or members.
- (2) 'Benefit plan' means a wholly or partially self-funded benefit plan or a fully insured benefit plan that by means of direct payment, reimbursement, or other arrangement, provides partial or complete coverage for health care services, including but not limited to medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or vision care, or for drugs or other items reasonably related thereto.
- (3) 'Participant' means an individual who is covered under a benefit plan.
- (4) 'Self-funder' means a person that assumes responsibility for payments under a benefit plan rather than transferring that responsibility to some other person.
- (5) 'Service contract' means a written agreement between an administrator and an insurer or self-funder for the provision of services by an administrator pursuant to this Article.

"§ 58-526. **Exceptions.** – Nothing in this Article applies to:

- (1) An employer or any employee thereof who conducts the activities specified in G.S. 58-525(1) on behalf of the employees of the employer or the employees of one or more subsidiary or affiliated corporations of such employer;
- (2) An insurer that is licensed under this Chapter or General Statute Chapters 57 or 57B or that is 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 licensed to write insurance;

(3) An agent or broker licensed by the Commissioner for any or all of the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3) whose activities are limited exclusively to the sale of such kind or kinds of insurance;

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

(5) A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186;

(6) 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 that meets the requirements of Section 401(f) of the Internal Revenue Code;

(7) A bank, credit union, or other financial institution to the extent that such activities are subject to supervision or examination by federal or State banking authorities;

(8) A credit card issuing company that, consistent with State law, advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(9) A person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law, and who does not collect charges or premiums in connection with the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3).

"§ 58-527. Service contract necessary. – (a) No person shall act as an administrator without a service contract; and such service contract shall be retained as part of the official records of both the insurer or the self-funder and the administrator for the duration of the service contract and for five years thereafter. Such service contract shall contain provisions that include the requirements of G.S. 58-529 through G.S. 58-534, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) 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 for five years thereafter.

"§ 58-528. Payment to administrator.–Whenever an insurer utilizes the services of an administrator under the terms of a service contract, the payment to the administrator of any premiums or charges for insurance by or on behalf of a participant 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 to be payment to a participant until such payments are received by the participant. Nothing in this Article limits any right against the administrator resulting from its failure to make payments to the insurer or participants.

"§ 58-529. Maintenance of information.–Every administrator shall maintain at its principal administrative office for the duration of the service contract and for five years

thereafter adequate books and records of all transactions between the administrator, insurers or self-funders, and participants. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping. The Commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained in such books and records, including but not limited to the identity and addresses of participants, shall be confidential; except the Commissioner may use such information in any proceeding instituted against the administrator. The insurer or self-funder shall retain the right to continuing access to such books and records sufficient to permit the insurer or self-funder to fulfill all of its contractual obligations to participants, subject to any restrictions in the service contract between the insurer or self-funder and administrator on the proprietary rights of the parties in such books and records.

"§ 58-530. Approval of advertising.—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.

"§ 58-531. Underwriting provision.—The service contract shall make provision with respect to the underwriting standards or other standards pertaining to the business underwritten by such insurer.

"§ 58-532. Collection of premiums and charges.—All insurance charges or premiums collected by an administrator on behalf of or for an insurer or self-funder, and return premiums received from such insurer or self-funder, 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 or self-funder, the administrator shall establish separate account; or shall cause the bank in which such fiduciary account is maintained to keep records clearly recording the deposits to and withdrawals from such account made on behalf of each insurer or self-funder. The administrator shall promptly obtain and keep copies of all such records and, upon the request of an insurer or self-funder, shall furnish such insurer or self-funder with copies of such records pertaining to deposits and withdrawals made on behalf of such insurer or self-funder. The administrator shall not pay any claim by making withdrawals from such fiduciary account. Withdrawals from such account shall be made, as provided in the written agreement between the administrator and the insurer or self-funder, for:

- (1) remittance to an insurer or self-funder entitled thereto;
- (2) deposits to another account maintained in the name of such insurer or self-funder;
- (3) transfer to and deposit in a claims paying account, with claims to be paid as provided in G.S. 58-533;
- (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 any person entitled thereto.

"§ 58-533. **Payment of claims.** – All claims paid by the administrator from funds collected on behalf of an insurer or self-funder shall be paid only on drafts of and as authorized by such insurer or self-funder.

"§ 58-534. **Claim adjustment or settlement.** – 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. This section does not prevent the compensation of an administrator from being based on premiums, capitation, or number of claims paid or processed.

"§ 58-535. **Notification required.** – Whenever the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer or self-funder to participants that advises them of the identities of and relationships among the administrator, the participant, and the insurer or self-funder. Whenever 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.

"§ 58-536. **Certificate of registration required.** – (a) No person shall act as or hold himself out to be an administrator in this State, other than an adjuster licensed in this State for the kinds of insurance specified in G.S. 58-72(1) through G.S. 58-72(3), unless he holds a certificate of registration as an administrator issued by the Commissioner. Such certificate shall be for a term of one year and shall be renewable. Failure to hold such certificate shall subject the administrator to the provisions of G.S. 58-9.7. The certificate shall be issued by the Commissioner to an administrator unless the Commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation; has violated any insurance statute or administrative rule; or has had a previous application for an insurance license denied for cause within the preceding five years.

(b) Each application for the issuance or renewal of a certificate shall be accompanied by a filing fee of twenty dollars (\$20.00) and evidence of maintenance of a fidelity bond of not less than one hundred thousand dollars (\$100,000).

"§ 58-537. **Committee on Third Party Administrators.**–The Commissioner is authorized to appoint a Committee on Third Party Administrators in conformance with the provisions of G.S. 58-7.4."

Sec. 2. This act shall become effective September 1, 1987.

In the General Assembly read three times and ratified this the 24th day of July, 1987.