

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2009 JUN 26 PM 4:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W.Va. Code §§33-26A-19 and 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: West Virginia Life And Health Insurance

Guaranty Association Act Notice Requirements

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 27, AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel

WV Offices of the Insurance Commissioner

P.O. Box 50540

Charleston, WV 25305-0540

Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Helton
Cabinet Secretary

West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 36

**WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS**

TITLE 114, SERIES 36

BRIEF SUMMARY OF RULE

The amendments to this rule are being proposed in order to update the appendix to this rule to reflect both extensive amendments by the 2009 Legislature to the Guaranty Association Act ("GAA") and to add a separate form as an additional appendix. See H.B. 3278 (2009). The current appendix, which is an Offices of the Insurance Commissioner approved template for the summary document mandated to be provided to policy/contract holders (see W. Va. Code §33-26A-19(b)-(c)), must be updated to reflect the increased coverage limits contained in the bill and to further reflect the changes to W. Va. Code §33-26A-3(b)(1) with regard to the types of policies/contracts to which the GAA applies. The rule is being amended further to add an additional Appendix that will set forth the separate document required by W. Va. Code §33-26A-19(d) that is required if the policy/contract being delivered will not be covered by the Guaranty Association. The current Appendix A included this requirement in the summary document template.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 36

**WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS**

TITLE 114, SERIES 36

STATEMENT OF CIRCUMSTANCES

The Life and Health Guaranty Association ("GA"), created in W. Va. Code §33-29A-6, is a "nonprofit legal entity" governed by a board of directors (but under the "immediate supervision of the insurance commissioner"). The GA's function is to protect persons covered by life and health policies and annuity holders from insurance companies' failure to perform their obligations under such policies and contracts. To perform this task, the GA is authorized to assess other companies. The WV Offices of the Insurance Commissioner regulates the GA pursuant to W. Va. Code §33-26A-11.

It is possible for an insurer to exempt a policy from the coverage normally provided by the Guaranty Association Act. W. Va. Code §33-26A-3(b)(2) provides that "[t]his article shall not provide coverage for: (1) A portion of policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner."

W. Va. Code §33-26A-19(b) requires that the association prepare a summary document, approved by the Insurance Commissioner, describing the general purposes and current limitations of the act and containing a clear and conspicuous disclaimer on its face. W. Va. Code §33-26A-19(b)-(c). The rule promulgated in response to this statutory mandate includes as the appendix the summary document with the disclaimer. The amendments to the GA Act contained in H.B. 3278, enacted by the 2009 Legislature, made extensive changes to the GA Act, including changes to the provision affected by the disclosure notice, W. Va. Code §33-26A-3(b)(1), that describes the types of policies/contracts to which the GA Act applies and those to which the notice is required in order to exempt such policies/contracts from GA coverage. The 2009 amendments also changed most of the coverage provisions, thereby necessitating changes to the summary document found in the appendix.

The rule is being amended further to add an additional Appendix that will set forth the separate notice document required by W. Va. Code §33-26A-19(d). When an insurer or producer delivers an insurance policy or contract, the document found in the new Appendix is required to be given to the consumer stating that the policy of insurance they are covering is not covered by the Guaranty Association.

Rule Title: West Virginia Life And Health Insurance Guaranty Association Act
Notice Requirements (Title 114, Series 36)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

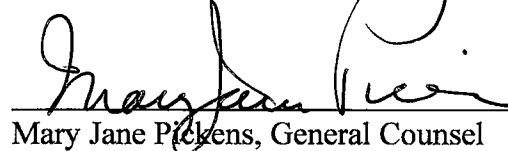
N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/26/09

Signature of Agency Head or Authorized Representative


Mary Jane Pickens, General Counsel

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 36
WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
ACT NOTICE REQUIREMENTS**

Section.

114-36-1. General.

114-36-2. Definitions.

114-36-3. Form and Content of ~~Notice~~ Summary Document.

Appendix A. Summary of the West Virginia Life and Health Guaranty Association Act and Notice Concerning Coverage Limitations and Exclusions Under the West Virginia Life and Health Insurance Guaranty Association Act.

