

1 **SENATE FLOOR VERSION**

2 March 1, 2011

3 SENATE BILL NO. 350

By: Sparks of the Senate

4 and

5 Virgin of the House

6
7 An Act relating to examinations conducted by the
8 Insurance Commissioner; amending Section 29, Chapter
9 264, O.S.L. 2006, as amended by Section 3, Chapter
10 356, O.S.L. 2010 (36 O.S. Supp. 2010, Section 1126),
11 which relates to access to documents; clarifying
12 limitation of confidentiality interpretation;
13 amending 36 O.S. 2001, Section 1219.4, as last
14 amended by Section 4, Chapter 356, O.S.L. 2010 (36
15 O.S Supp. 2010, Section 1219.4), which relates to
16 requirements for discount medical plan organizations;
17 limiting who can make certain information public;
18 clarifying limitation of confidentiality
19 interpretation; amending 36 O.S. 2001, Section 1443,
20 as amended by Section 5, Chapter 356, O.S.L. 2010 (36
21 O.S. Supp. 2010, Section 1443), which relates to
22 records associated with the Third-party Administrator
23 Act; limiting who can make certain information
24 public; clarifying limitation of confidentiality
interpretation; amending Section 6, Chapter 356,
O.S.L. 2010 (36 O.S. Supp. 2010, Section 1509.1),
which relates to confidentiality of information;
limiting who can make certain information public; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 29, Chapter 264, O.S.L.
2006, as amended by Section 3, Chapter 356, O.S.L. 2010 (36 O.S.
Supp. 2010, Section 1126), is amended to read as follows:

1 Section 1126. A. The Statement of Actuarial Opinion shall be
2 provided with the annual statement in accordance with the
3 appropriate National Associations of Insurance Commissioners
4 Property and Casualty Annual Statement Instructions and shall be
5 treated as a public document.

6 B. 1. Documents, materials or other information in the
7 possession or control of the Insurance Department that are
8 considered an actuarial report, work papers or actuarial opinion
9 summary provided in support of the opinion, and any other material
10 provided by the company to the Insurance Commissioner in connection
11 with the actuarial report, work papers or actuarial opinion summary,
12 and any work papers used by the Commissioner or any other person in
13 the analysis of the actuarial report, work papers, other material or
14 actuarial opinion summary provided in support of the opinion, shall
15 be confidential by law and privileged, shall not be subject to the
16 Oklahoma Open Records Act, shall not be subject to subpoena, and
17 shall not be subject to discovery or admissible in evidence in any
18 private civil action. ~~The privilege of confidentiality and~~
19 protection from discovery by subpoena provided in this ~~section~~
20 paragraph shall not be construed to be extended to identical,
21 similar or other related documents or information or to the work
22 papers that are not deemed to be in the possession, custody or
23 control of the Commissioner.

24

1 2. This provision shall not be construed to limit the
2 Commissioner's authority to release the documents to the Actuarial
3 Board for Counseling and Discipline (ABCD) so long as the material
4 is required for the purpose of professional disciplinary proceedings
5 and the ABCD establishes procedures satisfactory to the Commissioner
6 for preserving the confidentiality of the documents, nor shall this
7 section be construed to limit the Commissioner's authority to use
8 the documents, materials or other information in furtherance of any
9 regulatory or legal action brought as part of the Commissioner's
10 official duties.

11 C. Neither the Commissioner nor any person who received
12 documents, materials or other information while acting under the
13 authority of the Commissioner shall be permitted or required to
14 testify in any private civil action concerning any confidential
15 documents, materials or information subject to subsection B of this
16 section.

17 D. In order to assist in the performance of the Commissioner's
18 duties, the Commissioner:

19 1. May share documents, materials or other information,
20 including the confidential and privileged documents, materials or
21 information subject to subsection B of this section with other
22 state, federal and international regulatory agencies, with the
23 National Association of Insurance Commissioners and its affiliates
24 and subsidiaries, and with state, federal and international law

1 enforcement authorities; provided, that the recipient agrees to
2 maintain the confidentiality and privileged status of the document,
3 material or other information and has the legal authority to
4 maintain confidentiality;

5 2. May receive documents, materials or information, including
6 otherwise confidential and privileged documents, materials or
7 information, from the National Association of Insurance
8 Commissioners and its affiliates and subsidiaries, and from
9 regulatory and law enforcement officials of other foreign or
10 domestic jurisdictions, and shall maintain as confidential or
11 privileged any document, material or information received with
12 notice or the understanding that it is confidential or privileged
13 under the laws of the jurisdiction that is the source of the
14 document, material or information; and

15 3. May enter into agreements governing sharing and use of
16 information consistent with subsections B through D of this section.

