

This rule was filed as 13 NMAC 4.5.

TITLE 13 INSURANCE
CHAPTER 4 LICENSING OF INSURANCE PROFESSIONALS
PART 5 INSURANCE ADMINISTRATORS

13.4.5.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.
[7/1/97; Recompiled 11/30/01]

13.4.5.2 SCOPE: This rule applies to all administrators who provide administrative services in connection with insurance or alternatives to insurance or who, in a fiduciary capacity or otherwise, manage or handle funds, money, premiums, fees or other forms of consideration in connection with insurance or alternatives to insurance. This rule also applies to the claims practices of insurers or alternatives to insurance, whether or not they are administered by a third party.
[2/1/92; Recompiled 11/30/01]

13.4.5.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-12A-1 through 59A-12A-17 NMSA 1978.
[2/1/92; Recompiled 11/30/01]

13.4.5.4 DURATION: Permanent.
[7/1/97; Recompiled 11/30/01]

13.4.5.5 EFFECTIVE DATE: February 1, 1992, unless a later date is cited at the end of a section or paragraph. Repromulgated in NMAC format effective July 1, 1997.
[2/1/92, 7/1/97; Recompiled 11/30/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.

13.4.5.6 OBJECTIVE: The purpose of this rule is to provide criteria and procedures applicable to the licensure and conduct of insurance administrators and to govern the practice of insurance administration.
[2/1/92; Recompiled 11/30/01]

13.4.5.7 DEFINITIONS: As used in this rule, all terms defined in Section 59A-12A-2 NMSA 1978 shall have the meanings ascribed therein.
[2/1/92; Recompiled 11/30/01]

13.4.5.8 LICENSING REQUIREMENTS:

A. The superintendent will issue, renew and permit to exist any license of an insurance administrator to a person qualified as follows:

- (1) an applicant shall be at least 18 years of age;
- (2) a resident applicant shall have been a resident of the state of New Mexico for at least thirty (30) days immediately preceding the filing of the application;
- (3) a nonresident applicant may apply for a license while maintaining its bona fide continuous residence and chief place of business within the continental limits of the United States, but not within the state of New Mexico, and may engage in the business of insurance administration outside of New Mexico; and
- (4) the applicant shall complete and file an application and shall successfully pass a personal written examination to determine that the applicant has sufficient knowledge and reasonable familiarity with the insurance laws of New Mexico and with the provisions, terms and conditions of the insurance business to be transacted under the license sought, and that the applicant has a general and fair understanding of the obligations and duties of an insurance administrator.

B. No license shall be issued to or renewed for any administrator acting on behalf of an unauthorized insurer transacting the business of insurance in violation of the Insurance Code or federal law.

C. Pursuant to 18 U.S.C. Section 1033, no person who has been convicted of a felony involving dishonesty or a breach of trust may be licensed as an insurance administrator, unless the person has the written consent of the superintendent.
[7/1/97; Recompiled 11/30/01]

13.4.5.9 INDIVIDUAL APPLICATIONS:

A. Application by an individual for an insurance administrator's license shall be filed with the superintendent on forms prescribed and furnished by the superintendent and accompanied by applicable fees as set out in this regulation. The application shall be signed by the applicant under oath if required by the form. The application form may require information about applicant as to:

- (1) name, date of birth, social security number, residence, business address if applicable, and length of time a resident of New Mexico, if applicable;
- (2) personal history and business experience in general for at least the five-year period immediately preceding the date of the application;
- (3) experience or special training or education in the kind of business to be transacted under the license applied for;
- (4) previous licensing;
- (5) type of license applied for and kinds of insurance or transactions to be covered thereby;
- (6) proof of applicant's identity; and
- (7) such other pertinent information and matters as the superintendent may reasonably require.

B. In addition to the written application, individual applicants are required to file therewith the following documents:

- (1) Nonresident applicants who are licensed to transact any kind of insurance or insurance administration in another state shall provide a letter of certification or equivalent document from their state of domicile.
- (2) Resident applicants who are or have been licensed to transact any kind of insurance or insurance administration in another state shall provide a letter of clearance or equivalent document from such other states where they are or have been licensed.

[2/1/92; Recompiled 11/30/01]

13.4.5.10 CORPORATE APPLICATIONS: Corporate and partnership applicants shall submit an application for a license in the name of the legal entity and shall submit applications in the name of every officer and manager of a corporation and of every partner in a partnership who is to exercise license powers of the administrator as required by Section 59A-12A-3C NMSA 1978. (Manager as used herein shall mean the highest ranking administrator at a single location.) Such applications shall be filed with the superintendent by the partnership or corporation on form prescribed and furnished by the superintendent, accompanied by an application fee as set out in this rule. The application shall be signed on behalf of the legal entity (partnership or corporation) by a partner or corporate officer thereunto duly authorized, and under oath if so required by the superintendent. The application form may require information about applicant as follows:

A. if a partnership, the name, residence, proof of identity, business record and business experience of each partner and so much additional information concerning such individuals as required of applicants for license as individuals as the superintendent deems advisable;

B. if a corporation, the name, residence, proof of identity, business record and reputation, business experience of each officer, member of the board of directors, controlling stockholder(s), and such additional information concerning such individuals as required of applicants for license as individuals as the superintendent deems advisable;

C. evidence satisfactory to the superintendent that transaction of business proposed to be transacted under the license applied for is within the partnership agreement, if a partnership, or within the corporate powers, if a corporation; and

D. such further information concerning applicant, partners, corporate officers, directors, and stockholders, as the superintendent deems advisable.

