

**SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS**

*Administrative Rules of the Texas Department of Licensing and Regulation  
16 Texas Administrative Code, Chapter 77  
(Effective December 1, 2019)*

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**77.1. Authority.** *(New section effective November 16, 2009, 34 TexReg 7791)*

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 1304 and Texas Occupations Code, Chapter 51.

**77.10. Definitions.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective July 1, 2018, 43 TexReg 3873)*

The following words and terms, as used in this chapter and Texas Occupations Code, Chapter 1304, have the following meanings:

- (1) **“Buyer”** means a “service contract holder” as it relates to a “depreciation benefit optional member program.”
- (2) **“Dealer”** means a motor vehicle dealer licensed under Texas Occupations Code, Chapter 2301.
- (3) **“Depreciation benefit optional member program”** means a service contract financed under Chapter 348 or 353, Finance Code, that pays to the buyer, as a credit toward the purchase of a replacement vehicle at a participating dealer, an amount less than or equal to the difference between the purchase price and actual cash value for a total constructive loss.
- (4) **“Identity recovery”** means a process, through a limited power of attorney and the assistance of an identity recovery expert, that returns the identity of an identity theft victim to pre-identity theft event status.
- (5) **“Qualified financial institution”** means a financial institution organized and licensed under the laws of the United States, a state of the United States, or the District of Columbia.
- (6) **“Service contract”** means an agreement that is entered into for a separately stated consideration and for a specified term under which a provider agrees to:
  - (A) repair, replace, or maintain a product, or provide indemnification for the repair, replacement, or maintenance of a product, for operational or structural failure or damage caused by a defect in materials or workmanship or by normal wear;
  - (B) provide identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code; or
  - (C) provide compensation to the buyer of a vehicle on the total constructive loss under a depreciation benefit optional member program.
- (7) **“Service contract holder”** means a person who purchases or otherwise holds a service contract.
- (8) **“Third-party administration of a service contract”** includes any of the following activities performed on behalf of a service contract provider:
  - (A) performing or arranging the collection, maintenance, or disbursement of money to compensate any party for claims or repairs pursuant to a service contract;

- (B) participating in the processing or adjustment of claims arising under a service contract;
  - (C) maintaining records required by Texas Occupations Code, Chapter 1304; or
  - (D) complying with provider requirements, other than financial security requirements, of Texas Occupations Code, Chapter 1304.
- (9) The term “**third party administration of a service contract**” does not include the performance of repairs, or clerical functions ancillary to the performance of repairs, by a repair facility that performs no other activities with respect to a service contract.
- (10) “Total constructive loss” means a loss of such significance that the cost of restoring damaged property would exceed its value after restoration.

**77.20. Registration Requirements--Provider.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective January 15, 2014, 40 TexReg 60)*

- (a) A person may not operate as a service contracts provider, or offer to be a provider unless the person is either registered with the department or the service contracts offered are specifically exempt from Texas Occupations Code, Chapter 1304.
- (b) A registration expires one year from the date issued.
- (c) An applicant for a provider registration must submit on department-approved forms:
  - (1) a completed application;
  - (2) a completed personal information form from each controlling person as defined in Texas Occupations Code §1304.0035;
  - (3) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;
  - (4) the fee required under §77.80; and
  - (5) proof of financial security required under §77.40.
- (d) Within 30 days of a provider’s initial registration date, the provider must submit a list of the following information:
  - (1) website addresses where a consumer may purchase the provider’s service contracts, as applicable;
  - (2) the provider’s administrator(s) as applicable, including each administrator’s name, assumed name, street address, telephone number, and department registration number; and
  - (3) the provider’s service contracts sellers, except those excluded under Texas Occupations Code §1304.1025(c)(2), including each seller’s name, assumed name, street address, and telephone number.

