CHAPTER 516E

MOTOR VEHICLE SERVICE CONTRACTS

Referred to in §87.4, §296.7, §331.301, §364.4, §505.28, §505.29, §669.14, §670.7

Chapter transferred from chapter 321I in Code 2001 pursuant to directive in 2000 Acts, ch 1147, §15

516E.1 Definitions.
516E.2 Requirements for doing business — registration — fee.
516E.3 Filing and fee requirements.
516E.4 Reimbursement insurance policy requirements — insurer qualifications.
516E.5 Disclosure to service contract holders — contract provisions.
516E.6 Commissioner may prohibit certain sales — injunction.
516E.7 Rules.
516E.8 Exemption.
516E.9 Misrepresentations of state approval.
516E.10 Prohibited acts — unfair or deceptive trade practices.
516E.11 Records — explanation of reasons for denial of claims.
516E.12 Service of process.
516E.13 Orders, investigations, examinations, and subpoenas.
516E.14 Audits.
516E.15 Violations — penalties.
516E.16 Court action for failure to cooperate.
516E.17 Net worth requirement. Repealed by 2006 Acts, ch 1117, §128.
516E.18 Public access to records.
516E.19 Administration.
516E.20 Application of insurance laws.
516E.21 Financial responsibility and security requirements in lieu of reimbursement insurance policy.

516E.1 Definitions.

For the purposes of this chapter:

1. *"Administrator"* means the deputy administrator appointed pursuant to section 502.601.
2. *"Commissioner"* means the commissioner of insurance as provided in section 505.1.
3. *"Financial institution"* means an institution that is all of the following:

a. Organized or, in the case of the office of a foreign banking organization located in the United States, licensed, under the laws of the United States or any state, and granted authority to operate with fiduciary powers.

b. Regulated, supervised, and examined by federal or state authorities empowered to regulate banks and trust companies.

4. *"Maintenance agreement"* means a contract of limited duration that provides for scheduled maintenance only.
5. *"Mechanical breakdown insurance"* means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.
6. *"Motor vehicle"* means any self-propelled vehicle subject to registration under chapter 321.
7. *"Premium"* means the consideration paid to an insurer for a reimbursement insurance policy.
8. *"Provider"* means a person who sells or offers to sell a service contract.
9. *"Record"* means information stored or preserved in any medium, including in an electronic or paper format. A record includes but is not limited to documents, books, publications, accounts, correspondence, memoranda, agreements, computer files, film, microfilm, photographs, and audio or visual tapes.
10. *"Reimbursement insurance policy"* means a contractual liability insurance policy issued to a service company that either provides reimbursement to a service company under the terms of insured service contracts issued or sold by the service company or, in the event of nonperformance by the service company, pays, on behalf of the service company, all covered contractual obligations incurred by the service company under the terms of the insured service contracts issued or sold by the service company.

11. *"Service company"* means a person who issues and is obligated to perform, or arrange for the performance of, services pursuant to a service contract.

12. *"Service company fee"* means the consideration paid for a service contract.

13. *"Service contract"* means a contract or agreement given for consideration over and above the lease or purchase price of a new or used motor vehicle having a gross vehicle weight rating of less than sixteen thousand pounds, that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements.

14. *"Service contract holder"* means a person who purchases a service contract.

15. *"Third-party administrator"* means a person who contracts with a service company to be responsible for the administration of the service company's service contracts, including processing and adjudicating claims pursuant to a service contract.

85 Acts, ch 45, §1
CS85, §321I.1
90 Acts, ch 1145, §1; 92 Acts, ch 1163, §77; 2000 Acts, ch 1147, §1, 2, 15
C2001, §516E.1
2005 Acts, ch 70, §25; 2006 Acts, ch 1117, §77, 78
Referred to in **§163.51**, **§322.19**, **§523C.1**, **§551A.1**

516E.2 Requirements for doing business — registration — fee.

1. A service contract shall not be issued, sold, or offered for sale in this state unless the service company does all of the following:

a. Provides a receipt for the purchase of the service contract to the service contract holder.

b. Provides a copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase of the service contract.