17 E. No waiver of any applicable privilege or claim of
18 confidentiality in the documents, materials or information shall
19 occur as a result of disclosure to the Commissioner under this
20 section or as a result of sharing as authorized in subsection D of
21 this section.

22 SECTION 2. AMENDATORY 36 O.S. 2001, Section 1219.4, as
23 last amended by Section 4, Chapter 356, O.S.L. 2010 (36 O.S. Supp.
24 2010, Section 1219.4), is amended to read as follows:

1 Section 1219.4 A. As used in this section:

2 1. "Direct contract" means a contractual arrangement tying the
3 ultimate seller purporting to offer discounts through the discount
4 card to the health care provider, which expressly states the intent
5 of this agreement to be used for the purpose of offering discounts
6 on health-related purchases to uninsured or noncovered persons;

7 2. "Discount card" means a card or any other purchasing
8 mechanism or device, which is not insurance, that purports to offer
9 discounts or access to discounts in health-related purchases from
10 health care providers;

11 3. "Discount medical plan" means a business arrangement or
12 contract in which a person, in exchange for fees, dues, charges, or
13 other consideration, provides access for plan members to providers
14 of medical services and the right to receive medical services from
15 those providers at a discount. The term discount medical plan does
16 not include any product regulated as an insurance product, group
17 health service product or health maintenance organization (HMO)
18 product in the State of Oklahoma or discounts provided by an
19 insurer, group health service, or health maintenance organizations
20 (HMOs) where those discounts are provided at no cost to the insured
21 or member and are offered due to coverage with a licensed insurer,
22 group health service, or HMO;

23 4. "Discount medical plan organization" means a person or an
24 entity which operates a discount medical plan;

1 5. "Health care provider" means any person or entity licensed
2 by this state to provide health care services including, but not
3 limited to, physicians, hospitals, home health agencies, pharmacies,
4 and dentists;

5 6. "Health care provider network" means an entity which directly
6 contracts with physicians and hospitals and has contractual rights to
7 negotiate on behalf of those health care providers with a discount
8 medical plan organization to provide medical services to members of
9 the discount medical plan organization;

10 7. "Marketer" means a person or entity who markets, promotes,
11 sells or distributes a discount medical plan, including a private
12 label entity that places its name on and markets or distributes a
13 discount medical plan but does not operate a discount medical plan;

14 8. "Medical services" means any care, service or treatment of
15 illness or dysfunction of, or injury to, the human body including,
16 but not limited to, physician care, inpatient care, hospital
17 surgical services, emergency services, ambulance services, dental
18 care services, vision care services, mental health services,
19 substance abuse services, chiropractic services, podiatric care
20 services, laboratory services, and medical equipment and supplies.
21 The term does not include pharmaceutical supplies or prescriptions;

22 9. "Member" means any person who pays fees, dues, charges, or
23 other consideration for the right to receive the purported benefits
24 of a discount medical plan; and

1 10. "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, association, joint venture, limited
3 liability company, or any other government or commercial entity.

4 B. 1. Before doing business in this state as a discount
5 medical plan organization, an entity shall be a corporation, limited
6 liability corporation, partnership, limited liability partnership or
7 other legal entity, organized under the laws of this state or, if a
8 foreign entity, authorized to transact business in this state, and
9 shall be registered as a discount medical plan organization with the
10 Insurance Department ~~of the State of Oklahoma~~ or be licensed by the
11 Insurance Department ~~of the State of Oklahoma~~ as a licensed
12 insurance company, licensed HMO, licensed group health service
13 organization or motor service club.