**77.21. Registration Renewal Requirements--Provider.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective January 15, 2015, 40 TexReg 60)*

- (a) A registration must be renewed annually for a provider to continue operating in this state.
- (b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.
- (c) To renew a registration, a provider must submit on department-approved forms:
  - (1) a completed application;
  - (2) the number of service contracts sold or issued in the preceding 12-month period;
  - (3) the updated lists of information required under §77.20(d);
  - (4) a completed personal information form from any controlling person as defined in Texas Occupations Code §1304.0035 whose information provided previously has changed or who has never submitted a personal information form.
  - (5) a completed criminal history questionnaire from each controlling person as defined in Texas Occupations Code §1304.0035, if applicable;
  - (6) the fee required under §77.80; and
  - (7) proof of new or continuing financial security required under §77.40.
- (d) A person may not perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.

**77.22. Registration Requirements--Administrator.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective January 15, 2015, 40 TexReg 60)*

- (a) A person may not operate as an administrator for a provider unless the person is registered with the department.
- (b) A registration expires one year from the date issued.
- (c) An applicant for an administrator registration must submit on department-approved forms:
  - (1) a completed application;
  - (2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;
  - (3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and
  - (4) the fee required under §77.80.

**77.23. Registration Renewal Requirements--Administrator.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective January 15, 2015, 40 TexReg 60)*

- (a) A registration must be renewed annually for an administrator to continue operating in this state.
- (b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.
- (c) To renew a registration, an administrator must submit on department-approved forms:
  - (1) a completed application;
  - (2) the name and department registration number for each service contract provider(s) for which the person will act as an administrator;
  - (3) a list of the administrator's controlling persons as defined in Texas Occupations Code §1304.0035; and
  - (4) the fee required under §77.80.
- (d) A person may not perform or offer to perform work requiring registration under Texas Occupations Code, Chapter 1304 or this chapter with an expired registration.

**77.24. Quarterly Provider Requirements--Identity Recovery Services.** *(New section effective October 22, 2013, 38 TexReg 7305; amended effective October 22, 2013, 38 TexReg 7305)*

- (a) This section applies only to a provider who sells or issues service contracts that provide only for identity recovery services as described by Texas Occupations Code §1304.003(a)(2)(B). For purposes of this section, these service contracts are referred to herein as identity recovery service contracts.
- (b) A provider must submit quarterly fees based on the number of identity recovery service contracts sold or issued in this state.
- (c) Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department, in a manner prescribed by the executive director, the number of identity recovery service contracts sold or issued to consumers in this state during the calendar quarter and submit to the department a fee equal to one dollar (\$1) for each of those contracts.
- (d) The calendar quarter ends on the following dates: March 31, June 30, September 30 and December 31. The due dates for reporting the number of contracts and submitting the appropriate fees under subsection (c) are: April 30, July 30, October 30, and January 30.
- (e) Failure of the provider to report the number of contracts or to submit the fee as described in subsection (c) is cause for denial and/or revocation of the registration.
- (f) Falsification of information required under subsection (c) is cause for denial and/or revocation of the registration.

**77.26. Additional Provider Requirements-- Depreciation Benefit Optional Member Programs.** *(New section effective July 1, 2018, 43 TexReg 3873)*

- (a) This section applies only to a provider who sells or issues service contracts that provide a depreciation benefit optional member program as described by Texas Occupations Code §1304.003(a)(2)(C). For purposes of this section, these service contracts are referred to herein as “depreciation benefit service contracts.”

- (b) A provider or its dealers may not require the purchase of a depreciation benefit service contract as a condition of approval of a loan for the purchase of a vehicle.
- (c) A depreciation benefit service contract may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer.
- (d) The fee or purchase price that is charged for a depreciation benefit service contract must be reasonable in relation to the benefit provided by the depreciation benefit service contract.

