

§1909. Fiduciary accounts and duties

1. Administrators shall hold in a fiduciary capacity all contributions and premiums received or collected on behalf of a plan sponsor or insurer, except service fees owed to the administrator pursuant to the written agreement between the plan sponsor, insurer, health care service plan or health maintenance organization and the administrator. These funds may not be used as general operating funds of the administrator. All contributions and premiums received or collected by the administrator from residents of this State that the administrator holds more than 30 days or deposits into an account that is not under the control of the plan sponsor, health care service plan, health maintenance organization or insurer, must be placed in a special fiduciary account, designated as an ATF. All resident and quasi-resident licensees required to maintain an ATF under this section shall maintain the ATF with one or more financial institutions located within the State and subject to jurisdiction of the courts of this State. Funds belonging to 2 or more plans may be held in the same ATF, provided the administrator's records clearly indicate the funds belonging to each plan. Checks drawn on the ATF must indicate on the face of the checks that the checks are drawn on the administrator's ATF.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

2. The administrator may make the following disbursements from the ATF:

A. Contributions and premiums due insurers or other persons providing life, accident and health, or workers' compensation coverage for a plan; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

B. Return contributions and premiums to a plan or covered individual; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

C. Commissions or administrative fees due to the administrator when earned under a written agreement; and [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

D. Transfers into the CASA of the administrator. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

3. For each plan for which an ATF is required, the balance in the ATF must at all times be the amount deposited plus accrued interest, if any, less authorized disbursements. If the balance at the financial institution, with respect to the ATF, is less than the amount deposited plus accrued interest, if any, less authorized disbursements, the administrator is presumed, for purposes of license revocation or suspension, to have misappropriated funds and to have acted in a financially irresponsible manner. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

4. Before establishing an ATF that is interest bearing or income producing, the administrator shall disclose the nature of the account to the plan sponsor, health care service plan, health maintenance organization or insurer on whose behalf the funds are to be held. The administrator shall secure written consent and authorization from the plan sponsor, health care service plan, health maintenance organization or insurer for the investment of the money and disposition of the interest or earnings. An administrator may not make any investment that assumes a risk other than the risk that the obligor might not pay the principal when due. The administrator may not use specialized techniques or strategies that incur additional risks to generate higher returns or to extend maturities. Such techniques include, but are not limited to, the use of financial futures or options, buying on margins and pledging of ATF balances.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

5. Administrators may place ATF funds in interest bearing or income producing investments and retain the interest or income on the funds, provided the administrator obtains the prior written authorization of the plan sponsors, health care service plans, health maintenance organizations or

insurers on whose behalf the funds are to be held. In addition to savings and checking accounts, an administrator may invest in the following:

- A. Direct obligations of the United States or government agency securities with maturities of not more than one year; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]
- B. Certificates of deposit, with a maturity of not more than one year, issued by financial institutions insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), provided any such deposit does not exceed the maximum level of insurance protection provided to certificates of deposit held by those institutions; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]
- C. Repurchase agreements with financial institutions or government securities dealers recognized as primary dealers by the Federal Reserve System provided:
 - (1) The value of the repurchase agreement is collateralized with assets that are allowable investments for ATF funds;
 - (2) The collateral has a market value, at the time the repurchase agreement is entered into, at least equal to the value of the repurchase agreement; and
 - (3) The repurchase agreement does not exceed 30 days; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]
- D. Commercial paper, provided the commercial paper is rated at least P-1 by Moody's Investors Service, Inc. or at least A-1 by Standard & Poor's Corporation; or [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]
- E. Money market funds, provided the money market fund invests exclusively in assets that are allowable investments pursuant to paragraphs A to D for ATF funds. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

Each investment transaction must be made in the name of the administrator's ATF. The administrator shall maintain evidence of any such investments. Each investment transaction must flow through the administrator's ATF.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

6. The administrator shall hold in a fiduciary capacity all money that the administrator receives to pay claims and claim adjustment expenses. All resident and quasi-resident licensees shall place all such money for claims and claim adjustment expenses for residents of this State, whether received from a plan sponsor, health care service plan, health maintenance organization or insurer or from the administrator's ATF, in a special fiduciary account in a financial institution located in this State. The account must be designated a CASA. Funds belonging to 2 or more plans may be held in the same CASA, provided the administrator's records clearly indicate the funds belonging to each plan. Checks drawn on the CASA must indicate on the face of the checks that the checks are drawn on the administrator's CASA.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

7. No deposit may be made into a CASA and no disbursement may be made from a CASA except for claims and claim adjustment expenses. For each plan for which a CASA is required, the balance in the CASA must at all times be the amount deposited less claims and claims adjustment expenses paid. If the CASA balance is less than that amount, the administrator shall be presumed, for purposes of license revocation or suspension, to have misappropriated funds and to have acted in a financially irresponsible manner.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

8. Administrators shall maintain detailed books and records that reflect all transactions involving the receipt and disbursement of:

A. Contributions and premiums received on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer; and [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

B. Claims and claim adjustment expenses received and paid on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]
[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

9. The detailed preparation, journalizing and posting of books and records required by subsection 8 must be maintained on a timely basis and all journal entries for receipts and disbursements must be supported by evidential matter that must be referenced in the journal entry so that receipts and disbursements may be traced for verification. Administrators shall prepare and maintain monthly financial institution account reconciliations of any ATF and CASA established by the administrator. Reconciliation of accounts is timely if accomplished not more than 45 days after the end of the month in which the transaction occurred. The reconciliation must include, at a minimum, the following:

A. The source and amount of any money received and deposited by the administrator, and the date of receipt and deposit; [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

B. The date each disbursement was made, the person to whom the disbursement was made and a written explanation of any difference between the amount disbursed and the amount billed or authorized; and [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

C. A description of the disbursement in sufficient detail to identify the source document substantiating the purpose of the disbursement. [PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

10. Failure to accurately maintain the required books and records in a timely manner is deemed to be untrustworthy, hazardous or injurious to participants in the plan or the public and financially irresponsible.

[PL 1989, c. 846, Pt. D, §2 (NEW); PL 1989, c. 846, Pt. E, §4 (AFF).]

SECTION HISTORY

PL 1989, c. 846, §§D2,E4 (NEW).

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