14 2. To register as a discount medical plan organization, an
15 applicant shall:

16 a. file with the Insurance Department ~~of the State of~~
17 ~~Oklahoma~~ an application on the form that the Insurance
18 Commissioner requires, and

19 b. pay to the Insurance Department an application fee of
20 Two Hundred Fifty Dollars (\$250.00).

21 3. A registration is valid for a one-year term.

22 4. A registration expires one year following the registration
23 unless it is renewed as provided in this subsection.

24

1 5. Before it expires, a registrant may renew the registration
2 for an additional one-year term if the registrant:

- 3 a. otherwise is entitled to be registered,
- 4 b. files with the Insurance Department a renewal
5 application on the form that the Insurance
6 Commissioner requires, and
- 7 c. pays to the Insurance Department a renewal fee of Two
8 Hundred Fifty Dollars (\$250.00).

9 6. The Insurance Commissioner may deny a registration to an
10 applicant or refuse to renew, suspend, or revoke the registration of
11 a registrant if the applicant or registrant, or an officer,
12 director, or employee of the applicant or registrant:

- 13 a. makes a material misstatement or misrepresentation in
14 an application for registration,
- 15 b. fraudulently or deceptively obtains or attempts to
16 obtain a registration for the applicant or registrant
17 or for another,
- 18 c. in connection with the administration of a health care
19 discount program, commits fraud or engages in illegal
20 or dishonest activities, or
- 21 d. has violated any provisions of this section.

22 7. Prior to registration by the Insurance Department ~~of the~~
23 ~~State of Oklahoma~~, each discount medical plan organization shall
24 establish an Internet web site.

1 8. All amounts collected as registration or renewal fees shall
2 be deposited into the General Revenue Fund.

3 9. Nothing in this subsection shall require a provider who
4 provides discounts to his or her own patients to obtain and maintain
5 a registration as a discount medical plan organization.

6 10. a. Nothing in this subsection shall apply to an affiliate
7 of a licensed insurance company, HMO, group health
8 service organization or motor service club, provided
9 that the affiliate registers with and maintains
10 registration in good standing with the Insurance
11 Department ~~of the State of Oklahoma~~ in accordance with
12 subparagraphs b and c of this paragraph.

13 b. An affiliate shall register as a discount medical plan
14 organization on a form prescribed by the Insurance
15 Commissioner prior to the sale, marketing or
16 solicitation of a discount medical plan and pay an
17 application fee of One Hundred Dollars (\$100.00).

18 c. A registration shall expire one (1) year after the
19 date of registration, and each year on that date
20 thereafter. A registrant may renew the registration
21 if the registrant pays an annual registration fee of
22 One Hundred Dollars (\$100.00) and remains in good
23 standing with the Insurance Department ~~of the State of~~
24 Oklahoma.

1 d. For purposes of this section, "affiliate" means a
2 person that, directly or indirectly through one or
3 more intermediaries, controls or is controlled by or
4 is under common control with an insurance company,
5 HMO, group health service organization or motor
6 service club licensed in this state.

7 C. 1. The Insurance Department may examine or investigate the
8 business and affairs of any discount medical plan organization. The
9 Insurance Department may require any discount medical plan
10 organization or applicant to produce any records, books, files,
11 advertising and solicitation materials, or other information and may
12 take statements under oath to determine whether the discount medical
13 plan organization or applicant is in violation of the law or is
14 acting contrary to the public interest. The expenses incurred in
15 conducting any examination or investigation shall be paid by the
16 discount medical plan organization or applicant. Examinations and
17 investigations shall be conducted as provided in Sections 309.1 and
18 309.3 through 309.7 of this title. Discount medical plan
19 organizations shall be governed by the provisions of this section
20 and shall not be subject to the provisions of the Insurance Code
21 unless specifically referenced.

