

1-1 By: Callegari (Senate Sponsor - Brimer) H.B. No. 1286  
1-2 (In the Senate - Received from the House March 23, 2005;  
1-3 March 30, 2005, read first time and referred to Committee on  
1-4 Business and Commerce; April 25, 2005, reported favorably by the  
1-5 following vote: Yeas 6, Nays 0; April 25, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the regulation of service contract providers and  
1-9 administrators.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The heading to Chapter 1304, Occupations Code,  
1-12 is amended to read as follows:

1-13 CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

1-14 SECTION 2. Section 1304.002(1), Occupations Code, is  
1-15 amended to read as follows:

1-16 (1) "Administrator" means a [the] person, other than  
1-17 the provider of the service contract or an employee of the provider,  
1-18 who is responsible for the third-party administration of a service  
1-19 contract. [The term includes a person responsible for any filing  
1-20 required by this chapter.]

1-21 SECTION 3. Subchapter A, Chapter 1304, Occupations Code, is  
1-22 amended by adding Section 1304.0035 to read as follows:

1-23 Sec. 1304.0035. CONTROLLING PERSON. (a) In this chapter,  
1-24 "controlling person" means an individual who:

1-25 (1) possesses direct or indirect control of at least  
1-26 25 percent of the voting securities of a corporation;

1-27 (2) possesses the authority to set policy and direct  
1-28 the management of a business entity;

1-29 (3) is the president, the secretary, or a director of a  
1-30 corporation; or

1-31 (4) is a general partner of a partnership.

1-32 (b) An individual who is a controlling person of a  
1-33 corporation or other business entity that is the general partner of  
1-34 a limited partnership is a controlling person of the limited  
1-35 partnership.

1-36 SECTION 4. Section 1304.101(a), Occupations Code, is  
1-37 amended to read as follows:

1-38 (a) A person may not operate as a provider or administrator  
1-39 of service contracts sold in this state unless the person is  
1-40 registered with the department.

1-41 SECTION 5. Section 1304.102, Occupations Code, is amended  
1-42 to read as follows:

1-43 Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL;  
1-44 GENERAL REQUIREMENTS. (a) An applicant for registration or  
1-45 registration renewal must submit an application to the executive  
1-46 director.

1-47 (b) The application must:

1-48 (1) be in the form prescribed by the executive  
1-49 director; and

1-50 (2) include evidence satisfactory to the executive  
1-51 director of compliance with the applicable financial security  
1-52 requirements prescribed by Section 1304.151, if the application is  
1-53 for a provider registration or renewal.

1-54 (c) The department may refuse to issue or renew a  
1-55 registration if the applicant or a controlling person of the  
1-56 applicant has violated this chapter or a rule adopted or order  
1-57 issued by the commission or executive director.

1-58 (d) A person who makes a false statement in an application  
1-59 or in any document provided with an application is subject to  
1-60 disciplinary action under Subchapter E, including denial of the  
1-61 application or suspension or revocation of a registration.

1-62 SECTION 6. Subchapter C, Chapter 1304, Occupations Code, is  
1-63 amended by adding Section 1304.1025 to read as follows:

1-64 Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL

2-1 REQUIREMENTS FOR PROVIDERS. (a) In addition to the requirements  
 2-2 of Section 1304.102, an applicant for issuance or renewal of a  
 2-3 provider registration must file with the application:

2-4 (1) the reimbursement insurance policy, if the  
 2-5 provider is using a reimbursement insurance policy; and

2-6 (2) a biographical affidavit, in a form prescribed by  
 2-7 the executive director, for each controlling person of the  
 2-8 provider.

2-9 (b) The executive director may not issue or renew a  
 2-10 registration to a provider unless the provider provides evidence to  
 2-11 the executive director that:

2-12 (1) each controlling person of the provider is  
 2-13 trustworthy and can competently manage the affairs of the provider  
 2-14 in compliance with this chapter; and

2-15 (2) the provider can meet the provider's obligations  
 2-16 under service contracts and this chapter.

2-17 (c) Not later than the 30th day after the date of a  
 2-18 provider's initial registration, the provider must provide to the  
 2-19 department a list of any Internet website address through which a  
 2-20 consumer may purchase the provider's service contracts and the  
 2-21 name, assumed name, street address, and telephone number of:

2-22 (1) any administrator appointed by the provider under  
 2-23 Section 1304.153; and

2-24 (2) any seller of the provider's service contracts,  
 2-25 other than a seller that is:

2-26 (A) an employee of the provider; or

2-27 (B) a business with a physical location in this  
 2-28 state at which a consumer may purchase a service contract.

2-29 (d) The provider shall update the list required by  
 2-30 Subsection (c) with each renewal.