E. If a partnership, each individual in addition to a general partner who is to exercise license powers, and if a corporation, each individual, in addition to an officer and manager who is to exercise the license powers, shall file application as though for an individual license for the same kind of business as that applied for by the partnership or corporation.

F. Each application shall be accompanied by payment of the fee for filing an application and the fee for any examination required under the Insurance Code to be taken and passed prior to licensing. An additional license application filing fee is required as to each individual in excess of one who is to exercise the license powers of a corporation, or license powers of a partnership if not a general partner therein.

G. An administrator shall notify the superintendent within thirty (30) days of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority in this state.

[2/1/92; Recompiled 11/30/01]

13.4.5.11 EXCEPTIONS TO LICENSURE REQUIREMENTS:

A. An administrator is not required to hold a certificate of authority as an administrator in this state if all of the following conditions are met:

- (1) the administrator has its principal place of business in another state;
- (2) the administrator is not soliciting business as an administrator in this state; and
- (3) in the case of any group policy or plan of insurance serviced by the administrator, the lesser of five percent (5%) or one hundred (100) certificate holders reside in this state.

B. A person is not required to hold a certificate of authority as an administrator in this state if the person exclusively provides services to one or more bona fide employee benefit plans each of which is established by an employer or an employee organization, or both, and for which the insurance laws of this state are fully preempted pursuant to ERISA. Such persons shall register with the superintendent annually, verifying their status as herein described.

[2/1/92; Recompiled 11/30/01]

13.4.5.12 EXAMINATION OF APPLICANTS:

A. Examinations for insurance administrator licenses shall be arranged through the agents licensing division of the new mexico department of insurance and conducted according to the provisions of Section 59A-11-6 NMSA 1978 as amended.

B. Individual applicants, corporate officers, managers and employees who will exercise license powers and general partners and partnership employees who will exercise license powers shall be required to complete and successfully pass a written examination as herein provided.

[2/1/92; Recompiled 11/30/01]

13.4.5.13 EXEMPTIONS FROM EXAMINATION REQUIREMENTS:

A. No such examination will be required of an applicant for continuation or renewal of an existing insurance administrator's license.

B. In his discretion, the superintendent may waive the examination requirement for insurance administrators who were operating in New Mexico prior to June 16, 1989, the effective date of Chapter 59A, Article 12A NMSA 1978 pursuant to Section 59A-12A-3B NMSA 1978.

C. Upon request from an applicant, the superintendent may waive the examination requirement if the applicant holds a valid certificate of authority as an administrator issued in a state which the superintendent has determined has standards for administrators that are at least as stringent as those contained in the model statute for third party administrators of the national association of insurance commissioners.

[2/1/92; Recompiled 11/30/01]

13.4.5.14 FEES: Every insurance administrator transacting business in the state of New Mexico shall pay to the superintendent of insurance the following nonrefundable fees:

A. filing application for original insurance administrator license issued to a person as defined in this regulation, \$50.00;

B. filing application for original insurance administrator license issued to each officer and each manager exercising license powers of a licensed corporation and each partner exercising license powers in a licensed partnership, \$50.00;

C. continuation or renewal of license, each year, \$23.00;

D. examination for license conducted directly by superintendent, and payable as to each instance of examination, \$50.00;

E. for each request for a duplicate license and for each name change, \$30.00;

- F. for each annual report filed, \$50.00; and
- G. for each seal and signature affixed to any instrument, \$10.00.

[2/1/92, 7/1/97; Recompiled 11/30/01]

13.4.5.15 ANNUAL CONTINUATION OF LICENSE:

A. Licenses issued shall continue until the first day of March of the following year unless previously canceled by the licensee on a form prescribed by and filed with the superintendent.

B. Each insurance administrator licensed to transact business in the state of New Mexico shall continue the license previously issued by paying a continuation or renewal fee therefor on or before March 1 of each calendar year.

[2/1/92; Recompiled 11/30/01]

13.4.5.16 SCOPE OF LICENSE:

A. The license issued by the superintendent under these regulations shall state the name of the licensee and residence address if an individual, or business address if a partnership or corporation or a place of business is otherwise required of the licensee, the capacity in which the licensee is to act and the kind of business covered, date of issuance of license, and such other information as the superintendent deems pertinent and consistent with law.