22 2. All work papers, recorded information, documents, books,
23 files, advertising and solicitation materials, copies or other
24 information produced by, obtained by or disclosed to the

1 Commissioner or any other person in the course of an examination or
2 investigation made pursuant to this section or in the course of
3 analysis by the Commissioner or other person, shall be given
4 confidential treatment by the Commissioner and may not be made
5 public by the Commissioner or any other person who obtained the
6 information in the course of the examination or investigation,
7 except to the extent provided in this section. Access may be
8 granted to the National Association of Insurance Commissioners. The
9 parties shall agree in writing prior to receiving the information to
10 provide to it the same confidential treatment as required by this
11 section, unless the prior written consent of the company to which it
12 pertains has been obtained. The ~~privilege of confidentiality and~~
13 protection from discovery by subpoena provided for in this paragraph
14 shall not be construed to be extended to identical, similar or other
15 related documents or information or to the work papers that are not
16 deemed to be in the possession, custody or control of the
17 Commissioner.

18 3. Failure by the discount medical plan organization to pay the
19 expenses incurred under paragraph 1 of this subsection shall be
20 grounds for denial or revocation of the discount medical plan
21 organization's registration.

22 D. 1. A discount medical plan organization may charge a
23 reasonable one-time processing fee and a periodic charge.

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1 2. If the member cancels the membership within the first thirty
2 (30) days after receipt of the discount card and other membership
3 materials, the member shall receive a reimbursement of all periodic
4 charges paid. The return of all periodic charges shall be made
5 within thirty (30) days of the date of the cancellation. If all of
6 the periodic charges have not been paid within thirty (30) days,
7 interest shall be assessed and paid on the proceeds at a rate of the
8 Treasury Bill rate of the preceding calendar year, plus two (2)
9 percentage points.

10 3. The right of cancellation shall be set out in the contract
11 on the first page, in ten-point type or larger.

12 4. If a discount medical plan charges for a time period in
13 excess of one (1) month, the plan shall, in the event of
14 cancellation of the membership by either party, make a pro rata
15 reimbursement of all periodic charges to the member.

16 E. 1. A discount medical plan organization may not:

17 a. use in its advertisements, marketing material,
18 brochures, and discount cards the terms "insurance",
19 "health plan", "coverage", "copay", "copayments",
20 "preexisting conditions", "guaranteed issue",
21 "premium", "PPO", "preferred provider organization",
22 or other terms in a manner that could reasonably
23 mislead a person to believe that the discount medical
24 plan is health insurance,

1 b. except for hospital services, have restrictions on
2 free access to plan providers including waiting
3 periods and notification periods, or

4 c. pay providers any fees for medical services.

5 2. A discount medical plan organization may not collect or
6 accept money from a member for payment to a provider for specific
7 medical services furnished or to be furnished to the member unless
8 the organization has an active license from the Insurance Department
9 of the State of Oklahoma to act as an administrator.

10 F. 1. The following disclosures, to be printed in not less
11 than twelve-point type, shall be made in writing to any prospective
12 member and shall appear on the first page of any advertisements,
13 marketing materials or brochures relating to a discount medical
14 plan:

15 a. that the plan is not insurance,

16 b. that the plan provides discounts with certain health
17 care providers for medical services,

18 c. that the plan does not make payments directly to the
19 providers of medical services,

20 d. that the plan member is obligated to pay for all
21 health care services but will receive a discount from
22 those health care providers who have contracted with
23 the discount plan organization, and

1 e. the name and the location of the registered discount
2 medical plan organization, including the current
3 telephone number of the registered discount medical
4 plan organization or other entity responsible for
5 customer service for the plan, if different from the
6 registered discount medical plan organization.

7 2. If the discount medical plan is sold, marketed, or solicited
8 by telephone, the disclosures required by this section shall be made
9 orally and provided in the initial written materials that describe
10 the benefits under the discount medical plan provided to the
11 prospective or new member.

12 3. The discount card provided to members shall prominently
13 display the words "This is not insurance".

14 G. 1. All providers offering medical services to members under
15 a discount medical plan shall provide such services pursuant to a
16 written agreement. The agreement may be entered into directly by
17 the health care provider or by a health care provider network to
18 which the provider belongs if the provider network has contracts
19 with the health care provider that allow the provider network to
20 contract on behalf of the health care provider.

21 2. A health care provider agreement shall provide the
22 following:

23 a. a description of the services and products to be
24 provided at a discount,

- 1 b. the amount or amounts of the discounts or,
2 alternatively, a fee schedule which reflects the
3 health care provider's discounted rates, and
4 c. a provision that the health care provider will not
5 charge members more than the discounted rates.

