

By: Callegari

H.B. No. 1286

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of service contract providers and
3 administrators.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Chapter 1304, Occupations Code,
6 is amended to read as follows:

7 CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

8 SECTION 2. Section 1304.002(1), Occupations Code, is
9 amended to read as follows:

10 (1) "Administrator" means a [the] person, other than
11 the provider of the service contract or an employee of the provider,
12 who is responsible for the third-party administration of a service
13 contract. [~~The term includes a person responsible for any filing~~
14 ~~required by this chapter.~~]

15 SECTION 3. Subchapter A, Chapter 1304, Occupations Code, is
16 amended by adding Section 1304.0035 to read as follows:

17 Sec. 1304.0035. CONTROLLING PERSON. (a) In this chapter,
18 "controlling person" means an individual who:

19 (1) possesses direct or indirect control of at least
20 25 percent of the voting securities of a corporation;

21 (2) possesses the authority to set policy and direct
22 the management of a business entity;

23 (3) is the president, the secretary, or a director of a
24 corporation; or

1 (4) is a general partner of a partnership.

2 (b) An individual who is a controlling person of a
3 corporation or other business entity that is the general partner of
4 a limited partnership is a controlling person of the limited
5 partnership.

6 SECTION 4. Section 1304.101(a), Occupations Code, is
7 amended to read as follows:

8 (a) A person may not operate as a provider or administrator
9 of service contracts sold in this state unless the person is
10 registered with the department.

11 SECTION 5. Section 1304.102, Occupations Code, is amended
12 to read as follows:

13 Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL;
14 GENERAL REQUIREMENTS. (a) An applicant for registration or
15 registration renewal must submit an application to the executive
16 director.

17 (b) The application must:

18 (1) be in the form prescribed by the executive
19 director; and

20 (2) include evidence satisfactory to the executive
21 director of compliance with the applicable financial security
22 requirements prescribed by Section 1304.151, if the application is
23 for a provider registration or renewal.

24 (c) The department may refuse to issue or renew a
25 registration if the applicant or a controlling person of the
26 applicant has violated this chapter or a rule adopted or order
27 issued by the commission or executive director.

1 (d) A person who makes a false statement in an application
2 or in any document provided with an application is subject to
3 disciplinary action under Subchapter E, including denial of the
4 application or suspension or revocation of a registration.

5 SECTION 6. Subchapter C, Chapter 1304, Occupations Code, is
6 amended by adding Section 1304.1025 to read as follows:

7 Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL
8 REQUIREMENTS FOR PROVIDERS. (a) In addition to the requirements of
9 Section 1304.102, an applicant for issuance or renewal of a
10 provider registration must file with the application:

11 (1) the reimbursement insurance policy, if the
12 provider is using a reimbursement insurance policy; and

13 (2) a biographical affidavit, in a form prescribed by
14 the executive director, for each controlling person of the
15 provider.

16 (b) The executive director may not issue or renew a
17 registration to a provider unless the provider provides evidence to
18 the executive director that:

19 (1) each controlling person of the provider is
20 trustworthy and can competently manage the affairs of the provider
21 in compliance with this chapter; and

22 (2) the provider can meet the provider's obligations
23 under service contracts and this chapter.

24 (c) Not later than the 30th day after the date of a
25 provider's initial registration, the provider must provide to the
26 department a list of any Internet website address through which a
27 consumer may purchase the provider's service contracts and the

1 name, assumed name, street address, and telephone number of:

2 (1) any administrator appointed by the provider under
3 Section 1304.153; and

4 (2) any seller of the provider's service contracts,
5 other than a seller that is:

6 (A) an employee of the provider; or

7 (B) a business with a physical location in this
8 state at which a consumer may purchase a service contract.

9 (d) The provider shall update the list required by
10 Subsection (c) with each renewal.

11 SECTION 7. Section 1304.103, Occupations Code, is amended
12 to read as follows:

13 Sec. 1304.103. ~~[ANNUAL]~~ REGISTRATION AND RENEWAL FEES. (a)
14 The executive director shall develop a tiered schedule of ~~[annual]~~
15 registration and renewal fees under which a provider's
16 ~~[registration]~~ fee is based on the number of service contracts the
17 provider sold in this state during the preceding 12-month period.