B. Any license issued under this regulation entitles the licensee to act for one or more authorized insurers, eligible surplus lines insurers, plans or persons that self insure without being required to obtain a separate license with respect to each insurer, surplus lines insurer, plan or person that self insures.

C. The license of a partnership or corporation shall also state, or record by endorsement attached thereto, the name of each individual authorized to exercise the license powers. At the superintendent's discretion the name of such an individual may be registered with the insurance department in lieu of being shown or endorsed on the license.

[2/1/92; Recompiled 11/30/01]

13.4.5.17 CANCELLATION AND SURRENDER OF LICENSES:

A. Whenever a partnership or corporation licensed as an insurance administrator shall discharge any licensed insurance administrator from its employ, the discharging licensee shall immediately notify the superintendent on a form prescribed by him and request cancellation of the license existing in the name of the discharged licensee. In order to perform services as an administrator, the discharged licensee shall be required to reapply for an administrator's license, and may be reinstated under a new administrator within six months of termination without re-examination by payment of a new initial fee.

B. All licenses issued to natural persons terminate upon the death of such persons.

C. All licenses issued to legal entities terminate upon legal dissolution of such entities.

[2/1/92; Recompiled 11/30/01]

13.4.5.18 REVOCATION OF LICENSE:

A. **Grounds:** In the event that the superintendent is satisfied that any insurance administrator obtained a license by willful misrepresentation or fraud, or that the licensee has not complied with the insurance laws of the state of New Mexico, or that the interests of the insureds or the public are not being properly served under the license, it shall be the duty of the superintendent to revoke the administrator's license.

B. **Hearing:** Any person aggrieved by any action, threatened action, or failure to act of the superintendent shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Section 59A-4-15 NMSA 1978. Notice of hearing shall be given, the hearing conducted, rights and powers exercised, and the superintendent's order on hearing made and given as provided as to hearings in general under the applicable provisions of Chapter 59A, Article 4 NMSA 1978.

C. **Review:** Any person aggrieved by the superintendent's order on such hearing, or by the superintendent's refusal to hold the hearing, may request a review thereof under the applicable provision of Chapter 59A, Article 4 NMSA 1978.

[2/1/92; Recompiled 11/30/01]

13.4.5.19 ANNUAL REPORTS:

A. Each administrator shall file an annual report for the preceding calendar year with the superintendent on or before March 1 of each year, or within such extension of time therefor as the superintendent for good cause may grant. The report shall be in the form and contain such matters as the superintendent prescribes and shall be verified by at least two (2) officers or two (2) partners of the administrator, if applicable.

B. The annual report shall include the complete names and addresses of all insurers with which the administrator had an agreement during the preceding fiscal year. If requested in writing by the administrator, the names and addresses of the insureds may be kept confidential by the superintendent.

C. At the time of filing its annual report, the administrator shall pay a filing fee as required by this regulation.

[2/1/92; Recompiled 11/30/01]

13.4.5.20 WRITTEN AGREEMENTS:

A. The written agreement between the administrator and insurer required by Section 59A-12A NMSA 1978 -4 shall include a statement of duties which the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the administrator is to be authorized to administer. The agreement shall make provisions with respect to underwriting or other standards pertaining to the business underwritten by such insurer.

B. The insurer or administrator may upon written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer must fulfill any lawful obligations with respect to policies or claims affected by the written agreement, regardless of any dispute between the insurer and the administrator.

[2/1/92; Recompiled 11/30/01]

13.4.5.21 COMPENSATION:

A. An insurance carrier, plan, person that self insures, or third-party administrator doing business in this state shall not pay, directly or indirectly, any compensation or fee or any further consideration of value to any insurance administrator for service as an administrator within this state, unless the administrator is duly licensed to transact such business in the state of New Mexico.

B. The prohibition contained in the preceding paragraph does not prevent the payment or receipt of vested renewal or other deferred commissions or fees to or by any person solely because that administrator has ceased to hold a valid license.

[2/1/92; Recompiled 11/30/01]

13.4.5.22 RESPONSIBILITIES OF THE INSURER:

A. 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 such coverage and for securing reinsurance, if any. The rules pertaining to these matters must 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.

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

C. In cases where an administrator administers benefits for more than one hundred (100) certificate holders on behalf of an insurer, the insurer shall maintain for a minimum of at least three years any reviews conducted of the operations of the administrator, and shall produce the records pertaining to the review at the request of the superintendent.

[2/1/92; Recompiled 11/30/01]

HISTORY OF 13.4.5 NMAC:

Pre-NMAC History: The material in this rule was previously filed with the State Records Center as: SCC 91-4-IN, A Regulation Relating to Insurance Administration (Regulation 12A, Rule 1), filed 12/30/91.

History of Repealed Material: [RESERVED]