**77.40. Financial Security--General Requirements.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective October 15, 2010, 35 TexReg 9083; amended effective March 1, 2012, 37 TexReg 1319)*

- (a) A provider must maintain financial security to ensure the faithful performance of a provider's obligations to its service contract holders and for the benefit of those service contract holders who suffer actual financial loss due to the provider's failure to perform those obligations.
- (b) A provider must submit in a manner prescribed by the department proof of one of the following three forms of financial security that meets the requirements of Texas Occupations Code §1304.151 and/or §1304.152:
  - (1) a reimbursement insurance policy;
  - (2) a funded reserve account and a security deposit; or
  - (3) net worth of at least \$100 million.
- (c) Whichever form of financial security the provider uses must be maintained by the provider during the entire time the provider continues to do business in this state or is registered to do business in this state and until the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.
- (d) If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not sell or issue a new service contract after the effective date of the cancellation or lapse, unless and until the provider files with the executive director a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1304 and this chapter.
- (e) Cancellation or lapse of the financial security does not affect the provider's liability for a service contract sold or issued by the provider before or after the effective date of the cancellation or lapse.

**77.41. Financial Security--Reimbursement Insurance Policy.** *(New section effective November 16, 2009, 34 TexReg 7791 ; amended effective March 1, 2012, 37 TexReg 1319)*

- (a) A provider that uses a reimbursement insurance policy to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152, will not be allowed to obtain or renew a registration unless the insurer issuing the policy has provided all of the information and met all of the requirements set forth in Texas Occupations Code §1304.152(a-1).
- (b) A reimbursement insurance policy that is used to comply with the financial security requirements of Texas Occupations Code §1304.151 and §1304.152 must include:
  - (1) the "Service Contract Provider Texas Endorsement" prescribed by the executive director;

and

- (2) copy of the approval letter from the Texas Department of Insurance for using the endorsement.

**77.42. Financial Security--Funded Reserve Account and Security Deposit.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective October 15, 2010, 35 TexReg 9083 ; amended effective March 1, 2012, 37 TexReg 1319; amended effective December 1, 2019, 44 TexReg 7185)*

- (a) A provider that uses a funded reserve account and security deposit to comply with the financial security requirements of Texas Occupations Code §1304.151, will not be allowed to obtain or renew a registration unless the provider:
  - (1) maintains the funded reserve account and the security deposit at or above the financial levels required under Texas Occupations Code §1304.151(b) or §1304.151(b-1) - (b-3). The amounts under §1304.151(b) are calculated using a form prescribed by the department. The amounts under §1304.151(b-1) - (b-3) for a motor vehicle dealer who is only selling service contracts for vehicles sold by the dealer are as follows:
    - (A) \$25,000 for a motor vehicle dealer that generated \$1,125,000 or less in annual gross revenue from the sale of in-state service contracts in the preceding calendar year; or
    - (B) \$50,000 for a motor vehicle dealer that generated more than \$1,125,000 but less than \$2,500,000 in annual gross revenue from the sale of in-state service contracts in the preceding calendar year; or
    - (C) \$75,000 for a motor vehicle dealer that generated more than \$2,500,000 in annual gross revenue from the sale of in-state service contracts in the preceding calendar year.
    - (D) If a motor vehicle dealer has no gross revenue from the in-state sale of service contracts in the preceding calendar year, the security deposit shall be \$25,000.
  - (2) meets the requirements under this section; and
  - (3) submits the most recent audited financial statements as prescribed under Texas Occupation Code §1304.151(b).
- (b) The funded reserve account maintained by the provider must:
  - (1) be kept separate from the provider's operating accounts;
  - (2) be clearly identified as the "{Provider's Name} Texas Service Contracts Funded Reserve Account"; and
  - (3) not be used for any purpose other than to cover the provider's obligations under its service contracts that are issued and outstanding in this state.
- (c) In addition to maintaining the funded reserve account, the provider must submit one of the following forms of security deposit:
  - (1) A certificate of deposit that is issued by a qualified financial institution, assigned to the

executive director, and for the benefit of the department;