18 (b) The commission shall set the amounts of ~~[the]~~ fees to
19 cover the costs of administering this chapter, including
20 registration and renewal fees for administrators.

21 (c) To register or renew a registration ~~[be registered]~~, a
22 provider or administrator must pay the appropriate ~~[annual~~
23 ~~registration]~~ fee.

24 SECTION 8. The heading to Subchapter D, Chapter 1304,
25 Occupations Code, is amended to read as follows:

26 SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS AND
27 ADMINISTRATORS

1 SECTION 9. Section 1304.152, Occupations Code, is amended
2 by amending Subsections (a)-(c) and adding Subsections (a-1),
3 (b-1), and (e) to read as follows:

4 (a) A reimbursement insurance policy that a provider uses to
5 comply with Sections 1304.1025 and [Section] 1304.151(a)(1) must
6 state that:

7 (1) the insurer that issued the policy shall:

8 (A) reimburse or pay on behalf of the provider
9 any covered amount the provider is legally obligated to pay; or

10 (B) provide the service that the provider is
11 legally obligated to perform according to the provider's
12 contractual obligations under the insured service contract; ~~and~~

13 (2) if the covered service is not provided to a service
14 contract holder not later than the 60th day after the date of proof
15 of loss, the insurer shall pay the covered amount directly to the
16 service contract holder or provide the required service; and

17 (3) if a refund is not paid to the service contract
18 holder or credited to the service contract holder's account as
19 required by Section 1304.158, the insurer, after receiving written
20 notice, shall pay the refund amount directly to the service
21 contract holder.

22 (a-1) For a reimbursement insurance policy to comply with
23 Section 1304.151(a)(1), the insurer issuing the policy must:

24 (1) maintain surplus as to policyholders and paid-in
25 capital of at least \$15 million and annually file with the executive
26 director copies of the insurer's audited financial statements,
27 National Association of Insurance Commissioners annual statement,

1 and actuarial certification if the certification is required and
2 filed in the insurer's state of domicile; or

3 (2) maintain surplus as to policyholders and paid-in
4 capital of at least \$10 million but not more than \$15 million,
5 demonstrate to the satisfaction of the executive director that the
6 insurer maintains a ratio of net written premiums, wherever
7 written, to surplus as to policyholders and paid-in capital of not
8 more than three to one, and annually file with the executive
9 director copies of the insurer's audited financial statements,
10 National Association of Insurance Commissioners annual statement,
11 and actuarial certification if the certification is required and
12 filed in the insurer's state of domicile.

13 (b) The insurer may not cancel the reimbursement insurance
14 policy until the insurer delivers to the provider and the executive
15 director a written notice of cancellation that complies with the
16 notice requirements prescribed by Subchapters B and C, Chapter 551
17 [Articles 21.49-2A and 21.49-2B], Insurance Code, for cancellation
18 of an insurance policy under those subchapters [articles]. [The
19 provider shall forward a copy of the cancellation notice to the
20 executive director not later than the 15th business day after the
21 date the notice is delivered to the provider.] Cancellation of the
22 policy does not affect [reduce] the insurer's liability
23 [responsibility] for a service contract issued by the provider and
24 insured under the policy before the effective date of the
25 cancellation.

26 (b-1) If the insurer or provider cancels the reimbursement
27 insurance policy, the provider named on the policy may not issue a

1 new service contract after the effective date of the cancellation
2 unless:

3 (1) the provider files with the executive director a
4 copy of a new policy that meets the requirements of this section and
5 that provides coverage after that date; or

6 (2) the provider complies with other financial
7 security requirements provided by Section 1304.151(a).

8 (c) A provider is considered the agent of an insurer that
9 issues a reimbursement insurance policy for purposes of obligating
10 the insurer to the service contract holder in accordance with the
11 service contract and this chapter. The insurer issuing the
12 reimbursement insurance policy is considered to have received the
13 premium for the policy on the date the service contract holder pays
14 the purchase price of the service contract.