2. A service company shall not issue a service contract or arrange to perform services pursuant to a service contract unless the service company is registered with the commissioner. A service company shall file a registration with the commissioner annually, on a form prescribed by the commissioner, accompanied by a registration fee in the amount of five hundred dollars. Fees collected under this subsection shall be deposited as provided in section 505.7.

3. In order to assure the faithful performance of a service company's obligations to its service contract holders, service contracts shall be secured by a reimbursement insurance policy in compliance with the requirements set forth in section 516E.4 or the service company shall comply with the financial responsibility and security standards set forth in section 516E.21.

4. *a.* The commissioner may issue an order denying, suspending, or revoking any registration if the commissioner finds that the order is in the public interest and finds any of the following:

(1) The registration is incomplete in any material respect or contains any statement which, in light of the circumstances under which the registration was made, is determined by the commissioner to be false or misleading with respect to any material fact.

(2) A provision of this chapter or a rule, order, or condition lawfully imposed under this chapter, has been willfully violated in connection with the sale of service contracts by any of the following persons:

(a) The person filing the registration, but only if the person filing the registration is directly or indirectly controlled by or acting for the service company.

(b) The service company, any partner, officer, or director of the service company or any person occupying a similar status or performing similar functions for the service company, or any person directly or indirectly controlling or controlled by the service company.

(3) The service company has not filed a document or information required under this chapter.

(4) The service company's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(5) The service company has failed to pay the proper filing fee. However, the

commissioner shall vacate an order issued pursuant to this paragraph when the proper fee has been paid.

b. The commissioner may vacate or modify an order issued under this subsection if the commissioner finds that the conditions which prompted the entry of the order have changed or that it is otherwise in the public interest to do so.

85 Acts, ch 45, §2
CS85, §321I.2
90 Acts, ch 1145, §2; 2000 Acts, ch 1147, §3, 15
C2001, §516E.2
2005 Acts, ch 70, §26; 2006 Acts, ch 1117, §79, 80; 2009 Acts, ch 181, §82
Referred to in **§516E.21**

516E.3 Filing and fee requirements.

1. *Service companies.*

a. A service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract, and the service company's reimbursement insurance policy, if applicable, have been filed with the commissioner by the service company.

b. A service company shall file a consent to service of process on the commissioner, and such other information as the commissioner requires, annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the service company shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the service company was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

c. (1) A service company shall promptly file the following information with the commissioner:

(a) A change in the name or ownership of the service company.

(b) The termination of the service company's business.

(2) The service company is not required to submit a fee as part of this filing.

2. *Providers.*

a. A provider shall file a consent to service of process on the commissioner, a notice with the name and ownership of the provider, and such other information as the commissioner requires, annually with the commissioner no later than August 1. If August 1 falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after August 1 and sales have occurred during the period when the provider was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee in the amount of one hundred dollars.

b. (1) A provider shall promptly file the following information with the commissioner:

(a) A change in the name or ownership of the provider.

(b) The termination of the provider's business.

(2) A provider is not required to submit a fee as part of this filing.

85 Acts, ch 45, §3
CS85, §321I.3
90 Acts, ch 1145, §3; 98 Acts, ch 1189, §1; 2000 Acts, ch 1147, §4, 5, 15

C2001, §516E.3
2005 Acts, ch 70, §27; 2006 Acts, ch 1117, §81, 82; 2007 Acts, ch 137, §16; 2012 Acts, ch 1023, §157
Referred to in §516E.15

516E.4 Reimbursement insurance policy requirements — insurer qualifications.

1. *Requirements.* A reimbursement insurance policy insuring a service contract issued, sold, or offered for sale in this state shall provide for all of the following:

a. The reimbursement insurance policy shall, in the event of the service company's failure to perform under the service contract or otherwise, either reimburse or pay on behalf of the service company any covered amounts that the service company is legally obligated to pay under the service contract, including the return of any unearned service company fee owed by the service company to the service contract holder.

b. An insurer that issues a reimbursement insurance policy shall assume full responsibility for the administration of claims made pursuant to a service contract in the event that the service company is unable to do so.

c. If a service covered under a service contract is not provided by the service company within sixty days of proof of loss by the service contract holder, the service contract holder is entitled to apply directly against the reimbursement insurance policy of the service company.

