

CHAPTER 58
THIRD-PARTY ADMINISTRATORS

191—58.1(510) Purpose. The purpose of this chapter is to administer the provisions of Iowa Code chapter 510 relating to the regulation of third-party administrators.

[ARC 8310B, IAB 11/18/09, effective 12/23/09]

191—58.2(510) Definitions. The terms defined in Iowa Code section 510.11 shall have the same meaning for the purposes of this chapter. In addition, for purposes of this chapter:

“Affiliate” or *“affiliates”* 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. For purposes of this definition, “control” (including the terms “controls” or “controlled by”) means 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, 10 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 Iowa Code section 505.23 and Iowa Code chapter 521A that control does not exist in fact. The commissioner may determine, after furnishing notice and opportunity to be heard to all persons in interest and after making specific findings of fact to support the determination, that control exists in fact notwithstanding the absence of a presumption to that effect.

“Commissioner” means the commissioner of insurance for the state of Iowa.

“Division” means the Iowa insurance division.

“Home state” means the United States state or territory or the District of Columbia designated by a third-party administrator as its principal regulator, which shall be either its place of incorporation or its principal place of business within the United States. A third-party administrator may designate as its home state any United States jurisdiction in which it does business and which has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter.

“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

“Insurer” means a person engaged in the business of insurance who is regulated under Iowa Code chapter 508, 512B, 514, 514B, 515, or 520.

“Nonresident third-party administrator” means a person who is applying for licensure in Iowa, who is licensed in any state other than Iowa, and whose home state is not Iowa.

“Person” means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

“Stop-loss” or *“stop-loss insurance”* means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against higher than expected obligations under the plan.

“Underwrites” or *“underwriting”* or *“underwritten”* 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, or the overall planning and coordinating of a benefits program.

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191—58.3(505,510) Registration required. A third-party administrator shall not operate as a third-party administrator in Iowa without an approved certificate of registration from the division. A third-party administrator that has a home state other than Iowa must apply for and obtain a nonresident third-party administrator certificate of registration from the division before operating as a third-party administrator in Iowa.

58.3(1) Exceptions.

a. The following persons doing the following corresponding actions shall not be required to have approved certificates of registration from the division if these are the only actions by the persons that would otherwise cause the persons to be considered third-party administrators:

(1) An employer administering its employee benefit plan or the plan of an affiliated employer under common management and control;

(2) A trust exempt from taxation under Section 507(a) of the Internal Revenue Code and its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code; or

(3) A person licensed as a managing general agent in this state when acting within the scope of activities conveyed under such a license.

b. An insurer that underwrites, collects charges, collateral or premiums from, or adjusts or settles claims for other than its policyholders, subscribers and certificate holders is not required to be licensed as a third-party administrator and shall be exempt from rule 191—58.3(505,510), except that the insurer shall comply with paragraphs 58.3(1) "c," "e" and "f" and rules 191—58.6(505,510) and 191—58.7(505,510), if applicable.

c. A person shall not be required to have an approved certificate of registration from the division if that person is affiliated with a licensed insurer and that person only acts as a third-party administrator for the direct and assumed insurance business of the affiliated insurer, provided that the insurer shall provide all of the third-party administrator's books and records to the insurance commissioner upon request.

d. A person shall not be required to have an approved certificate of registration from the division if that person only acts as a third-party administrator for a group plan based in another state that has fewer than 100 insureds under the plan residing in Iowa.

e. A person who is not required to be registered as a third-party administrator under Iowa Code chapter 510 or this chapter and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall file a statement with the commissioner triennially, verifying the person's status as described herein. An example of such a statement may be found on the division's Web site, www.iid.state.ia.us.

f. An administrator operating solely as a single-employer trust or Taft-Hartley labor union trust as defined under ERISA shall be required to file a statement triennially, verifying the administrator's status as described herein. An example of such a statement may be found on the division's Web site, www.iid.state.ia.us.

58.3(2) Application.

a. All third-party administrators wishing to do business in Iowa shall electronically file a completed application and any required attachments in the form prescribed by the division. The application shall be accompanied by a filing fee as stated in rule 191—58.18(510).

b. Application for resident third-party administrator certificate of registration.

(1) All applications shall include evidence of the existence of a surety bond issued by an insurance company licensed to do business in the state of Iowa. The bond must be in an amount equivalent to 10 percent of the third-party administrator's average daily client account balance during the preceding calendar year. In no case shall the bond be less than \$50,000 or more than \$1,000,000. The surety bond shall be in the form prescribed by the commissioner. The bond shall be payable to the Iowa Insurance Division to ensure the financial protection of the third-party administrator's customers, subject to the dollar limitation of the surety bond.