2-31 SECTION 7. Section 1304.103, Occupations Code, is amended  
 2-32 to read as follows:

2-33 Sec. 1304.103. [ANNUAL] REGISTRATION AND RENEWAL FEES.  
 2-34 (a) The executive director shall develop a tiered schedule of  
 2-35 [annual] registration and renewal fees under which a provider's  
 2-36 [registration] fee is based on the number of service contracts the  
 2-37 provider sold in this state during the preceding 12-month period.

2-38 (b) The commission shall set the amounts of [the] fees to  
 2-39 cover the costs of administering this chapter, including  
 2-40 registration and renewal fees for administrators.

2-41 (c) To register or renew a registration [be registered], a  
 2-42 provider or administrator must pay the appropriate [annual  
 2-43 registration] fee.

2-44 SECTION 8. The heading to Subchapter D, Chapter 1304,  
 2-45 Occupations Code, is amended to read as follows:

2-46 SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS AND  
 2-47 ADMINISTRATORS

2-48 SECTION 9. Section 1304.152, Occupations Code, is amended  
 2-49 by amending Subsections (a)-(c) and adding Subsections (a-1),  
 2-50 (b-1), and (e) to read as follows:

2-51 (a) A reimbursement insurance policy that a provider uses to  
 2-52 comply with Sections 1304.1025 and [Section] 1304.151(a)(1) must  
 2-53 state that:

2-54 (1) the insurer that issued the policy shall:  
 2-55 (A) reimburse or pay on behalf of the provider  
 2-56 any covered amount the provider is legally obligated to pay; or

2-57 (B) provide the service that the provider is  
 2-58 legally obligated to perform according to the provider's  
 2-59 contractual obligations under the insured service contract; [and]

2-60 (2) if the covered service is not provided to a service  
 2-61 contract holder not later than the 60th day after the date of proof  
 2-62 of loss, the insurer shall pay the covered amount directly to the  
 2-63 service contract holder or provide the required service; and

2-64 (3) if a refund is not paid to the service contract  
 2-65 holder or credited to the service contract holder's account as  
 2-66 required by Section 1304.158, the insurer, after receiving written  
 2-67 notice, shall pay the refund amount directly to the service  
 2-68 contract holder.

2-69 (a-1) For a reimbursement insurance policy to comply with

3-1 Section 1304.151(a)(1), the insurer issuing the policy must:

3-2 (1) maintain surplus as to policyholders and paid-in  
 3-3 capital of at least \$15 million and annually file with the executive  
 3-4 director copies of the insurer's audited financial statements,  
 3-5 National Association of Insurance Commissioners annual statement,  
 3-6 and actuarial certification if the certification is required and  
 3-7 filed in the insurer's state of domicile; or

3-8 (2) maintain surplus as to policyholders and paid-in  
 3-9 capital of at least \$10 million but not more than \$15 million,  
 3-10 demonstrate to the satisfaction of the executive director that the  
 3-11 insurer maintains a ratio of net written premiums, wherever  
 3-12 written, to surplus as to policyholders and paid-in capital of not  
 3-13 more than three to one, and annually file with the executive  
 3-14 director copies of the insurer's audited financial statements,  
 3-15 National Association of Insurance Commissioners annual statement,  
 3-16 and actuarial certification if the certification is required and  
 3-17 filed in the insurer's state of domicile.

3-18 (b) The insurer may not cancel the reimbursement insurance  
 3-19 policy until the insurer delivers to the provider and the executive  
 3-20 director a written notice of cancellation that complies with the  
 3-21 notice requirements prescribed by Subchapters B and C, Chapter 551  
 3-22 [Articles 21.49-2A and 21.49-2B], Insurance Code, for cancellation  
 3-23 of an insurance policy under those subchapters [articles]. [The  
 3-24 provider shall forward a copy of the cancellation notice to the  
 3-25 executive director not later than the 15th business day after the  
 3-26 date the notice is delivered to the provider.] Cancellation of the  
 3-27 policy does not affect [reduce] the insurer's liability  
 3-28 [responsibility] for a service contract issued by the provider and  
 3-29 insured under the policy before the effective date of the  
 3-30 cancellation.

3-31 (b-1) If the insurer or provider cancels the reimbursement  
 3-32 insurance policy, the provider named on the policy may not issue a  
 3-33 new service contract after the effective date of the cancellation  
 3-34 unless:

3-35 (1) the provider files with the executive director a  
 3-36 copy of a new policy that meets the requirements of this section and  
 3-37 that provides coverage after that date; or

3-38 (2) the provider complies with other financial  
 3-39 security requirements provided by Section 1304.151(a).