2. *Termination.* As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy unless a written notice has been received by the commissioner and by each applicable provider, service company, or third-party administrator. The notice shall fix the date of termination at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider, service company, or third-party administrator. The notice may be delivered in person or sent by mail, and a restricted certified mail return receipt shall be deemed proof of receipt of notice. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for a service contract issued by a service company prior to the date of termination.

3. *Indemnification or subrogation.* This section does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification from or subrogation against a service company if the insurer pays or is obligated to pay a service contract holder sums that the service company was obligated to pay pursuant to the provisions of a service contract or pursuant to a contractual agreement.

4. *Obligations insured.* If a service company secures its service contracts with a reimbursement insurance policy, the reimbursement insurance policy shall insure one hundred percent of the obligations of all service contracts sold by the service company.

5. *Qualifications of insurer.* An insurer issuing a reimbursement insurance policy under this chapter shall be authorized, registered, or otherwise permitted to transact business in this state, or shall be an excess and surplus lines insurer authorized, registered, or otherwise permitted to transact business in this state, and shall meet one of the following requirements:

a. At the time the policy is filed with the commissioner, and continuously thereafter, the insurer maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually files copies of the insurer's financial statements, national association of insurance commissioners annual statement, and actuarial certification, if required and filed in the insurer's state of domicile.

b. At the time the policy is filed with the commissioner and continuously thereafter, the insurer does all of the following:

(1) Maintains surplus as to policyholders and paid-in capital of less than fifteen million dollars but at least ten million dollars.

(2) Demonstrates to the satisfaction of the commissioner 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 three to one.

(3) Files copies annually of the insurer's financial statements, national association of insurance commissioners annual statement, and actuarial certification, if required and filed in the insurer's state of domicile.

85 Acts, ch 45, §4

CS85, §321I.4
2000 Acts, ch 1147, §15
C2001, §516E.4
2005 Acts, ch 70, §28; 2006 Acts, ch 1117, §83, 84
Referred to in §516E.2

516E.5 Disclosure to service contract holders — contract provisions.

1. *a.* A service contract insured by a reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the service company to the service contract holder are guaranteed under a reimbursement insurance policy, including a statement in substantially the following form:

> Obligations of the service company under this service contract are guaranteed under a reimbursement insurance policy. If the service company fails to pay or provide service on a claim within sixty days after proof of loss has been filed with the service company, the service contract holder is entitled to make a claim directly against the reimbursement insurance policy.

b. A claim against a reimbursement insurance policy shall also include a claim for return of the unearned service company fee paid for the service contract. A service contract shall conspicuously state the name and address of the issuer of the reimbursement insurance policy for that service contract.

c. A service contract issued, sold, or offered for sale in this state that is not insured under a reimbursement insurance policy shall contain a statement in substantially the following form:

> Obligations of the service company under this service contract are backed by the full faith and credit of the service company.

2. A service contract shall be written in clear, understandable language and the entire contract shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract does all of the following:

a. Clearly and conspicuously states the name and address of the service company and describes the service company's obligations to perform services or to arrange for the performance of services under the service contract.

b. Clearly and conspicuously states the name and address of the issuer of the reimbursement insurance policy, if applicable.

c. Identifies the service company obligated to perform the service under the service contract, any third-party administrator, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

d. Sets forth the total purchase price of the service contract and the terms under which the purchase price of the service contract is to be paid.

e. Sets forth the procedure for making a claim, including a telephone number.

