

**516E.21 Financial responsibility and security requirements in lieu of reimbursement insurance policy.**

1. In lieu of obtaining a reimbursement insurance policy as provided in section 516E.2, subsection 3, a service company may secure its service contracts by maintaining a funded reserve account which complies with all of the following:

a. The reserve account shall be in a custodial account at a financial institution that is dedicated to the service company's outstanding obligations under service contracts issued and outstanding in this state.

b. The reserve account shall comply with rules adopted by the commissioner pursuant to chapter 17A establishing requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities as necessary to protect holders of service contracts issued and outstanding in this state. The commissioner may require amendments to reserve account agreements that are not in compliance with the provisions of this section.

c. The reserve account shall not be an amount that is less than forty percent of the gross consideration received, less claims paid, on the sale of service contracts issued and outstanding by the service company in this state.

d. The reserve account shall be subject to examination and review by the commissioner or a designee on the premises of the financial institution where the account is located and the financial institution shall, upon request, produce documents or records as necessary to allow the commissioner or a designee to verify the value and safety of the assets of the reserve account.

2. The service company shall annually provide the commissioner with one of the following:

a. A copy of the service company's financial statements.

b. If the service company's financial statements are consolidated with those of its parent company, a copy of the parent company's most recent form 10-K or form 20-F filed with the federal securities and exchange commission within the last calendar year, or if the parent company does not file with the federal securities and exchange commission, a copy of the parent company's audited financial statements showing a net worth of at least one hundred million dollars. If the service company's financial statements are consolidated with those of its parent company, the service company shall also provide a copy of a written agreement by the parent company guaranteeing the obligations of the service company under service contracts issued and outstanding by the service company in this state.

3. If a service company secures its contracts by maintaining a funded reserve account as provided in subsection 1 but does not have or maintain a minimum net worth or stockholders' equity of one hundred million dollars or more, the service company shall also meet one of the following requirements:

a. Maintain a security deposit trust fund which complies with all of the following:

(1) The security deposit trust fund shall be in an account at a financial institution.

(2) The security deposit trust fund shall be held, invested, and administered for the benefit and protection of service contract holders in this state in the event of nonperformance of the service contract by the service company.

(3) The security deposit trust fund shall comply with rules adopted by the commissioner pursuant to chapter 17A, establishing the form, terms, and conditions of security deposit trust fund agreements established pursuant to this paragraph "a".

(4) The security deposit trust fund shall be subject to recovery by any service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under the service contract. A holder of a service contract issued in this state may, in the event of nonperformance by the service company, maintain an action and file a claim against the security deposit trust fund maintained by the service company.

(5) The security deposit trust fund shall not be commingled with other funds of the service company.

(6) The security deposit trust fund shall have a value of not less than five percent of the gross consideration received by the service company, less claims paid, for the sale of all service contracts issued and in force in this state, but not less than twenty-five thousand dollars, and consist of one or more of the following:

- (a) Cash.
  - (b) Securities of the type eligible for deposit by insurers authorized to transact business in this state.
  - (c) Certificates of deposit.
  - (d) Another form of security as prescribed by the commissioner by rule.
- b. File a surety bond with the commissioner that is issued by a surety company authorized to do business in this state, and that complies with all of the following:
- (1) The surety bond is conditioned upon the service company's faithful performance of service contracts subject to this chapter.
  - (2) The surety bond is for the benefit of and subject to recovery by any service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under a service contract. The surety's liability shall extend to all service contracts issued by the service company and outstanding in this state. A holder of a service contract issued in this state may, in the event of nonperformance of the contract by the service company, maintain an action and file a claim against the surety bond filed by the service company.
  - (3) The surety bond is for an amount that is not less than five percent of the gross consideration received by the service company, less claims paid, for the sale of all service contracts issued and in force in this state, but not less than twenty-five thousand dollars.
  - (4) The surety bond cannot be canceled by the surety except upon written notice of cancellation by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner.

2006 Acts, ch 1117, §90

Referred to in §516E.2