- (2) A deposit of cash; or
  - (3) An original letter of credit acceptable to the department that:
    - (A) is irrevocable;
    - (B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;
    - (C) does not require examination of the performance of the underlying transaction between the department and the provider;
    - (D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and
    - (E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the provider or other party.
- (d) Funded reserve accounts that existed prior to September 1, 2019 and that involve in-state service contracts sold by motor vehicle dealers on their own inventory may be reduced to the new amounts required by Texas Occupations Code §1304.151(b-1) - (b-3) as follows:
- (1) A deposit of cash in excess of the amounts in Texas Occupations Code §1304.151(b)(b-1) - (b-3) may be withdrawn by the provider, so that the balance meets the reduced minimum requirements. Proof that the balance meets the reduced minimum requirements must be provided to the department within thirty days of the withdrawal.
  - (2) A provider with a letter of credit issued by a qualified financial institution may withdraw and replace a letter that exceeds the amounts in Texas Occupations Code §1304.151(b-1) - (b-3) with a letter that meets the reduced minimum requirements. A provider may also opt to retain a current letter of credit that exceeds the reduced amounts or replace it the time of their next license renewal.
  - (3) A provider with a certificate of deposit issued by a qualified financial institution may choose to withdraw and replace a certificate that exceeds the amounts in Texas Occupations Code §1304.151(b-1) - (b-3) with a certificate that meets the reduced minimum requirements. A provider may also opt to wait until a current certificate reaches maturity to withdraw and replace.
- (e) Upon request, the department may require the provider to submit the following additional financial reports:
- (1) claims paid reports;
  - (2) account statements;
  - (3) monthly activity reports; or
  - (4) actuarial reports.

**77.43. Financial Security--Minimum Net Worth.** *(New section effective November 16, 2009, 34 TexReg 7791)*

A provider that maintains, or has a parent company maintain, a net worth or stockholder's equity of at least \$100 million to comply with the financial security requirements of Texas Occupations Code §1304.151, will not be allowed to obtain or renew a registration unless the provider gives the department audited financial statements as described under §1304.151(c) and (d) or information for accessing and viewing the proof of net worth online.

**77.70. Responsibilities of Providers and Administrators.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective October 22, 2013, 38 TexReg 7305; amended effective October 22, 2013, 39 TexReg 7305; amended effective, July 1, 2018, 43 TexReg 3873)*

- (a) The provider must clearly and conspicuously identify itself on all written service contracts and, on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).
- (b) The provider and/or any administrator appointed by the provider must provide service contract holders with a notification that meets all of the following requirements.
  - (1) The notification must provide the name, mailing address, and telephone number of the department.
  - (2) The notification must contain a statement that unresolved complaints concerning providers and administrators or questions concerning the regulation of service contract providers and administrators may be addressed to the department.
  - (3) The notification must be included on all written service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.
- (c) The provider and/or any administrator appointed by the provider must provide service contract holders with the provider's complaint resolution procedures.
- (d) The provider and/or any administrator appointed by the provider must disclose the following information to service contract holders:
  - (1) the specific contract provisions and required disclosures in accordance with Texas Occupations Code §1304.156;
  - (2) the procedures and timeframes for a service contract holder to cancel a service contract in accordance with Texas Occupations Code §1304.1581;
  - (3) the procedures and timeframes for a provider to refund the purchase price of the service contract and pay any applicable penalty to the service contract holder in accordance with Texas Occupations Code §1304.1581; and
  - (4) the conditions in which the provider may cancel a service contract and issue a refund in accordance with Texas Occupations Code §1304.159.
- (e) As part of the disclosures required under subsection (d), a provider and/or any administrator appointed by the provider who sells or issues service contracts described under Texas Occupations Code §1304.003(a)(2)(B) (referred herein as "identity recovery service contracts") must disclose the following information:
  - (1) the person or persons who are covered under the identity recovery service contract;