(2) An application by a third-party administrator that is a corporation, association or benefit society shall be accompanied by a certified copy of the articles of incorporation or association or a certification of good standing from the Iowa secretary of state.

c. Application for nonresident third-party administrator certificate of registration.

(1) A third-party administrator whose home state is not Iowa shall file with the division, in a manner acceptable to the division, a completed application and a certification from the home state that verifies that the applicant is in good standing in the home state.

(2) In lieu of requiring a third-party administrator to file a certification, the division may verify the nonresident third-party administrator's home state status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A third-party administrator shall not be eligible for a nonresident third-party administrator certificate of registration under paragraph 58.3(2) "c" if the third-party administrator does not hold a certificate of registration as a resident in a home state that has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter. A third-party administrator may designate a state other than the resident state as its home state. If a third-party administrator is not eligible under paragraph 58.3(2) "c," it must meet the application requirements for a resident third-party administrator.

d. The division may refuse to issue a certificate of registration to an applicant as provided in Iowa Code section 510.21, or may refuse to issue a certificate of registration if the division determines that any of the grounds set forth in rule 191—58.16(510) exist with respect to the third-party administrator.

e. If an application is approved, the division will electronically deliver to the third-party administrator a certificate of registration.

58.3(3) Validity. A certificate of registration issued under Iowa Code chapter 510 and this rule shall remain valid, unless surrendered by the third-party administrator, or suspended, revoked, or not renewed by the commissioner, for as long as the third-party administrator continues to renew the certificate of registration timely, continues in business in this state, and remains in compliance with Iowa Code chapter 510 and this chapter.

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191—58.4(510) Third-party administrator duties.

58.4(1) A third-party administrator registered or applying for a certificate of registration or renewal under Iowa Code section 510.21 and this chapter shall:

a. Make available for inspection on request by the commissioner copies of all contracts with insurers or other persons utilizing the services of the third-party administrator.

b. As often as reasonably required by the commissioner, produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs.

c. Immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of registration in this state.

d. Notify the commissioner in writing of any change in the information required to be filed under these rules including, but not limited to, a change of address or name, not later than 30 days after the change.

58.4(2) The commissioner may terminate a third-party administrator's certificate of registration, following notice and an opportunity for a hearing, for failure to comply with this rule.

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191—58.5(510) Renewal procedure. A third-party administrator that wants to maintain its certificate of registration in Iowa shall file a completed request for renewal no later than 60 days before the expiration date on the certificate of registration.

58.5(1) The division shall provide notice to the third-party administrator of the upcoming renewal date.

58.5(2) The renewal form shall be filed in a manner as prescribed by the division. The renewal form shall be accompanied by the fee specified in rule 191—58.18(510).

58.5(3) Renewal requests filed after the 60-day period specified must include the late fee specified in rule 191—58.18(510).

58.5(4) A third-party administrator that allows the certificate of registration to lapse and does not renew within one year from the expiration date must apply for a new certificate of registration.

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191—58.6(505,510) Responsibilities of the insurer.

58.6(1) If an insurer utilizes the services of a third-party administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage.

58.6(2) An insurer must supervise its contracted third-party administrators to ensure that its programs are administered in a competent and appropriate manner.

58.6(3) In cases where a third-party administrator administers benefits for more than 100 certificate holders, subscribers, claimants or policyholders on behalf of an insurer, the insurer shall, at least annually, conduct a reasonable review of the operations of the third-party administrator. If a third-party administrator has an independent party conduct a review of the third-party administrator's operations and has provided that review to the insurer, and the insurer has determined that the review was reasonable for purposes of this subrule, the review may, at the discretion of the division, meet the requirement of this subrule.

58.6(4) The requirements of rule 191—58.6(505,510) also apply to any insurer that contracts with a person exempt from licensure, pursuant to the exceptions set forth in subrule 58.3(1), to act as a third-party administrator.

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191—58.7(505,510) Written agreement.

58.7(1) The written agreement required by Iowa Code section 510.12 shall include a statement of duties that the third-party administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the third-party administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting, claims handling and other standards pertaining to the business underwritten by the insurer. The rules pertaining to these matters shall be provided, in writing, by the insurer to the third-party administrator, pursuant to Iowa Code section 510.12 and rule 191—58.7(505,510).

