

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1371

By: Sparks

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5
6 AS INTRODUCED

7 An Act relating to examinations conducted by the
8 Insurance Commissioner; amending 36 O.S. 2011,
9 Section 1126, which relates to access to documents;
10 clarifying limitation of confidentiality
11 interpretation; amending 36 O.S. 2011, Section
12 1219.4, which relates to requirements for discount
13 medical plan organizations; limiting who can make
14 certain information public; clarifying limitation of
15 confidentiality interpretation; amending 36 O.S.
16 2011, Section 1443, which relates to records
17 associated with the Third-party Administrator Act;
18 limiting who can make certain information public;
19 clarifying limitation of confidentiality
20 interpretation; amending 36 O.S. 2011, Section
21 1509.1, which relates to confidentiality of
22 information; limiting who can make certain
23 information public; and providing an effective date.

16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1126, is
19 amended to read as follows:

20 Section 1126. A. The Statement of Actuarial Opinion shall be
21 provided with the annual statement in accordance with the
22 appropriate National Associations of Insurance Commissioners
23 Property and Casualty Annual Statement Instructions and shall be
24 treated as a public document.

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

19 2. This provision shall not be construed to limit the
20 Commissioner's authority to release the documents to the Actuarial
21 Board for Counseling and Discipline (ABCD) so long as the material
22 is required for the purpose of professional disciplinary proceedings
23 and the ABCD establishes procedures satisfactory to the Commissioner
24 for preserving the confidentiality of the documents, nor shall this

1 section be construed to limit the Commissioner's authority to use
2 the documents, materials or other information in furtherance of any
3 regulatory or legal action brought as part of the Commissioner's
4 official duties.

5 C. Neither the Commissioner nor any person who received
6 documents, materials or other information while acting under the
7 authority of the Commissioner shall be permitted or required to
8 testify in any private civil action concerning any confidential
9 documents, materials or information subject to subsection B of this
10 section.

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

13 1. May share documents, materials or other information,
14 including the confidential and privileged documents, materials or
15 information subject to subsection B of this section with other
16 state, federal and international regulatory agencies, with the
17 National Association of Insurance Commissioners and its affiliates
18 and subsidiaries, and with state, federal and international law
19 enforcement authorities; provided, that the recipient agrees to
20 maintain the confidentiality and privileged status of the document,
21 material or other information and has the legal authority to
22 maintain confidentiality;

23 2. May receive documents, materials or information, including
24 otherwise confidential and privileged documents, materials or

1 information, from the National Association of Insurance
2 Commissioners and its affiliates and subsidiaries, and from
3 regulatory and law enforcement officials of other foreign or
4 domestic jurisdictions, and shall maintain as confidential or
5 privileged any document, material or information received with
6 notice or the understanding that it is confidential or privileged
7 under the laws of the jurisdiction that is the source of the
8 document, material or information; and

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

11 E. No waiver of any applicable privilege or claim of
12 confidentiality in the documents, materials or information shall
13 occur as a result of disclosure to the Commissioner under this
14 section or as a result of sharing as authorized in subsection D of
15 this section.

16 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1219.4, is
17 amended to read as follows:

18 Section 1219.4 A. As used in this section:

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

24

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

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

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

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

23 6. "Health care provider network" means an entity which directly
24 contracts with physicians and hospitals and has contractual rights to

1 negotiate on behalf of those health care providers with a discount
2 medical plan organization to provide medical services to members of
3 the discount medical plan organization;

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

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

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

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

22 B. 1. Before doing business in this state as a discount
23 medical plan organization, an entity shall be a corporation, limited
24 liability corporation, partnership, limited liability partnership or

1 other legal entity, organized under the laws of this state or, if a
2 foreign entity, authorized to transact business in this state, and
3 shall be registered as a discount medical plan organization with the
4 Insurance Department ~~of the State of Oklahoma~~ or be licensed by the
5 Insurance Department ~~of the State of Oklahoma~~ as a licensed
6 insurance company, licensed HMO, licensed group health service
7 organization or motor service club.

8 2. To register as a discount medical plan organization, an
9 applicant shall:

10 a. file with the Insurance Department ~~of the State of~~
11 ~~Oklahoma~~ an application on the form that the Insurance
12 Commissioner requires, and

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

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

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

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

20 a. otherwise is entitled to be registered,

21 b. files with the Insurance Department a renewal
22 application on the form that the Insurance
23 Commissioner requires, and
24

1 c. pays to the Insurance Department a renewal fee of Two
2 Hundred Fifty Dollars (\$250.00).

3 6. The Insurance Commissioner may deny a registration to an
4 applicant or refuse to renew, suspend, or revoke the registration of
5 a registrant if the applicant or registrant, or an officer,
6 director, or employee of the applicant or registrant:

7 a. makes a material misstatement or misrepresentation in
8 an application for registration,

9 b. fraudulently or deceptively obtains or attempts to
10 obtain a registration for the applicant or registrant
11 or for another,

12 c. in connection with the administration of a health care
13 discount program, commits fraud or engages in illegal
14 or dishonest activities, or

15 d. has violated any provisions of this section.