6 3. A health care provider agreement with a health care provider
7 network shall require that the health care provider network have
8 written agreements with its health care providers that:

- 9 a. contain the terms described in paragraph 2 of this
10 subsection,
11 b. authorize the health care provider network to contract
12 with the discount medical plan organization on behalf
13 of the provider, and
14 c. require the network to maintain an up-to-date list of
15 its contracted health care providers and to provide
16 that list on a quarterly basis to the discount medical
17 plan organization.

18 4. The discount medical plan organization shall maintain a copy
19 of each active health care provider agreement into which it has
20 entered.

21 H. 1. There shall be a written agreement between the discount
22 medical plan organization and the member specifying the benefits
23 under the discount medical plan and complying with the disclosure
24 requirements of this section.

1 2. All forms used, including the written agreement pursuant to
2 the provisions of subsection G of this section, shall first be filed
3 with the Insurance Department. Every form filed shall be identified
4 by a unique form number placed in the lower left corner of each
5 form. A filing fee of Twenty-five Dollars (\$25.00) per form shall
6 be payable to the Insurance Department ~~of the State of Oklahoma~~ for
7 deposit into the General Revenue Fund.

8 I. 1. Each discount medical plan organization required to be
9 registered pursuant to this section except an affiliate shall, at
10 all times, maintain a net worth of at least One Hundred Fifty
11 Thousand Dollars (\$150,000.00).

12 2. The Insurance Department ~~of the State of Oklahoma~~ may not
13 allow a registration unless the discount medical plan organization
14 has a net worth of at least One Hundred Fifty Thousand Dollars
15 (\$150,000.00).

16 J. 1. The Insurance Department ~~of the State of Oklahoma~~ may
17 suspend the authority of a discount medical plan organization to
18 enroll new members, revoke any registration issued to a discount
19 medical plan organization, or order compliance if the Department
20 finds that any of the following conditions exist:

- 21 a. the organization is not operating in compliance with
- 22 the provisions of this section,
- 23 b. the organization does not have the minimum net worth
- 24 as required by this section,

- 1 c. the organization has advertised, merchandised or
2 attempted to merchandise its services in such a manner
3 as to misrepresent its services or capacity for
4 service or has engaged in deceptive, misleading or
5 unfair practices with respect to advertising or
6 merchandising,
7 d. the organization is not fulfilling its obligations as
8 a discount medical plan organization, or
9 e. the continued operation of the organization would be
10 hazardous to its members.

11 2. If the Insurance Department ~~of the State of Oklahoma~~ has
12 cause to believe that grounds for the suspension or revocation of a
13 registration exist, the Insurance Department shall notify the
14 discount medical plan organization in writing, specifically stating
15 the grounds for suspension or revocation, and shall provide
16 opportunity for a hearing on the matter in accordance with the
17 Administrative Procedures Act and the Oklahoma Insurance Code.

18 3. When the certificate of registration of a discount medical
19 plan organization is nonrenewed, surrendered or revoked, such
20 organization shall proceed, immediately following the effective date
21 of the order of revocation, or in the case of nonrenewal, the date
22 of expiration of the certificate of registration, to wind up its
23 affairs transacted under the certificate of registration. The
24

1 organization may not engage in any further advertising,
2 solicitation, collecting of fees, or renewal of contracts.

3 4. The Insurance Department ~~of the State of Oklahoma~~ shall, in
4 its order suspending the authority of a discount medical plan
5 organization to enroll new members, specify the period during which
6 the suspension is to be in effect and the conditions, if any, which
7 shall be met by the discount medical plan organization prior to
8 reinstatement of its registration to enroll new members. The order
9 of suspension is subject to rescission or modification by further
10 order of the Insurance Department prior to the expiration of the
11 suspension period. Reinstatement may not be made unless requested
12 by the discount medical plan organization; however, the Insurance
13 Department may not grant reinstatement if it finds that the
14 circumstances for which the suspension occurred still exist or are
15 likely to reoccur.