58.7(2) The insurer or third-party 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 third-party 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 third-party administrator.

58.7(3) The requirements of this rule shall also apply to any insurer that contracts with a person exempt from licensure, pursuant to the exceptions set forth in subrule 58.3(1), to act as a third-party administrator, unless that person and the insurer are the same.

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191—58.8(510) Compensation to the third-party administrator. A third-party administrator and an insurer shall not enter into an agreement or understanding that makes the amount of the third-party administrator's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. Third-party administrators are not prohibited from receiving performance-based compensation for providing to the insurer cost control services, including hospital auditing or other auditing services, subrogation services, contractual discounting services, or claim negotiation with providers.

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191—58.9(510) Disclosure of charges and fees. The third-party 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. Additional charges may not be made for services to the extent the insurer has paid for those services.

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191—58.10(510) Delivery of materials to covered individuals. Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the third-party administrator for delivery to insured parties or covered individuals shall be delivered by the third-party administrator promptly after receipt of delivery instructions from the insurer.

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191—58.11(510) Annual report and fee.

58.11(1) Each registered third-party administrator shall file by July 1 an annual report in a form and manner as prescribed by the commissioner. The report shall:

- a. Be verified by at least two officers of the third-party administrator;
- b. Include audited financial statements prepared by an independent certified public accountant using generally accepted accounting principles;
- c. Be prepared on a consolidated basis; and
- d. 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 shall be shown on the worksheet;
- (2) Amounts for each entity shall be stated separately; and
- (3) Explanations of consolidating and eliminating entries shall be included.

58.11(2) A third-party administrator that makes a late filing shall pay a late fee as stated in rule 191—58.18(510).

58.11(3) Extensions of the July 1 filing date may be granted by the commissioner for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

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191—58.12(510) Change of information.

58.12(1) A third-party administrator shall notify the commissioner within 30 days of any change in the information required to be filed under these rules including, but not limited to, a change of original application content. Reports of changes shall be filed electronically at tparegistration@iid.iowa.gov. Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

58.12(2) A third-party administrator may not do business under any name other than the name on the original application unless the third-party administrator notifies the commissioner prior to using the assumed name. The notice shall include a detailed explanation of the manner in which the name will be used.

58.12(3) A third-party administrator who ceases doing business in Iowa may either allow its certificate of registration to expire or file a request to withdraw its certificate of registration. A request for withdrawal must include information demonstrating that the third-party administrator will no longer be acting in Iowa as a third-party administrator.

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191—58.13(510) Inquiry by commissioner. A third-party administrator shall promptly respond in writing to inquiries from the commissioner. A third-party administrator's actions are deemed untimely under this rule if the third-party administrator fails to respond to an inquiry from the commissioner within 30 days of the receipt of the inquiry, unless good cause exists for delay and the commissioner has given the third-party administrator a time extension in writing.

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191—58.14(510) Complaints. A third-party administrator shall keep all complaints on file for a period of five years. Complaint information shall be made available to the division by the third-party administrator at any time upon the commissioner's request.

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191—58.15(510) Periodic examination. The commissioner reserves the right to examine a third-party administrator or require the most recent audited financial statements from the third-party administrator and such other interim evidence as the commissioner deems appropriate.

58.15(1) Reasonable costs of the examination or audited financial statements shall be paid by the third-party administrator.

58.15(2) Examination shall include, but not be limited to: financial condition, premium collection, claims processing, and marketing practices.

58.15(3) If one or more of the following factors are present, the commissioner may require and determine an amount of additional security:

- a. Insufficient liquid assets or retained earnings;
- b. A deteriorating financial condition, as evidenced through an examination by the commissioner or any other insurance commissioner;
- c. Any other relevant considerations.

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191—58.16(510) Grounds for denial, nonrenewal, suspension or revocation of certificate of registration.

58.16(1) The commissioner may, at the commissioner's discretion and without advance notice or hearing, immediately suspend the certificate of registration of a third-party administrator if the commissioner finds that one or more of the following circumstances exist:

- a. The third-party administrator is insolvent or impaired;
- b. A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the third-party administrator has been commenced in any state; or
- c. The financial condition or business practices of the third-party administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

58.16(2) The commissioner shall deny, suspend, revoke, or not renew a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Is in unsound financial condition;
- b. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
- c. Has failed to pay any judgment rendered against it in this state within 60 days after the judgment has become final.

