



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004**

David A. Paterson  
Governor

Kermitt J. Brooks  
Acting Superintendent

**Circular Letter No. 19 (2009)  
August 3, 2009**

**TO: All authorized insurers licensed to write service contract reimbursement insurance, licensed excess line brokers, registered service contract providers, and the Excess Line Association of New York**

**RE: Service Contract Reimbursement Insurance**

**STATUTORY REFERENCE: N.Y. Ins. Law § 308 and Article 79; and 11 NYCRR Part 390**

The purpose of this circular letter is to: (1) advise service contract providers of registration procedures when they utilize service contract reimbursement insurance (SCRI) to demonstrate financial responsibility; (2) remind insurers writing SCRI of their obligations under Article 79 of the Insurance Law and 11 NYCRR Part 390 (Regulation 155); and (3) require insurers to attest whether the SCRI policies that they have issued in New York State are in compliance with New York requirements.

**I. Registration procedures for service contract providers utilizing SCRI**

Insurance Law § 7903(c) requires a service contract provider to assure the faithful performance of its service contracts by demonstrating financial responsibility in one of three ways. Under Insurance Law § 7903(c)(1), a service contract provider can demonstrate financial responsibility by insuring "the performance of all of [the provider's] obligations under all service contracts pursuant to a [SCRI] policy issued by an insurer authorized to issue service contract reimbursement insurance in this state or procured by an excess line licensee pursuant to section two thousand one hundred eighteen of [the Insurance Law]." A provider electing such method must submit a certification that specifies, among other things, that the coverage provided under the policy conforms to all of the requirements of Article 79 and Regulation 155.

However, it has come to the Department's attention that some insurers have issued SCRI policies that do not fully satisfy the requirements set forth in Article 79 and Regulation 155. In those instances, consumers do not have the full protections afforded to them by the Insurance Law and regulations promulgated thereunder.

Accordingly, please be advised that when a provider utilizes a SCRI policy as proof of financial responsibility, the Department will request a copy of the SCRI policy itself when the provider first applies to register as a service contract provider, as well as upon each subsequent registration renewal.

## II. Obligations of SCRI insurers under Article 79 and Regulation 155

SCRI insurers and service contract providers are reminded of their obligations to fully comply with all applicable aspects of Article 79 and Regulation 155. For instance:

-Under Insurance Law §§ 1113(a)(28) and 7903(c)(1), a SCRI policy must cover the service contract provider's obligations under all of its service contracts issued in New York State (including the return of unearned provider fees), unless the service contract provider has submitted proof to the Department that those of its service contracts not covered under the SCRI policy are backed by another acceptable method of financial responsibility. Provisions not consistent with this requirement, such as the following, are unacceptable:

- conditioning coverage upon the service contract provider reporting the sale of a service contract to the insurer;
- conditioning coverage upon the service contract provider filing copies of its New York service contract forms with the insurer or obtaining the insurer's prior approval of such forms;
- requiring that, before a claim may be directly presented by the service contract holder to the insurer, the service contract provider must have approved the claim, or the service contract holder must satisfy a deductible or pay a co-insurance amount before payment is made;
- relating coverage to the quality, condition or nature of the covered property, such as exclusion for the failure of the holder to comply with a manufacturer's maintenance schedules or pre-existing conditions, or a mileage limitation for an automobile;
- making the coverage only excess of other insurance policies; or
- providing that claims are to be paid on a pro-rata basis where there are other insurance policies.

-Under § 390.7(b)(1) of Regulation 155, a SCRI policy must provide for payments directly to service contract holders in the event that the service contract provider fails to pay or provide service upon a legitimate service contract claim within 60 days after submission of proof of loss, or when the service contract provider fails to return an unearned provider fee after a service contract is cancelled.

-Under § 390.7(b)(3) of Regulation 155, a SCRI policy must state that the revocation or other termination or suspension of the service contract provider's registration, for any reason, shall be construed to be a default by the service contract provider so as to trigger the provision for direct payment to service contract holders immediately.

-Under § 390.7(b)(2) of Regulation 155, a SCRI policy must state that the termination of the policy shall not affect or reduce the insurer's obligations thereunder to service contract holders whose service contracts are covered under the policy, and that the coverage will continue until all of the covered service contracts expire or otherwise terminate.

-Under § 390.7(c) of Regulation 155, a SCRI policy may not be cancelled by the insurer for any reason not specified in Insurance Law § 3426.

-Under § 390.9(b) of Regulation 155, a SCRI policy may not be rescinded by the insurer.

-Under § 390.9 of Regulation 155, in addition to the notice of termination requirements contained in Insurance Law § 3426, an insurer terminating a SCRI policy must provide at least 15 days prior written notice thereof to the Superintendent and, for a termination initiated by the service contract provider, the insurer must provide written notice thereof to the Superintendent not later than five days after the notice of termination was received by the insurer.

## III. Insurer attestations as to compliance

Every insurer that currently has outstanding SCRI policies covering service contracts issued in New York State is directed, pursuant to Insurance Law § 308, to review its SCRI policies for conformance with the statutory and regulatory requirements set forth in Article 79 and Regulation 155, respectively, and to **submit a letter to the Superintendent by September 30, 2009, signed by an executive officer of the insurer, attesting as to the results of the policy review, and stating whether the policies that it has issued in New York State comply fully with New York's governing law.** The letter also must specify the number of

SCRI policies that the insurer has written covering New York State service contracts that are currently in effect and, for each such policy, provide the policy number, effective dates of the coverage afforded, and the name of the insured service contract provider. Please direct the letters to George Babu, Senior Insurance Examiner, Property Bureau, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, or send an e-mail to [gbabu@ins.state.ny.us](mailto:gbabu@ins.state.ny.us).

If, in the course of its policy review, an insurer finds any legal deficiencies, the insurer must include a statement identifying the deficiency, and make a representation that the necessary amendments have been or soon will be made to bring the SCRI policy into full legal compliance. Further, if the insurer revises the policy in response to the policy review undertaken pursuant to Insurance Law § 308, the insurer should submit the revised policy form to the Department. If a revision consists of adding an endorsement, the endorsement should specifically state the provisions required by the New York Insurance Law or regulations promulgated thereunder, and remove any impermissible exclusions, restrictions or conditions from the policy.

Very truly yours,

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Larry Levine  
Assistant Deputy Superintendent and  
Bureau Chief,  
Property Bureau