

HOUSE No. 3599

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to third party administrators.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ronald Mariano</i>	<i>3rd Norfolk</i>	<i>1/20/2011</i>

HOUSE No. 3599

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 3599) of Ronald Mariano relative to third party life, disability, workers' compensation, annuity, or health coverage administrators. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to third party administrators.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws is hereby amended by inserting after chapter 175K the following chapter:-

Chapter 175L

THIRD PARTY ADMINISTRATOR ACT

Section 1. For the purpose of this chapter, the following words shall, except the context clearly requires otherwise, have the following meanings:-

“Administrator” or “third party administrator”, a person who directly or indirectly solicits, underwrites, collects charges or premiums from, or adjusts, settles or pays claims on residents of this state, in connection with life, disability, workers’ compensation, annuity, or health coverage offered or provided by an insurer, except any of the following:-

(1) an employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such employer;

(2) a union on behalf of its members;

(3) an insurer that is authorized to transact insurance in this state;

(4) An insurance producer licensed to sell life, disability, workers' compensation, annuities, or health coverage in this state, whose activities are limited exclusively to the sale of insurance;

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

(6) a trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. Section 186;

(7) a trust exempt from taxation under Section 501(a) of the Internal Revenue Code, 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 which meets the requirements of Section 401(f) of the Internal Revenue Code;

(8) a credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments;

(9) a credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection;

(10) a person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life, disability, workers' compensation, annuity or health coverage;

(11) an adjuster licensed by this state whose activities are limited to adjustment of claims;

(12) a person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license; or

(13) an administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, "insurer" means a licensed or authorized insurance company, non-profit hospital service plan, medical service corporation, dental service corporation, optometric service corporation, health maintenance organization, or any other person providing a plan of insurance subject to state regulation.

"Affiliate or affiliated", 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.

52 “Commissioner”, the commissioner of insurance.

53 “Control” (including the terms “controlling,” “controlled by” and “under common control
54 with”), the possession, direct or indirect, of the power to direct or cause the direction of the
55 management and policies of a person, whether through the ownership of voting securities, by
56 contract other than a commercial contract for goods or nonmanagement services, or otherwise,
57 unless the power is the result of an official position with or corporate office held by the person.
58 Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with
59 the power to vote, or holds proxies representing, 10 percent or more of the voting securities of
60 any other person. This presumption may be rebutted by a showing made in the manner provided
61 by subsection (k) of 206C of chapter 175 that control does not exist in fact. The commissioner
62 may determine, after furnishing all persons in interest notice and opportunity to be heard and
63 making specific findings of fact to support the determination, that control exists in fact,
64 notwithstanding the absence of a presumption to that effect.

65 “GAAP”, United States generally accepted accounting principles consistently applied.

66 “Insurance producer”, a person required to be licensed under the laws of this state to sell,
67 solicit or negotiate insurance as those terms are defined in this Act.

68 “Insurer”, a person undertaking to provide life, disability, workers’ compensation,
69 annuity, or health coverage in this state. For the purposes of this Act, insurer includes a licensed
70 or authorized insurance company, a non-profit hospital service plan, a medical service
71 corporation, a dental service corporation, an optometric service corporation, a health
72 maintenance organization, or any other person providing a plan of insurance subject to state
73 insurance regulation. Insurer shall not include a bona fide employee benefit plan established by

an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974, nor shall insurer include a workers' compensation self-insurance group as that term is used in sections twenty-five E through twenty-five U, inclusive, of chapter fifty-two of the general laws.

"Negotiate", the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Person", an individual or a business entity.

"Sell", to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit", attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

"Underwrites" or "underwriting", 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; the overall planning and coordinating of a benefits program.

Section 2. No administrator shall act as such without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for 5 years thereafter. The agreement shall contain all provisions required by this Act, except insofar as those requirements do not apply to the functions performed by the administrator.

95 The written agreement shall include a statement of duties that the administrator is
96 expected to perform on behalf of the insurer and the lines, classes or types of insurance for which
97 the administrator is to be authorized to administer. The agreement shall make provision with
98 respect to underwriting or other standards pertaining to the business underwritten by the insurer.