58.16(3) The commissioner may deny, suspend, revoke, or not renew a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Has violated or failed to comply with any lawful rule or order of the commissioner or any provision of the insurance laws of this state;
- b. Has a financial condition that has deteriorated to the degree that it may adversely affect the third-party administrator's ability to operate as a third-party administrator;
- c. Has filed an application or any necessary forms with the division that contain fraudulent information or omissions;
- d. Has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a person otherwise entitled to the moneys and that have been entrusted to the third-party administrator in its fiduciary capacities;
- e. Has provided insufficient explanation, as determined by the commissioner, of the circumstances surrounding evidence that an owner, principal, officer, partner, manager, director, stockholder, trustee, employee of the third-party administrator or the third-party administrator itself:

(1) Has had an insurance license or an application for an insurance license in any state denied, suspended, revoked, or not renewed;

(2) Has been the subject of an investigation, fine, penalty, order, withdrawal or informal settlement with any state insurance department;

(3) Has been the subject of a criminal investigation, summons, arrest, indictment or questioning;

(4) Has been charged, tried, convicted of, or pled guilty or no contest to any felony or misdemeanor;

f. Has been found by the commissioner not to be competent, trustworthy, financially responsible or of good personal and business reputation;

g. Has refused to be examined or to produce its accounts, records and files for examination, or that any of the following individuals responsible for the conduct of the affairs of the third-party 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: 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 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

h. Has, without just cause, refused to pay proper claims or perform services arising under its contracts, caused covered individuals to accept less than the amount due them, or caused covered individuals to employ attorneys or bring suit against the third-party administrator to secure full payment or settlement of such claims;

i. At any time fails to meet any qualification for which issuance of the certificate of registration could have been refused had the failure then existed and been known to the commissioner;

j. Has, or any of the following individuals responsible for the conduct of the affairs of the third-party administrator has, been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld: 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 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

k. Is under suspension or revocation in another state;

l. Has failed to promptly respond to one or more inquiries of the commissioner; or

m. Has failed to timely file its annual report.

58.16(4) If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of registration issued under this chapter, the commissioner may, in addition to or in lieu of suspension or revocation, impose a monetary penalty that shall not exceed \$1,000 for each act or violation of this chapter, up to an aggregate of \$10,000, unless the person knew or reasonably should have known that the person was in violation of this chapter, in which case the penalty shall not exceed \$5,000 for each act or violation, up to an aggregate of \$50,000 in any one six-month period.

[ARC 8310B, IAB 11/18/09, effective 12/23/09]

191—58.17(510) Confidential information.

58.17(1) 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 Iowa Code section 510.14.

58.17(2) In order to assist in the performance of the commissioner's duties, the commissioner:

a. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Iowa Code section 510.14, 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 documents, materials or other information;

b. May 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

c. May enter into agreements governing the sharing and use of information consistent with this subrule.

58.17(3) 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 rule 191—58.17(510) or as a result of sharing as authorized in subrule 58.17(2).

58.17(4) Nothing in this rule shall prohibit the commissioner from releasing final, adjudicated actions, including for-cause terminations that are open to public inspection pursuant to Iowa Code chapter 22 or Iowa Code section 505.8, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

58.17(5) In the event the insurer and the third-party administrator cancel their agreement, the third-party administrator may, by written agreement with the insurer, transfer all records to a new third-party administrator rather than retain the records for the five years required under Iowa Code section 510.14. In such cases, the new third-party administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior third-party administrator as required in Iowa Code section 510.14.

[ARC 8310B, IAB 11/18/09, effective 12/23/09]

191—58.18(510) Fees.

58.18(1) Fees to be paid directly to the division shall be paid by check. Fees accompanying electronic filings shall be paid in a manner as directed by the commissioner.

58.18(2) Fees related to this chapter are as follows:

a. The fee to accompany an application for a certificate of registration is \$100.

b. The fee to accompany the filing of an annual report is \$50.

c. The fee to renew a certificate of registration is \$100.

d. The fee for the late filing of an annual report or of an application to renew a certificate of registration is \$100.

58.18(3) The division may charge a reasonable fee for the compilation and production of records necessary to evaluate an application for a certificate of registration, an application for the renewal of a certificate of registration, or an annual report.

[ARC 8310B, IAB 11/18/09, effective 12/23/09]

191—58.19(510) Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

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191—58.20(510) Compliance date. All persons shall comply with this chapter on and after January 1, 2010.

[ARC 8310B, IAB 11/18/09, effective 12/23/09]

These rules are intended to implement Iowa Code chapters 505 and 510.

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