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

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

21 9. Nothing in this subsection shall require a provider who
22 provides discounts to his or her own patients to obtain and maintain
23 a registration as a discount medical plan organization.
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- 1 10. a. Nothing in this subsection shall apply to an affiliate
2 of a licensed insurance company, HMO, group health
3 service organization or motor service club, provided
4 that the affiliate registers with and maintains
5 registration in good standing with the Insurance
6 Department ~~of the State of Oklahoma~~ in accordance with
7 subparagraphs b and c of this paragraph.
- 8 b. An affiliate shall register as a discount medical plan
9 organization on a form prescribed by the Insurance
10 Commissioner prior to the sale, marketing or
11 solicitation of a discount medical plan and pay an
12 application fee of One Hundred Dollars (\$100.00).
- 13 c. A registration shall expire one (1) year after the
14 date of registration, and each year on that date
15 thereafter. A registrant may renew the registration
16 if the registrant pays an annual registration fee of
17 One Hundred Dollars (\$100.00) and remains in good
18 standing with the Insurance Department ~~of the State of~~
19 Oklahoma.
- 20 d. For purposes of this section, "affiliate" means a
21 person that, directly or indirectly through one or
22 more intermediaries, controls or is controlled by or
23 is under common control with an insurance company,
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1 HMO, group health service organization or motor
2 service club licensed in this state.

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

18 2. All work papers, recorded information, documents, books,
19 files, advertising and solicitation materials, copies or other
20 information produced by, obtained by or disclosed to the
21 Commissioner or any other person in the course of an examination or
22 investigation made pursuant to this section or in the course of
23 analysis by the Commissioner or other person, shall be given
24 confidential treatment by the Commissioner and may not be made

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

14 3. Failure by the discount medical plan organization to pay the
15 expenses incurred under paragraph 1 of this subsection shall be
16 grounds for denial or revocation of the discount medical plan
17 organization's registration.

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

20 2. If the member cancels the membership within the first thirty
21 (30) days after receipt of the discount card and other membership
22 materials, the member shall receive a reimbursement of all periodic
23 charges paid. The return of all periodic charges shall be made
24 within thirty (30) days of the date of the cancellation. If all of

1 the periodic charges have not been paid within thirty (30) days,
2 interest shall be assessed and paid on the proceeds at a rate of the
3 Treasury Bill rate of the preceding calendar year, plus two (2)
4 percentage points.

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

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

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

- 12 a. use in its advertisements, marketing material,
13 brochures, and discount cards the terms "insurance",
14 "health plan", "coverage", "copay", "copayments",
15 "preexisting conditions", "guaranteed issue",
16 "premium", "PPO", "preferred provider organization",
17 or other terms in a manner that could reasonably
18 mislead a person to believe that the discount medical
19 plan is health insurance,
- 20 b. except for hospital services, have restrictions on
21 free access to plan providers including waiting
22 periods and notification periods, or
- 23 c. pay providers any fees for medical services.

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

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

- 11 a. that the plan is not insurance,
- 12 b. that the plan provides discounts with certain health
13 care providers for medical services,
- 14 c. that the plan does not make payments directly to the
15 providers of medical services,
- 16 d. that the plan member is obligated to pay for all
17 health care services but will receive a discount from
18 those health care providers who have contracted with
19 the discount plan organization, and
- 20 e. the name and the location of the registered discount
21 medical plan organization, including the current
22 telephone number of the registered discount medical
23 plan organization or other entity responsible for
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1 customer service for the plan, if different from the
2 registered discount medical plan organization.

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

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

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

17 2. A health care provider agreement shall provide the
18 following:

- 19 a. a description of the services and products to be
20 provided at a discount,
21 b. the amount or amounts of the discounts or,
22 alternatively, a fee schedule which reflects the
23 health care provider's discounted rates, and
24

1 c. a provision that the health care provider will not
2 charge members more than the discounted rates.

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

6 a. contain the terms described in paragraph 2 of this
7 subsection,

8 b. authorize the health care provider network to contract
9 with the discount medical plan organization on behalf
10 of the provider, and

11 c. require the network to maintain an up-to-date list of
12 its contracted health care providers and to provide
13 that list on a quarterly basis to the discount medical
14 plan organization.

15 4. The discount medical plan organization shall maintain a copy
16 of each active health care provider agreement into which it has
17 entered.

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

22 2. All forms used, including the written agreement pursuant to
23 the provisions of subsection G of this section, shall first be filed
24 with the Insurance Department. Every form filed shall be identified

1 by a unique form number placed in the lower left corner of each
2 form. A filing fee of Twenty-five Dollars (\$25.00) per form shall
3 be payable to the Insurance Department ~~of the State of Oklahoma~~ for
4 deposit into the General Revenue Fund.