99 The insurer or administrator may, with written notice, terminate the written agreement for
100 cause as provided in the agreement. The insurer may suspend the authority of the administrator
101 during the pendency of any dispute regarding the cause for termination of the written agreement.
102 The insurer shall fulfill any lawful obligations with respect to policies affected by the written
103 agreement, regardless of any dispute between the insurer and the administrator.

104 Section 3. If an insurer utilizes the services of an administrator, the payment to the
105 administrator of any premiums or charges for insurance by or on behalf of the insured party shall
106 be deemed to have been received by the insurer, and the payment of return premiums or claim
107 payments forwarded by the insurer to the administrator shall not be deemed to have been paid to
108 the insured party or claimant until the payments are received by the insured party or claimant.
109 Nothing in this section limits any right of the insurer against the administrator resulting from the
110 failure of the administrator to make payments to the insurer, insured parties or claimants.

111 Section 4. An administrator shall maintain and make available to the insurer complete
112 books and records of all transactions performed on behalf of the insurer. The books and records
113 shall be maintained in accordance with prudent standards of insurance record keeping and shall
114 be maintained for a period of not less than 7 years from the date of their creation.

115 The commissioner may at any time, as he or she deems necessary, make such
116 examination of the books and affairs of the administrator and for this purpose shall have the

117 powers conferred by section four of chapter one hundred seventy-five of the general laws. Any
118 officer, director, agent or employee of any such administrator who refuses to submit to such
119 examination, or who obstructs the commissioner or any of his or her deputies or examiners in the
120 making of such examination, shall be punished by the penalty provided in section 4 of chapter
121 175.

122 The insurer shall own the records generated by the administrator pertaining to the insurer;
123 however, the administrator shall retain the right to continuing access to such books and records
124 to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants,
125 and the insurer.

126 In the event the insurer and the administrator terminate their agreement; notwithstanding
127 the provisions of Subsection A of this section, the administrator may, by written agreement with
128 the insurer, transfer all records to a new administrator rather than retain them for 7 years. In such
129 cases, the new administrator shall acknowledge, in writing, to the insurer, that it is responsible
130 for retaining the records of the prior administrator as required in subsection A of this section.

131 If an administrator maintains books and records of an insurer against which an order of
132 receivership is entered in any state, the administrator shall, within 30 days of demand by the
133 receiver, deliver such books and records to the receiver or, at the receiver's sole discretion, to the
134 applicable state guaranty association(s). Copies of the books and records of an insurer may be
135 made by the administrator at their own expense. Failure to comply with the demands of the
136 receiver shall be subject to penalties as provided in section 14 of this Act. The receiver will be
137 entitled to the same access to all books and records as provided to both the insurer and the
138 commissioner.

Section 5. An administrator may use only advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

Section 6. If an insurer utilizes the services of an administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

It is the sole responsibility of the insurer to provide for competent administration of its programs.

The insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review each year shall be an on-site audit of the operations of the administrator.

No insurer shall utilize the services of an administrator that is not duly licensed as an administrator. Any insurer that violates this provision shall be punished by a fine of not more than \$5,000.

For purposes of this section, “insurer” means a licensed insurance company, a non-profit hospital service plan, medical service corporation, dental service corporation, optometric service corporation, health maintenance organization, or any other person providing a plan of insurance subject to state regulation.

Section 7. All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally or state insured financial institution. The administrator shall establish a separate fiduciary account for the insurer and no monies received in a fiduciary capacity shall be commingled with monies held for another insurer. The written agreement between the administrator and the insurer shall provide for the administrator to render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer on an annual basis.

If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The administrator shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

The administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from the account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address, but not be limited to, the following:-

- (i) remittance to an insurer entitled to remittance;
- (ii) deposit in an account maintained in the name of the insurer;

(iii) transfer to and deposit in a claims-paying account, with claims to be paid as provided for in fourth paragraph;

(iv) payment to a group policyholder for remittance to the insurer entitled to such remittance;

(v) payment to the administrator of its commissions, fees or charges; and

(vi) remittance of return premium to the person or persons entitled to such return premium.

All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

In the event that an insurer with whom the administrator has an agreement becomes subject to a receivership order entered in any state, the administrator shall provide a receivership reconciliation and accounting to the receiver within 90 days after such request by the receiver.

Upon the receiver's request, the administrator shall remit any and all funds held on behalf of the subject insurer.