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

g. Specifies the merchandise or services, or both, to be provided and clearly states any and all limitations, exceptions, or exclusions.

h. Sets forth the conditions on which substitution of services will be allowed.

i. Sets forth all of the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage to the motor vehicle, and the obligation to notify the service company in advance of any repair, if any.

j. Sets forth any and all terms, restrictions, or conditions governing transferability of the service contract, if any.

k. Describes or references any and all applicable provisions of the Iowa consumer credit code, chapter 537.

l. States the name and address of the commissioner.

m. Sets forth any and all conditions on which the service contract may be canceled, the

terms and conditions for the refund of any portion of the purchase price, the identity of the person primarily liable to provide any refund, and the identity of any other person liable to provide any portion of the refund. If the service contract holder cancels the service contract, the service company shall mail a written notice of termination to the service contract holder within fifteen days of the date of the termination.

n. Permits the service contract holder to cancel and return the service contract within at least twenty days of the date of mailing the service contract to the service contract holder or within at least ten days after delivery of the service contract if the service contract is delivered at the time of sale of the service contract, or within a longer period of time as permitted under the service contract. If no claim has been made under the service contract prior to its return, the service contract is void and the full purchase price of the service contract shall be refunded to the service contract holder. A ten percent penalty shall be added each month to a refund that is not paid to a service contract holder within thirty days of the return of the service contract to the service company. The applicable time period for cancellation of a service contract shall apply only to the original service contract holder that purchased the service contract.

3. A complete copy of the terms of the service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

85 Acts, ch 45, §5
CS85, §321I.5
90 Acts, ch 1145, §4; 94 Acts, ch 1031, §1; 98 Acts, ch 1189, §2, 3; 2000 Acts, ch 1147, §15
C2001, §516E.5
2005 Acts, ch 70, §29; 2006 Acts, ch 1117, §85, 86
Referred to in §714H.3

516E.6 Commissioner may prohibit certain sales — injunction.

The commissioner shall issue an order instructing a provider, service company, or third-party administrator to cease and desist from selling or offering for sale service contracts if the commissioner determines that the provider, service company, or third-party administrator has failed to comply with a provision of this chapter. Upon the failure of a provider, service company, or third-party administrator to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider, service company, or third-party administrator to enjoin the provider, service company, or third-party administrator from selling or offering for sale service contracts until the provider, service company, or third-party administrator complies with the provisions of this chapter, and the district court may issue the injunction.

85 Acts, ch 45, §6
CS85, §321I.6
98 Acts, ch 1189, §4; 2000 Acts, ch 1147, §15
C2001, §516E.6
2005 Acts, ch 70, §30

516E.7 Rules.

The commissioner may adopt rules as provided in chapter 17A to administer and enforce the provisions of this chapter and to establish minimum standards for disclosure of service contract coverage limitations and exclusions.

85 Acts, ch 45, §7
CS85, §321I.7
2000 Acts, ch 1147, §15
C2001, §516E.7
2005 Acts, ch 70, §31

516E.8 Exemption.

This chapter does not apply to a service contract issued by the manufacturer or importer of the motor vehicle covered by the service contract or to any third party acting in an administrative capacity on the manufacturer's behalf in connection with that service contract.

85 Acts, ch 45, §8
CS85, §321I.8
90 Acts, ch 1145, §5; 94 Acts, ch 1031, §2; 2000 Acts, ch 1147, §15
C2001, §516E.8
2005 Acts, ch 70, §32

516E.9 Misrepresentations of state approval.

A service company shall not represent or imply in any manner that the service company has been sponsored, recommended, or approved or that the service company's abilities or qualifications have in any respect been passed upon by the state of Iowa, including the commissioner, the insurance division, or the division's securities and regulated industries bureau.

90 Acts, ch 1145, §7
C91, §321I.10
92 Acts, ch 1163, §78; 2000 Acts, ch 1147, §6, 15
C2001, §516E.9
2005 Acts, ch 70, §33; 2006 Acts, ch 1117, §87
Referred to in §714H.3

516E.10 Prohibited acts — unfair or deceptive trade practices.