- (2) the price of the identity recovery service contract separate from the purchase price of the automobile and any other products or services that are financed with the vehicle;
- (3) the term of the identity recovery service contract; and
- (4) any conditions that may change the stated term of the identity recovery service contract, including if the identity recovery service contract holder:
  - (A) pays off the automobile early;
  - (B) makes late payments or defaults on the payments on the automobile;
  - (C) refinances the automobile; or
  - (D) sells or transfers title to the automobile.
- (f) As part of the disclosures required under subsection (d), a provider and/or any administrator appointed by the provider who sells or issues service contracts described under Texas Occupations Code §1304.003(a)(2)(C) (referred herein as “depreciation benefit service contracts”) must disclose the following information:
  - (1) the names and locations of the participating dealers who are part of the depreciation benefit optional member program;
  - (2) the amount of the credit that will be paid or the method of calculation that will be used to pay the credit toward the purchase of a replacement vehicle;
  - (3) a statement that purchase of the service contract is not required as a condition of approval of a loan for the purchase of a vehicle;
  - (4) a statement that a service contract may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer; and
  - (5) a statement that the service contract may be cancelled by the service contract holder and the procedures and timeframes for a service contract holder to cancel the service contract and obtain a refund as specified under subsections (d)(2) and (d)(3).
- (g) If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a copy of the service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.
- (h) If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of a service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.
- (i) A provider shall report to the department within 30 days any change in information required by §77.20 and §77.21.

- (j) An administrator shall report to the department within 30 days any change in information required by §77.22 and §77.23.
- (k) Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code Chapter 1304. These records include copies of the service contracts marketed, sold, administered or issued in this state.

**77.71. Responsibilities of Providers Ceasing Operations or Discontinuing Business.** *(New section effective March 1, 2012, 37 TexReg 1319)*

- (a) To the extent not prohibited by any other law or court order, a provider must comply with the provisions under this rule when ceasing operations or discontinuing business in this state.
- (b) A provider must notify the department as soon as possible when ceasing operations or discontinuing business in this state.
- (c) Within 10 days after notifying the department in accordance with subsection (b), a provider must submit to the department:
  - (1) a copy of each unique form of service contract sold;
  - (2) the names and addresses of the service contract holders with active service contracts in this state;
  - (3) a list of each location, whether it be a physical location or a website address, at which the provider's service contracts are marketed, sold, or offered for sale;
  - (4) the total number of active service contracts in this state;
  - (5) the remaining amount of time left on the active service contracts in this state; and
  - (6) any other information determined necessary by the department relating to the provider ceasing operations in this state.
- (d) A provider that ceases operations or discontinues business in this state remains contractually and financially responsible to its service contract holders with active service contracts in this state.
- (e) A provider that ceases operations or discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.
- (f) Any security deposit on file with the department shall be retained by the department until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.

**77.80. Fees.** *(New section effective November 16, 2009, 34 TexReg 7791; amended effective March 1, 2012, 37 TexReg 1319; amended effective October 22, 2013, 38 TexReg 7305; amended effective October 22, 2013, 38 TexReg 7305)*

- (a) All registration fees are non-refundable.

- (b) Provider Fees.
  - (1) The initial registration fee for a service contract provider is \$250.
  - (2) The annual renewal registration fee for a service contract provider is:
    - (A) \$250 for registrants selling or issuing 0 to 250 service contracts during the 12-month period preceding the expiration date of the registration;
    - (B) \$500 for registrants selling or issuing 251 to 499 service contracts during the 12-month period preceding the expiration date of the registration; and
    - (C) \$1,000 for registrants selling or issuing 500 or more service contracts during the 12-month period preceding the expiration date of the registration.
  - (3) The fee for a duplicate or amended registration certificate is \$25.
  - (4) The quarterly contract fee for a provider is \$1 per service contract described by Texas Occupations Code §1304.003(a)(2)(B) sold or issued in the state in the previous calendar quarter as provided under §77.24.
- (c) Administrator Fees.
  - (1) The initial registration fee for an administrator is \$250.
  - (2) The annual renewal registration fee for an administrator is \$250.
  - (3) The fee for a duplicate or amended registration certificate is \$25.
- (d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees). The late fee is based on the number of service contracts sold or issued during the 12-month period preceding the expiration date of the registration.

**77.90. Administrative Penalties and Sanctions.** *(New section effective November 16, 2009, 34 TexReg 7791)*

If a person violates any provision of Texas Occupations Code, Chapter 1304, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1304; Texas Occupations Code, Chapter 51; and any associated rules.

**77.91. Other Enforcement Authority.** *( New Section effective March 1, 2012, 37 TexReg 1319)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1304 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1304 and this chapter.