Section 8. An administrator shall not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

Section 9. When the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

When an administrator collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

The 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.

Section 10. Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

Section 11. No person shall act as, offer to act as, or hold himself out to be an administrator in this state without a valid license as an administrator issued by the commissioner. The commissioner may impose a fine of not more than \$5,000 for each and every violation against any person who acts as an administrator without a valid license.

An administrator applying for licensure under this Act shall initially and annually thereafter make application to the commissioner upon a form to be furnished by the commissioner. The application shall include or be accompanied by an application fee as required by the commissioner and by the following information and documents:-

223 (i) all basic organizational documents of the administrator, including any articles of
224 incorporation, articles of association, partnership agreement, trade name certificate, trust
225 agreement, shareholder agreement and other applicable documents and all amendments to such
226 documents;

227 (ii) the bylaws, rules, regulations or similar documents regulating the internal affairs
228 of the administrator;

229 (iii) NAIC Biographical Affidavit for the individuals who are responsible for the
230 conduct of affairs of the administrator; including all members of the board of directors, board of
231 trustees, executive committee or other governing board or committee; the principal officers in the
232 case of a corporation or the partners or members in the case of a partnership, association or
233 limited liability company; any shareholders or member holding directly or indirectly ten percent
234 (10%) or more of the voting stock, voting securities or voting interest of the administrator; and
235 any other person who exercises control or influence over the affairs of the administrator;

236 (iv) audited annual financial statements or reports, prepared in accordance with GAAP
237 and certified by an independent certified public accountant, for the 2 most recent fiscal years that
238 prove that the administrator has an adequate net worth to engage in the business proposed. If the
239 administrator has been in existence for less than two (2) fiscal years, the application shall include
240 financial statements or reports, certified by an officer of the administrator and prepared in
241 accordance with GAAP, for any completed fiscal years, and for any month during the current
242 fiscal year for which such financial statements or reports have been completed. An audited
243 financial/annual report prepared on a consolidated basis shall include a columnar consolidating
244 or combining worksheet that shall be filed with the report and include the following: (a) amounts

shown on the consolidated audited financial report shall be shown on the worksheet; (b) amounts for each entity shall be stated separately, and (c) explanations of consolidating and eliminating entries shall be included. The administrator shall also include such other information as the commissioner may require in order to review the current financial condition of the administrator;

(v) a statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting;

(vi) if the administrator will be managing the solicitation of new or renewal business, proof that it employs or has contracted with a producer licensed in this state for solicitation and taking of applications. Any administrator which intends to directly solicit insurance contracts or to otherwise act as an insurance producer shall provide proof that it has a license as an insurance producer in this state; and

(vii) such other pertinent information as may be required by the commissioner.

An administrator licensed or applying for licensure under this section shall make available for inspection by the commissioner copies of all contracts with insurers or other persons utilizing the services of the administrator.

An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers readily available to give information with respect to its affairs, as often as reasonably required by the commissioner.

265 The commissioner may refuse to issue a license if the commissioner determines that the
266 administrator, or any individual responsible for the conduct of affairs of the administrator is not
267 competent, trustworthy, financially responsible or of good personal and business reputation, or
268 has had an insurance or an administrator certificate of authority or license denied or revoked for
269 cause by any jurisdiction, or if the commissioner determines that any of the grounds set forth in
270 section 14 exists with respect to the administrator.

271 A license issued under this section shall expire on June thirtieth of each year, unless
272 sooner surrendered, suspended or revoked by the commissioner, but may be renewed by the
273 commissioner on or before said date upon written application of the administrator, subject to all
274 of the provisions of this chapter.

275 An administrator licensed or applying for licensure under this section shall immediately
276 notify the commissioner of any material change in its ownership, control, or other fact or
277 circumstance affecting its qualification for a license in this state.

278 An administrator licensed or applying for licensure under this section shall have and keep
279 in full force and effect a surety bond in the amount \$100,000.

280 No administrator not domiciled in this state shall be licensed to do business until it has
281 filed with the commissioner a power of attorney constituting and appointing the commissioner or
282 his or her successor its true and lawful attorney, upon whom all lawful processes in any action or
283 legal proceeding against it may be served, and therein shall agree that any lawful process against
284 it which may be served upon its said attorney shall be of the same force and validity as if served
285 on the administrator, and that the authority thereof shall continue in force irrevocable so long as
286 any liability of the administrator remains outstanding in this state. The service of such process

shall be made by leaving the same in duplicate in the hands of the office of the commissioner. One of the duplicates of such process certified by the commissioner as having been served upon him or her shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed service upon the principal.