16 K. Each discount medical plan organization required to be
17 registered pursuant to this section shall provide the Insurance
18 Department ~~of the State of Oklahoma~~ at least thirty (30) days'
19 advance notice of any change in the discount medical plan
20 organization's name, address, principal business address, or mailing
21 address.

22 L. Each discount medical plan organization shall maintain an
23 up-to-date list of the names and addresses of the providers with
24 which it has contracted on an Internet web site page, the address of

1 which shall be prominently displayed on all its advertisements,
2 marketing materials, brochures, and discount cards. This section
3 applies to those providers with whom the discount medical plan
4 organization has contracted directly, as well as those who are
5 members of a provider network with which the discount medical plan
6 organization has contracted.

7 M. 1. All advertisements, marketing materials, brochures and
8 discount cards used by marketers shall be approved in writing for
9 such use by the discount medical plan organization.

10 2. The discount medical plan organization shall have an
11 executed written agreement with a marketer prior to the marketer's
12 marketing, promoting, selling, or distributing the discount medical
13 plan.

14 N. The Insurance Commissioner may promulgate rules to
15 administer the provisions of this section.

16 O. Regulation of discount medical plan organizations shall be
17 done pursuant to the Administrative Procedures Act.

18 P. 1. A discount medical plan organization required to be
19 registered pursuant to this section except an affiliate shall
20 maintain a surety bond with the Insurance Department ~~of the State of~~
21 ~~Oklahoma~~, having at all times a value of not less than Thirty-five
22 Thousand Dollars (\$35,000.00), for use by the Insurance Department
23 in protecting plan members.

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1 2. No judgment creditor or other claimant of a discount medical
2 plan organization, other than the Insurance Department ~~of the State~~
3 ~~of Oklahoma~~, shall have the right to levy upon the surety bond held
4 pursuant to the provisions of paragraph 1 of this subsection.

5 Q. 1. A person who knowingly and willfully operates as or aids
6 and abets another operating as a discount medical plan organization
7 in violation of subsection B of this section commits a felony,
8 punishable as provided for in Oklahoma law, as if the discount
9 medical plan organization were an unauthorized insurer, and the
10 fees, dues, charges, or other consideration collected from the
11 members by the discount medical plan organization or marketer were
12 insurance premium.

13 2. A person who collects fees for purported membership in a
14 discount medical plan but fails to provide the promised benefits
15 commits a theft, punishable as provided in Oklahoma law.

16 R. 1. In addition to the penalties and other enforcement
17 provisions of this section, the Insurance Department may seek both
18 temporary and permanent injunctive relief if:

- 19 a. a discount medical plan organization is being operated
20 by any person or entity that is not registered
21 pursuant to this section, or
- 22 b. any person, entity, or discount medical plan
23 organization has engaged in any activity prohibited by

1 this section or any rule adopted pursuant to this
2 section.

3 2. The venue for any proceeding brought pursuant to the
4 provisions of this section shall be in the district court of
5 Oklahoma County.

6 S. 1. The provisions of this section apply to the activities
7 of a discount medical plan organization that is not registered
8 pursuant to this section as if the discount medical plan
9 organization were an unauthorized insurer.

10 2. A discount medical plan organization being operated by any
11 person or entity that is not registered pursuant to this section, or
12 any person, entity or discount medical plan organization that has
13 engaged or is engaging in any activity prohibited by this section or
14 any rules adopted pursuant to this section shall be subject to the
15 Unauthorized Insurer Act as if the discount medical plan
16 organization were an unauthorized insurer, and shall be subject to
17 all the remedies available to the Insurance Commissioner under the
18 Unauthorized Insurer Act.

19 T. If the Insurance Commissioner finds that a discount medical
20 plan organization has violated any provision of this section or that
21 grounds exist for the discretionary revocation or suspension of a
22 registration, the Commissioner, in lieu of such revocation or
23 suspension, may impose a fine upon the discount medical plan
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1 organization in an amount not to exceed One Thousand Dollars
2 (\$1,000.00) per violation.

3 SECTION 3. AMENDATORY 36 O.S. 2001, Section 1443, as
4 amended by Section 5, Chapter 356, O.S.L. 2010 (36 O.S. Supp. 2010,
5 Section 1443), is amended to read as follows:

6 Section 1443. A. No person shall act as an administrator
7 without a written agreement between that person and an insurer. The
8 written agreement shall be retained as part of the official records
9 of both the insurer and the administrator for the duration of the
10 agreement and for five (5) years thereafter.

