

BILL ANALYSIS

H.B. 1286
By: Callegari
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A service contract is an agreement, under which a provider agrees to repair, replace, or maintain a product or provide indemnification for the product, for operational or structural failure caused by a defect or by normal wear. Service contracts are regulated by the Texas Department of Licensing and Regulation (“TDLR”). House Bill 1286 seeks to provide TDLR with additional regulatory authority in order to improve oversight over the industry.

H.B. 1286 requires administrators of service contract providers to register with TDLR; provides TDLR with additional controls to ensure providers and their controlling persons are trustworthy; increases the capital and service requirements for insurers providing reimbursement insurance policies to providers; and creates other consumer protections.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 1304, Occupations Code, by adding "administrators."

SECTION 2. Amends Section 1304.002 (1), Occupations Code, by amending the definition of “Administrator” through exempting providers or employees of providers from the definition. Strikes language attributing an administrator from being a person responsible for any filing required by this chapter.

SECTION 3. Amends Subchapter A, Chapter 1304, Occupations Code, by adding Section 1304.0035 to define “Controlling Person.”

SECTION 4. Amends Section 1304.101(a), Occupations Code, by prohibiting a person from operating as an administrator of service contracts sold in this state unless the person is registered with the department.

SECTION 5. Amends Section 1304.102, Occupations Code, as follows:

Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL; GENERAL REQUIREMENTS. (a) Requires an applicant for registration renewal submit an application to the executive director.

(b) Requires an applicant for a provider registration to include proof of compliance with financial security requirements.

(c) Authorizes the department to refuse to issue or renew a registration if the applicant, or a controlling person of the applicant, has violated this chapter, a rule adopted, or an order issued by the commission or executive director.

(d) Provides that a person who makes a false statement in an application is subject to disciplinary action under Subchapter E, including denial of the application, suspension, or revocation of a registration.

SECTION 6. Amends Subchapter C, Chapter 1304, Occupations Code, by adding Section 1304.1025, as follows:

Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL REQUIREMENTS FOR PROVIDERS. (a) Requires an applicant for issuance or renewal of a provider registration to file: (1) the reimbursement policy; and (2) a biographical affidavit.

(b) Prohibits the executive director from issuing or renewing a registration unless certain provisions are met.

(c) Requires the provider to supply the department with a list of any Internet website address through which a consumer may purchase the provider's service contracts within 30 days of registration, and the name, address, and telephone number of certain administrators and sellers.

(d) Requires the provider to update the list required by Subsection (c) with each renewal.

SECTION 7. Amends Section 1304.103, Occupations Code, by striking references to "annual" registration and adding "renewal" fees and "administrators" in section language. Makes conforming changes.

SECTION 8. Amends the heading to Subchapter D, Chapter 1304, Occupations Code, by adding administrators.

SECTION 9. Amends Section 1304.152, Occupations Code, by amending Subsections (a)-(c) and adding Subsections (a-1), (b-1), (e), and (f), as follows:

(a) Adds Section 1304.1025 in reference to requirements concerning a provider's insurance policy and includes Subsection (3), requiring an insurer to pay the refund amount directly to the service contract holder if the refund is not paid according to Section 1304.158.

(a-1) Requires an insurer issuing a reimbursement insurance policy to maintain certain capital and surplus requirements.

(b) Provides that an insurer give written notice of policy cancellation to the executive director prescribed by Subchapter B, Chapter 551, rather than Articles 21.49-2A and 21.49-2B, Insurance Code. Strikes language made redundant by the prior addition of the executive director. Makes conforming and nonsubstantive changes.

(b-1) Prohibits the provider from issuing a new service contract, if the insurer cancels the insurance policy, after the effective date of the cancellation, unless certain conditions are met.

(c) Adds language providing that the insurer issuing the reimbursement insurance policy is considered to have received the premium for the policy on the date the service contract holder pays the purchase price of the service contract.

(e) Prohibits a reimbursement insurance policy from being issued by the provider, administrator, or seller of service contracts for the provider.

(f) Defines "net written premiums."

SECTION 10. Amends Section 1304.153, Occupations Code, to specify an administrator who is registered may be appointed by a provider, and is responsible for compliance with this chapter, except for Section 1304.151.

(b) Provides that the appointment of an administrator under this section does not affect a provider's responsibility to comply with this chapter.

SECTION 11. Amends Section 1304.155, Occupations Code, by adding Subsection (e), providing that an administrator is responsible for compliance with this section to the same extent as the provider.

SECTION 12. Amends Sections 1304.156 (a) and (d), Occupations Code, by making a conforming change to (a) and amending (d) to add that the service contract holder may apply directly to the insurer if a refund or credit is not paid before the 46th day as required by Section 1304.158.

SECTION 13. Repealer: Subchapter B, Chapter 1304, Occupations Code.

SECTION 14. Sections 1304.102 and 1304.1025, Occupations Code, apply to a registration that expires on or after the effective date of this Act.

SECTION 15. Sections 1304.101(a) and 1304.153, Occupations Code, take effect March 1, 2006.

SECTION 16. Sections 1304.152 and 1304.156, Occupations Code, apply only to a contract entered into on or after the effective date of this Act.

SECTION 17. Effective Date: January 1, 2006.

EFFECTIVE DATE

Sections 1304.101(a) and 1304.153, Occupations Code, take effect March 1, 2006.

Except as otherwise provided by this Act, this Act takes effect January 1, 2006.