Section 12. A person who, in whole or in part, directly or indirectly solicits, underwrites, collects charges or premiums from, or adjusts, settles or pays claims on residents of this state, in connection with life, disability, workers' compensation, annuity or health coverage provided by a bona-fide employee benefit plan which is established by an employer or an employee organization, or both, and for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974 shall register with the commissioner annually, verifying its status as herein described.

A person who, in whole or in part, directly or indirectly solicits, underwrites, collects charges or premiums from, or adjusts, settles or pays claims on residents of this state, in connection with workers' compensation coverage provided by a workers' compensation self-insurance group, as that term used in sections 25 E through 25 U, inclusive, of chapter fifty-two of the general laws, shall register with the commissioner annually, verifying its status as herein described.

Section 13. Each administrator shall file an annual report for the preceding calendar year with the commissioner on or before May 1 annually, or within such extension of time as the commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining

309 worksheet that shall be filed with the report and include the following: a) amounts shown on the
310 consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity
311 shall be stated separately, and c) explanations of consolidating and eliminating entries shall be
312 included. The report shall be in the form and contain such matters as the commissioner
313 prescribes and shall be verified by at least two (2) officers of the administrator.

314 The annual report shall include the complete names and addresses of all insurers with
315 which the administrator had agreements during the preceding fiscal year.

316 At the time of filing its annual report, the administrator shall pay a filing fee as required
317 by the commissioner.

318 An administrator neglecting to make and file its annual report under this section in the
319 form and within the time provided may be fined not more than \$100 for each day during which
320 such neglect continues.

321 Section 14. The license of an administrator shall be denied, suspended or revoked if
322 the commissioner finds that the administrator: -

323 (i) is in unsound financial condition;

324 (ii) is using such methods or practices in the conduct of its business so as to render its
325 further transaction of business in this state hazardous or injurious to insured persons or the
326 public; or

327 (iii) has failed to pay any judgment rendered against it in this state within 60 days after
328 the judgment has become final.

329 The commissioner may deny, suspend or revoke the license of an administrator if the
330 commissioner finds that the administrator:

331 (i) has violated any lawful rule or order of the commissioner or any provision of the
332 insurance laws of this state;

333 (ii) has refused to be examined or to produce its accounts, records and files for
334 examination, or if any individual responsible for the conduct of affairs of the administrator,
335 including members of the board of directors, board of trustees, executive committee or other
336 governing board or committee; the principal officers in the case of a corporation or the partners
337 or members in the case of a partnership, association or limited liability company; any
338 shareholder or member holding directly or indirectly 10 per cent or more of the voting stock,
339 voting securities or voting interest of the administrator; and any other person who exercises
340 control or influence over the affairs of the administrator; has refused to give information with
341 respect to its affairs or has refused to perform any other legal obligation as to an examination,
342 when required by the commissioner;

343 (iii) has, without just cause, refused to pay proper claims or perform services arising
344 under its contracts or has, without just cause, caused covered individuals to accept less than the
345 amount due them or caused covered individuals to employ attorneys or bring suit against the
346 administrator to secure full payment or settlement of such claims;

347 (iv) at any time fails to meet any qualification for which issuance of the license could
348 have been refused had the failure then existed and been known to the commissioner;

349 (v) or any of the individuals responsible for the conduct of its affairs, including members
350 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 per or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs; has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld;

(vi) is under suspension or revocation in another state; or

(vii) has failed to timely file its annual report pursuant to section 13.

The commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the license of an administrator if the commissioner finds that one or more of the following circumstances exist:

(i) the administrator is insolvent or impaired;

(ii) a proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state; or

(iii) the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this Act, the commissioner may, in lieu of, or in addition to, suspension or revocation, impose a fine from \$1,000 to \$10,000 for each and every violation upon the administrator.

371 Section 15. The commissioner may in accordance with provisions of chapter 30A,
372 after notice and hearing, promulgate reasonable rules and regulations necessary to carry out the
373 provisions of this chapter.