15 (e) In this section, "net written premiums" means the sum of
16 direct written premiums and assumed reinsurance premiums, minus
17 ceded reinsurance premiums.

18 SECTION 10. Section 1304.153, Occupations Code, is amended
19 to read as follows:

20 Sec. 1304.153. APPOINTMENT AND RESPONSIBILITIES OF
21 ADMINISTRATOR. (a) A provider may appoint an administrator
22 registered under this chapter [~~or designate a person~~] to be
23 responsible for:

24 (1) all or any part of the administration or sale of
25 service contracts; and

26 (2) compliance with this chapter, except for Section
27 1304.151.

1 (b) The appointment of an administrator under this section
2 does not affect a provider's responsibility to comply with this
3 chapter.

4 SECTION 11. Section 1304.155, Occupations Code, is amended
5 by adding Subsection (e) to read as follows:

6 (e) An administrator appointed to maintain the provider's
7 records is responsible for compliance with this section to the same
8 extent as the provider.

9 SECTION 12. Sections 1304.156(a) and (d), Occupations Code,
10 are amended to read as follows:

11 (a) A service contract marketed, sold, offered for sale,
12 issued, made, proposed to be made, or administered in this state
13 must:

14 (1) be written, printed, or typed in clear,
15 understandable language that is easy to read;

16 (2) state the name and address of the provider;

17 (3) state the purchase price of the contract and the
18 terms under which the contract is sold;

19 (4) state the terms and restrictions governing
20 cancellation of the contract by the provider or the service
21 contract holder before the expiration date of the contract;

22 (5) identify:

23 (A) any administrator [~~if the administrator is~~
24 ~~not the provider~~];

25 (B) the contract seller; and

26 (C) the service contract holder, if the service
27 contract holder provides the holder's name;

1 (6) state the amount of any deductible;

2 (7) specify the products and services to be provided
3 under the contract and any limitation, exception, or exclusion;

4 (8) specify any restriction governing the
5 transferability of the contract;

6 (9) state the duties of the service contract holder,
7 including any duty to protect against any further damage and any
8 requirement to follow the instructions in the owner's manual; and

9 (10) state whether the contract provides for or
10 excludes consequential damages or preexisting conditions, if
11 applicable.

12 (d) A service contract insured under a reimbursement
13 insurance policy under Section 1304.151(a)(1) must:

14 (1) state the name and address of the insurer;

15 (2) state that the service contract holder may apply
16 for reimbursement directly to the insurer if:

17 (A) a covered service is not provided to the
18 service contract holder by the provider not later than the 60th day
19 after the date of proof of loss; or

20 (B) a refund or credit is not paid before the 46th
21 day after the date on which the contract is returned to the provider
22 under Section 1304.158; and

23 (3) contain a statement substantially similar to the
24 following: "Obligations of the provider under this service
25 contract are insured under a service contract reimbursement
26 insurance policy."

27 SECTION 13. Subchapter B, Chapter 1304, Occupations Code,

1 is repealed.

2 SECTION 14. Section 1304.102, Occupations Code, as amended
3 by this Act, and Section 1304.1025, Occupations Code, as added by
4 this Act, apply to a registration that expires on or after the
5 effective date of this Act. A registration that expires before the
6 effective date of this Act is governed by the law in effect on the
7 date the registration expired, and the former law is continued in
8 effect for that purpose.

9 SECTION 15. Sections 1304.101(a) and 1304.153, Occupations
10 Code, as amended by this Act, take effect March 1, 2006.

11 SECTION 16. Sections 1304.152 and 1304.156, Occupations
12 Code, as amended by this Act, apply only to a contract entered into
13 on or after the effective date of this Act. A contract entered into
14 before the effective date of this Act is covered by the law in
15 effect when the contract was entered into, and the former law is
16 continued in effect for that purpose.

17 SECTION 17. This Act takes effect January 1, 2006.