1. *Misrepresentations, false advertising, and unfair practices.*

a. Unless licensed as an insurance company, a service company shall not use in its name, contracts, or literature, the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company.

b. A service company shall not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product, or an implied warranty enforceable against the lessor, seller, or manufacturer of a product.

c. A provider, service company, or third-party administrator shall not make, permit, or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a service contract.

d. A provider, service company, or third-party administrator shall not permit or cause the omission of a material statement in connection with the sale, offer to sell, or advertisement of a service contract, which under the circumstances should have been made in order to make the statement not misleading.

e. A provider, service company, or third-party administrator shall not make, permit, or cause to be made a false or misleading statement, either oral or written, about the benefits or services available under the service contract.

f. A provider, service company, or third-party administrator shall not make, permit, or cause to be made a statement of practice which has the effect of creating or maintaining a fraud.

g. A provider, service company, or third-party administrator shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the service contract industry or with respect to a provider, service company, or third-party administrator which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content,

phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

h. A bank, savings association, credit union, insurance company, or other lending institution shall not require the purchase of a service contract as a condition of a loan.

2. *Defamation.* A provider, service company, or third-party administrator shall not make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a person, and which is calculated to injure the person.

3. *Boycott, coercion, and intimidation.* A provider, service company, or third-party administrator shall not enter into an agreement to commit, or by a concerted action commit, an act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

4. *False statements.* A provider, service company, or third-party administrator shall not knowingly file with a supervisory or other public official, or knowingly make, publish, disseminate, circulate, or deliver to a person, or place before the public, or knowingly cause directly or indirectly to be made, published, disseminated, circulated, delivered to a person, or placed before the public, a false material statement of fact as to the financial condition of a person.

5. *False entries.* A provider, service company, or third-party administrator shall not knowingly make a false entry of a material fact in a book, report, or statement of a person or knowingly fail to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

6. *Used or rebuilt parts.* A service company shall not repair a motor vehicle covered by a service contract with any of the following:

a. Used parts, unless the service company receives prior written authorization by the vehicle owner.

b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

7. *Marketing.* A provider, service company, or third-party administrator shall not market, advertise, offer to sell, or sell a service contract by using personal information obtained in violation of the federal Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq.

8. *Violations of section 714.16.*

a. A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is an unfair practice as defined in section 714.16.

b. An enforcement agreement between the commissioner and a provider, service company, or third-party administrator does not bar the attorney general from bringing an action against the provider, service company, or third-party administrator under section 714.16 as to allegations that a violation of this chapter constitutes a violation of section 714.16.

90 Acts, ch 1145, §8
C91, §321I.11
98 Acts, ch 1189, §5; 2000 Acts, ch 1147, §7, 15
C2001, §516E.10
2005 Acts, ch 70, §34; 2006 Acts, ch 1030, §63; 2012 Acts, ch 1017, §100
Referred to in **§714H.3**

516E.11 Records — explanation of reasons for denial of claims.

1. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter.

a. Records of a provider, service company, or third-party administrator shall include all of the following:

(1) Copies of each type of service contract issued or sold.

(2) The name and address of each service contract holder.

(3) Claim files which shall contain, at a minimum, the dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.

(4) Copies of all materials relating to claims which have been denied.

b. A provider, service company, or third-party administrator shall retain all required records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider, service company, or third-party administrator discontinuing business in this state shall maintain its records until the provider, service company, or third-party administrator furnishes the commissioner satisfactory proof that the provider, service company, or third-party administrator has discharged all obligations to contract holders in this state.

c. A provider, service company, or third-party administrator shall make all records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

d. A provider, service company, or third-party administrator may keep all records required under this chapter in an electronic form. If an administrator maintains records in a form other than a printed copy, the records shall be accessible from a computer terminal available to the commissioner and shall be capable of duplication to a legible printed copy.

2. A provider, service company, or third-party administrator shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

3. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter, including a list of the locations where service contracts are marketed, sold, offered for sale, or performed.

90 Acts, ch 1145, §9
C91, §321I.12
94 Acts, ch 1031, §3; 98 Acts, ch 1189, §6; 2000 Acts, ch 1147, §8 – 10, 15
C2001, §516E.11
2005 Acts, ch 70, §35

516E.12 Service of process.

The commissioner shall be the agent for service of process upon a provider, service company, or third-party administrator and an issuer of a reimbursement insurance policy.