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

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

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

- 18 a. the organization is not operating in compliance with
19 the provisions of this section,
- 20 b. the organization does not have the minimum net worth
21 as required by this section,
- 22 c. the organization has advertised, merchandised or
23 attempted to merchandise its services in such a manner
24 as to misrepresent its services or capacity for

1 service or has engaged in deceptive, misleading or
2 unfair practices with respect to advertising or
3 merchandising,

4 d. the organization is not fulfilling its obligations as
5 a discount medical plan organization, or

6 e. the continued operation of the organization would be
7 hazardous to its members.

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

15 3. When the certificate of registration of a discount medical
16 plan organization is nonrenewed, surrendered or revoked, such
17 organization shall proceed, immediately following the effective date
18 of the order of revocation, or in the case of nonrenewal, the date
19 of expiration of the certificate of registration, to wind up its
20 affairs transacted under the certificate of registration. The
21 organization may not engage in any further advertising,
22 solicitation, collecting of fees, or renewal of contracts.

23 4. The Insurance Department ~~of the State of Oklahoma~~ shall, in
24 its order suspending the authority of a discount medical plan

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

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

18 L. Each discount medical plan organization shall maintain an
19 up-to-date list of the names and addresses of the providers with
20 which it has contracted on an Internet web site page, the address of
21 which shall be prominently displayed on all its advertisements,
22 marketing materials, brochures, and discount cards. This section
23 applies to those providers with whom the discount medical plan
24 organization has contracted directly, as well as those who are

1 members of a provider network with which the discount medical plan
2 organization has contracted.

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

6 2. The discount medical plan organization shall have an
7 executed written agreement with a marketer prior to the marketer's
8 marketing, promoting, selling, or distributing the discount medical
9 plan.

10 N. The Insurance Commissioner may promulgate rules to
11 administer the provisions of this section.

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

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

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

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

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

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

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

22 2. The venue for any proceeding brought pursuant to the
23 provisions of this section shall be in the district court of
24 Oklahoma County.

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

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

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

21 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1443, is
22 amended to read as follows:

23 Section 1443. A. No person shall act as an administrator
24 without a written agreement between that person and an insurer. The

1 written agreement shall be retained as part of the official records
2 of both the insurer and the administrator for the duration of the
3 agreement and for five (5) years thereafter.

4 B. The written agreement required by the provisions of
5 subsection A of this section shall contain provisions stating any of
6 the requirements of ~~Sections 1444 through 1448 of this title~~ the
7 Third-party Administrator Act which apply to the functions performed
8 by the administrator.

9 C. If a policy is issued to a trustee, a copy of the trust
10 agreement and any amendments to the agreement shall be furnished to
11 the insurer by the administrator and shall be retained as part of
12 the official records of both the insurer and the administrator for
13 the duration of the policy and for five (5) years thereafter.

14 D. Every administrator shall maintain at the principal
15 administrative office of the administrator for the duration of the
16 agreement and for five (5) years thereafter the written agreement
17 required by the provisions of this section and records of all
18 transactions among the administrator, insurers or trusts, and
19 insured persons.

20 E. 1. For the purposes of examination, audit, and inspection,
21 the Insurance Commissioner or any other person in the course of
22 examination, audit and inspection shall have access to books and
23 records maintained by the administrator. Any trade secrets
24 contained in these books and records, including the identity and

1 addresses of policyholders and certificate holders, shall be
2 confidential.

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

22 3. The Commissioner may use this information in any proceedings
23 instituted against the administrator.

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1 F. The insurer or trust shall have the right of continuing
2 access to books and records maintained by the administrator
3 sufficient to permit the insurer or trust to fulfill all of its
4 contractual obligations to insured persons, subject to any
5 restriction in the written agreement between the insurer or trust
6 and the administrator concerning the proprietary rights of the
7 parties to said books and records.

8 G. The agreement required by the provisions of this section
9 shall include provisions stating the underwriting standards or other
10 standards pertaining to the business underwritten by the insurer or
11 trust.

12 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1509.1, is
13 amended to read as follows:

14 Section 1509.1 All work papers, recorded information, documents
15 and copies of materials associated with, produced, obtained by or
16 disclosed to the Insurance Commissioner or any other person in the
17 course of review or analysis pursuant to Sections 1801 through 1938
18 of ~~Title 36 of the Oklahoma Statutes~~ this title shall be given
19 confidential treatment by the Commissioner and may not be made
20 public by the Commissioner or any other person who obtained the
21 information in the course of the review or analysis, except to the
22 extent provided in Sections 1801 through 1938 of ~~Title 36 of the~~
23 ~~Oklahoma Statutes~~ this title, unless prior written consent of the
24 company to which it pertains has been obtained. The ~~privilege of~~

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

6 SECTION 5. This act shall become effective November 1, 2012.

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