11 B. The written agreement required by the provisions of
12 subsection A of this section shall contain provisions stating any of
13 the requirements of ~~Sections 1444 through 1448 of this title~~ the
14 Third Party Administrator Act which apply to the functions performed
15 by the administrator.

16 C. If a policy is issued to a trustee, a copy of the trust
17 agreement and any amendments to the agreement shall be furnished to
18 the insurer by the administrator and shall be retained as part of
19 the official records of both the insurer and the administrator for
20 the duration of the policy and for five (5) years thereafter.

21 D. Every administrator shall maintain at the principal
22 administrative office of the administrator for the duration of the
23 agreement and for five (5) years thereafter the written agreement
24 required by the provisions of this section and records of all

1 transactions among the administrator, insurers or trusts, and
2 insured persons.

3 E. 1. For the purposes of examination, audit, and inspection,
4 the Insurance Commissioner or any other person in the course of
5 examination, audit and inspection shall have access to books and
6 records maintained by the administrator. Any trade secrets
7 contained in these books and records, including the identity and
8 addresses of policyholders and certificate holders, shall be
9 confidential.

10 2. All work papers, recorded information, documents and copies
11 thereof produced or obtained by or disclosed to the Commissioner or
12 other person in the course of examination, audit and inspection made
13 pursuant to this section, or in the course of analysis by the
14 Commissioner or other person in the course of examination, audit and
15 inspection, shall be given confidential treatment by the
16 Commissioner and may not be made public by the Commissioner or any
17 other person who obtained the information in the course of the
18 examination, audit and inspection, except to the extent provided in
19 this section. Access may be granted to the National Association of
20 Insurance Commissioners. The parties shall agree in writing prior
21 to receiving the information to provide to it the same confidential
22 treatment as required by this section, unless the prior written
23 consent of the company to which it pertains has been obtained. The
24 ~~privilege of confidentiality~~ and protection from discovery by

1 subpoena provided for in this paragraph shall not be construed to be
2 extended to identical, similar or other related documents or
3 information or to the work papers that are not deemed to be in the
4 possession, custody or control of the Commissioner.

5 3. The Commissioner may use this information in any proceedings
6 instituted against the administrator.

7 F. The insurer or trust shall have the right of continuing
8 access to books and records maintained by the administrator
9 sufficient to permit the insurer or trust to fulfill all of its
10 contractual obligations to insured persons, subject to any
11 restriction in the written agreement between the insurer or trust
12 and the administrator concerning the proprietary rights of the
13 parties to said books and records.

14 G. The agreement required by the provisions of this section
15 shall include provisions stating the underwriting standards or other
16 standards pertaining to the business underwritten by the insurer or
17 trust.

18 SECTION 4. AMENDATORY Section 6, Chapter 356, O.S.L.
19 2010 (36 O.S. Supp. 2010, Section 1509.1), is amended to read as
20 follows:

21 Section 1509.1 All work papers, recorded information, documents
22 and copies of materials associated with, produced, obtained by or
23 disclosed to the Insurance Commissioner or any other person in the
24 course of review or analysis pursuant to Sections 1801 through 1938

1 of ~~Title 36 of the Oklahoma Statutes~~ this title shall be given
2 confidential treatment by the Commissioner and may not be made
3 public by the Commissioner or any other person who obtained the
4 information in the course of the review or analysis, except to the
5 extent provided in Sections 1801 through 1938 of ~~Title 36 of the~~
6 ~~Oklahoma Statutes~~ this title, unless prior written consent of the
7 company to which it pertains has been obtained. The ~~privilege of~~
8 confidentiality and protection from discovery by subpoena provided
9 for in this paragraph shall not be construed to be extended to
10 identical, similar or other related documents or information or to
11 the work papers that are not deemed to be in the possession, custody
12 or control of the Commissioner.

13 SECTION 5. This act shall become effective November 1, 2011.

14 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
15 2-24-11 - DO PASS, As Coauthored.

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