90 Acts, ch 1145, §10
C91, §321I.13
2000 Acts, ch 1147, §15
C2001, §516E.12
2005 Acts, ch 70, §36

516E.13 Orders, investigations, examinations, and subpoenas.

1. The commissioner may take actions which are necessary or appropriate for the protection of service contract holders or for the effective administration of this chapter. The commissioner may make private and public investigations and examinations as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter or a rule or order adopted or issued pursuant to this chapter.

2. In an investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records which the commissioner deems relevant or material to an inquiry, all of which may be enforced in accordance with chapter 17A.

3. A person is not excused from attending and testifying or from producing a document or record before the administrator or in obedience to a subpoena of the administrator or an officer designated by the administrator, or in a proceeding instituted by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter

about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

4. Upon the commissioner's determination that a provider, service company, or third-party administrator has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

90 Acts, ch 1145, §11
C91, §321I.14
94 Acts, ch 1031, §4; 2000 Acts, ch 1147, §11, 15
C2001, §516E.13
2005 Acts, ch 70, §37

516E.14 Audits.

The commissioner may examine or cause to be examined the records of a provider, service company, or third-party administrator for the purpose of verifying compliance with this chapter. The commissioner may require, by a subpoena, the attendance of the provider, service company, or third-party administrator, or a representative thereof, and any other witness whom the commissioner deems necessary or expedient, and the production of records relating in any manner to compliance with this chapter if a provider, service company, third-party administrator, or witness fails or refuses to produce the documents for examination when requested by the commissioner.

90 Acts, ch 1145, §12
C91, §321I.15
2000 Acts, ch 1147, §12, 15
C2001, §516E.14
2005 Acts, ch 70, §38

516E.15 Violations — penalties.

1. *a.* Except as provided in paragraph "*b*", all of the following shall apply:

(1) A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "*a*". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

(2) A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "D" felony.

b. A provider or service company that fails to file documents and information with the commissioner as required pursuant to section 516E.3 may be subject to a civil penalty. The

amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the name or the termination of the business of a provider or service company as required pursuant to section 516E.3 is subject to a civil penalty of not more than five hundred dollars.

2. If the commissioner believes that grounds exist for the criminal prosecution of a provider, service company, or third-party administrator for violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

94 Acts, ch 1031, §5
C95, §321I.16
2000 Acts, ch 1147, §13, 15
C2001, §516E.15
2005 Acts, ch 70, §39, 40; 2006 Acts, ch 1117, §88

516E.16 Court action for failure to cooperate.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any of the following:

a. Injunctive relief restricting or prohibiting the offer or sale of service contracts.

b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

c. Such other relief as may be appropriate.

2. A court order issued pursuant to subsection 1 is effective until the person who is subject to the order files the statement or report, produces the documents requested, or obeys the subpoena.

2005 Acts, ch 70, §41

516E.17 Net worth requirement. Repealed by 2006 Acts, ch 1117, §128. See §516E.21.

516E.18 Public access to records.

1. The administrator shall keep a register of all filings and orders which have been entered. The register shall be open for public inspection.

2. Upon request and for a reasonable fee, the administrator shall furnish to any person copies of any register entry or any document which is a matter of public record and not confidential. Copies shall be available during normal business hours and may be certified upon request. In any administrative, civil, or criminal proceeding, a certified copy is prima facie evidence of the contents of the document certified.

3. Pursuant to chapter 22, the administrator may maintain the confidentiality of information obtained during an investigation or audit.

2005 Acts, ch 70, §43

516E.19 Administration.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to

the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, auditors, investigators, and other employees as shall be needed for the administration of this chapter.

2. Upon request, the commissioner may honor requests from interested persons for interpretive opinions.

2005 Acts, ch 70, §44

516E.20 Application of insurance laws.

The sale of a service contract under this chapter shall not be deemed to include the sale of insurance. Unless a service company, third-party administrator, or provider is otherwise engaged in the sale of insurance, the insurance laws of this state are not applicable to the service company, third-party administrator, or provider of such a service contract.

2006 Acts, ch 1117, §89

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**