

§7103. Requirements for doing business

1. Administrator. A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of the provider's service contracts and compliance with this chapter. All administrators of service contracts sold in this State shall register with the superintendent as provided in this section.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Provision of receipt and copy of contract. A service contract may not be issued, sold or offered for sale in this State unless the provider has:

A. Registered with the superintendent pursuant to this section; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder; [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. Complied with the provisions of this chapter. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

3. Sample copy before sale. A provider shall make a complete sample copy of the service contract terms and conditions available for inspection by a consumer prior to the time of sale.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

4. Registration. A provider or administrator of service contracts issued, sold or offered for sale in this State shall apply for registration with the superintendent on a form prescribed by the superintendent, providing the registrant's name, full business address, telephone number and contact person and designating an agent in this State for service of process. The registration must be updated by written notification to the superintendent if changes occur in the registration on file.

A. The registrant shall pay to the superintendent a fee as set forth in section 601, subsection 30 upon initial registration and every year thereafter. [RR 2011, c. 1, §44 (COR).]

B. A registrant whose registration has terminated shall send notice within 15 days as follows:

(1) To all in-force service contract holders, if the registrant is a provider. Such registrant shall also cease issuing new service contracts in this State and may not renew existing service contracts unless authorized by the terms of a run-off plan approved by the superintendent; and

(2) To all providers for which it acts as an administrator, and to all in-force service contract holders of those providers, if the registrant is an administrator. Such registrant shall also cease acting as an administrator as to all service contract programs that it has contracted for in this State. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

This section may not be construed to require a provider or administrator to apply for and obtain a license under chapter 16, subchapter 2-A.

[RR 2011, c. 1, §44 (COR).]

5. Provider's obligations. To ensure the performance of the provider's obligations to its service contract holders, the provider shall either:

A. Insure all service contracts under a reimbursement insurance policy filed with the superintendent and issued by an insurer authorized to transact casualty insurance in this State, purchased through a risk retention group registered with the superintendent, or issued pursuant to

chapter 19 by an eligible surplus lines insurer that agrees in writing to comply with the terms of this chapter and to submit to the jurisdiction of the superintendent for purposes of enforcing this chapter, as long as such insurer or risk retention group either:

- (1) At the time the policy is filed with the superintendent and continuously thereafter:
 - (a) Maintains surplus as to policyholders and paid-in capital of at least \$15,000,000; and
 - (b) Files annually copies of the insurer's or risk retention group's as audited financial statements, its annual statement under section 423 and the actuarial certification required by and filed in the insurer's state of domicile; or
- (2) At the time the policy is filed with the superintendent and continuously thereafter:
 - (a) Maintains surplus as to policyholders and paid-in capital of at least \$10,000,000;
 - (b) Demonstrates to the satisfaction of the superintendent that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1; and
 - (c) Files annually copies of the insurer's audited financial statements, its annual statement under section 423 and the actuarial certification required by and filed in the insurer's state of domicile; or [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Maintains, or together with its parent company maintains, a tangible net worth of at least \$100,000,000 and upon request provides the superintendent with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K or Form 20-F annual report filed with the United States Securities and Exchange Commission within the last calendar year or, if the company does not file with the United States Securities and Exchange Commission, a copy of the company's audited financial statements that shows a tangible net worth of the provider or its parent company of at least \$100,000,000. If the provider's parent company's Form 10-K or Form 20-F annual report or financial statements are filed to meet the provider's financial stability requirement, the parent company shall agree, on a form approved by the superintendent, to guarantee the obligations of the provider relating to service contracts sold by the provider in this State. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

6. Other financial security requirements. Except for the requirements specified in subsections 4 and 5, other financial security requirements may not be required by the superintendent for providers. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

7. Return of service contract. A service contract must require the provider to permit the service contract holder to return the service contract subject to the following conditions.

A. A service contract holder may return a service contract within 20 days of the date the service contract was mailed to the service contract holder or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder or lienholder if the service contract holder has financed the purchase of the service contract the full provider fee and any sales tax refund required pursuant to state law. The right to void the service contract provided in this subsection is not transferable and applies only to the original service contract purchaser and only if no claim has been made prior to its return to the provider. A monthly penalty equal to 10% of the provider fee outstanding must be added to a refund that is not paid or

credited within 45 days after return of the service contract to the provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. After the time period specified in paragraph A for returning a service contract or if a claim has been made under the service contract within that time period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100% of the unearned pro rata provider fee, less any claims paid. An administrative fee not to exceed 10% of the provider fee paid by the service contract holder may be charged by the provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

8. Premium taxes. Insurance premium taxes under Title 36, chapter 357 apply as follows.

A. Provider fees collected on service contracts are not subject to premium taxes. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. Premiums for reimbursement insurance policies are subject to premium taxes. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

9. Licensing exemption. Except for the registration requirements in subsection 4, a license or registration is not required under this Title to provide, administer, market, sell or offer to sell service contracts in this State.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

10. Insurance laws exemption. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators and other persons are exempt from all provisions of the State's insurance laws, except as specified in this chapter, as long as a service contract provider or administrator has registered with the superintendent as required by subsection 4. Reimbursement insurance policies are subject to all relevant provisions of this Title to the full extent consistent with this chapter.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

RR 2011, c. 1, §44 (COR). PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

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