3-40 (c) A provider is considered the agent of an insurer that  
 3-41 issues a reimbursement insurance policy for purposes of obligating  
 3-42 the insurer to the service contract holder in accordance with the  
 3-43 service contract and this chapter. The insurer issuing the  
 3-44 reimbursement insurance policy is considered to have received the  
 3-45 premium for the policy on the date the service contract holder pays  
 3-46 the purchase price of the service contract.

3-47 (e) In this section, "net written premiums" means the sum of  
 3-48 direct written premiums and assumed reinsurance premiums, minus  
 3-49 ceded reinsurance premiums.

3-50 SECTION 10. Section 1304.153, Occupations Code, is amended  
 3-51 to read as follows:

3-52 Sec. 1304.153. APPOINTMENT AND RESPONSIBILITIES OF  
 3-53 ADMINISTRATOR. (a) A provider may appoint an administrator  
 3-54 registered under this chapter [or designate a person] to be  
 3-55 responsible for:

3-56 (1) all or any part of the administration or sale of  
 3-57 service contracts; and

3-58 (2) compliance with this chapter, except for Section  
 3-59 1304.151.

3-60 (b) The appointment of an administrator under this section  
 3-61 does not affect a provider's responsibility to comply with this  
 3-62 chapter.

3-63 SECTION 11. Section 1304.155, Occupations Code, is amended  
 3-64 by adding Subsection (e) to read as follows:

3-65 (e) An administrator appointed to maintain the provider's  
 3-66 records is responsible for compliance with this section to the same  
 3-67 extent as the provider.

3-68 SECTION 12. Sections 1304.156(a) and (d), Occupations Code,  
 3-69 are amended to read as follows:

4-1 (a) A service contract marketed, sold, offered for sale,  
4-2 issued, made, proposed to be made, or administered in this state  
4-3 must:

4-4 (1) be written, printed, or typed in clear,  
4-5 understandable language that is easy to read;

4-6 (2) state the name and address of the provider;

4-7 (3) state the purchase price of the contract and the  
4-8 terms under which the contract is sold;

4-9 (4) state the terms and restrictions governing  
4-10 cancellation of the contract by the provider or the service  
4-11 contract holder before the expiration date of the contract;

4-12 (5) identify:

4-13 (A) any administrator [~~if the administrator is~~  
4-14 ~~not the provider~~];

4-15 (B) the contract seller; and

4-16 (C) the service contract holder, if the service  
4-17 contract holder provides the holder's name;

4-18 (6) state the amount of any deductible;

4-19 (7) specify the products and services to be provided  
4-20 under the contract and any limitation, exception, or exclusion;

4-21 (8) specify any restriction governing the  
4-22 transferability of the contract;

4-23 (9) state the duties of the service contract holder,  
4-24 including any duty to protect against any further damage and any  
4-25 requirement to follow the instructions in the owner's manual; and

4-26 (10) state whether the contract provides for or  
4-27 excludes consequential damages or preexisting conditions, if  
4-28 applicable.

4-29 (d) A service contract insured under a reimbursement  
4-30 insurance policy under Section 1304.151(a)(1) must:

4-31 (1) state the name and address of the insurer;

4-32 (2) state that the service contract holder may apply  
4-33 for reimbursement directly to the insurer if:

4-34 (A) a covered service is not provided to the  
4-35 service contract holder by the provider not later than the 60th day  
4-36 after the date of proof of loss; or

4-37 (B) a refund or credit is not paid before the 46th  
4-38 day after the date on which the contract is returned to the provider  
4-39 under Section 1304.158; and

4-40 (3) contain a statement substantially similar to the  
4-41 following: "Obligations of the provider under this service  
4-42 contract are insured under a service contract reimbursement  
4-43 insurance policy."

4-44 SECTION 13. Subchapter B, Chapter 1304, Occupations Code,  
4-45 is repealed.

4-46 SECTION 14. Section 1304.102, Occupations Code, as amended  
4-47 by this Act, and Section 1304.1025, Occupations Code, as added by  
4-48 this Act, apply to a registration that expires on or after the  
4-49 effective date of this Act. A registration that expires before the  
4-50 effective date of this Act is governed by the law in effect on the  
4-51 date the registration expired, and the former law is continued in  
4-52 effect for that purpose.

4-53 SECTION 15. Sections 1304.101(a) and 1304.153, Occupations  
4-54 Code, as amended by this Act, take effect March 1, 2006.

4-55 SECTION 16. Sections 1304.152 and 1304.156, Occupations  
4-56 Code, as amended by this Act, apply only to a contract entered into  
4-57 on or after the effective date of this Act. A contract entered into  
4-58 before the effective date of this Act is covered by the law in  
4-59 effect when the contract was entered into, and the former law is  
4-60 continued in effect for that purpose.

4-61 SECTION 17. This Act takes effect January 1, 2006.

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