Appendix B. Notice of Non-Coverage.

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TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

2009 JUN 26 PM 4: 33

SERIES 36
WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
ACT NOTICE REQUIREMENTS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-36-1. General.

1.1. Scope. -- This rule applies to Member Insurers and their agents that provide insurance coverage for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts and for structured settlement annuities to those persons specified in W. Va. Code §33-26A-3(a).

1.2. Authority. -- W. Va. Code §§33-26A-19(d) and 33-2-10.

1.3. Filing Date. -- ~~April 13, 1994.~~

1.4. Effective Date. -- ~~April 13, 1994.~~

§114-36-2. Definitions.

2.1. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.2. "Disclaimer" means the ~~disclaimer~~ written notice required to be placed on the face of the Summary Document pursuant to W. Va. Code §33-26A-19(c).

2.3. "Member Insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under ~~section three of this article~~ W. Va. Code §33-29A-3, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, and includes nonprofit service corporations as defined in article twenty-four of this chapter and health care corporations as defined in W. Va. Code §33-25-1 *et seq.*: *Provided*, That the term "member insurer" does not include a health maintenance organization, a fraternal benefit society, a mandatory state pooling plan, a mutual assessment company, any entity that operates on an assessment basis, an insurance exchange, an organization that has a certificate or license limited to the issuance of charitable gift annuities pursuant to W. Va. Code §33-13B-1 et seq., or any other similar entity.

2.4. "Notice" means the ~~two-sided single page~~ document set forth in Appendix ~~A B~~ of this rule entitled "~~NOTICE CONCERNING COVERAGE LIMITATIONS AND EXCLUSIONS UNDER THE WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY~~"

ASSOCIATION OF NON-COVERAGE." The Notice comprises the ~~Summary Document, Disclaimer and the non-coverage notice of partial or non-coverage~~ required by W. Va. Code §33-26A-19(d).

2.5. "Policy or Contract" means the following types of policies or contracts issued by a Member Insurer to persons described in W. Va. Code §33-26A-3(a):

2.5.1 a. Direct nongroup life insurance, health insurance, annuities and supplemental policies or contracts;

2.5.2 b. Certificates under direct group life insurance policies, health insurance policies, or annuity contracts; or

2.5.3 c. Unallocated annuity contracts.

2.6. "Summary Document" means the document describing the general purposes, limitations and exclusions under the West Virginia Life and Health Insurance Guaranty Association Act, W. Va. Code §33-26A-1 *et seq.*, as adopted by the West Virginia Life and Health Insurance Guaranty Association and approved by the Commissioner and required to be given to Policy or Contract Holders by Member Insurers or their agents pursuant to W. Va. Code §33-26A-19(b). An approved summary document containing the disclaimer required by W. Va. Code §33-26A-19(c) can be found in the attached Appendix A of this rule.

§114-36-3. Form and Content of Notice Summary Document .

3.1. On or after ~~January 1, 1994~~ July 10, 2009, no Member Insurer or its agent may deliver a Policy or Contract to a Policy or Contract Holder, unless the Notice Summary Document as set forth in Appendix A is delivered to the Policy or Contract Holder prior to or at the time of delivery of the Policy or Contract.

3.2. The insurer or agent making the delivery of the Notice Summary Document shall maintain a record of the delivery.

3.3. The Notice Summary Document shall be printed on a separate sheet of paper. The Notice Summary Document may not include the name and address of the Member Insurer issuing the Policy or Contract or the name and address of the agent who procured the Policy or Contract.

3.4. The Notice Summary Document shall be identical to that prescribed by the Commissioner in Appendix A of this rule.

Title 114, Series 36
Legislative Rule
Insurance Commissioner

~~3.5. Delivery of the Notice as set forth in Appendix A of this rule shall satisfy the delivery of a separate written notice of partial or total non-coverage to Policy or Contract Holders of Policies or Contracts where any portion of the Policy or Contract is not guaranteed by the Member Insurer, or under which the risk is borne by the Policy or Contract Holder. Delivery of the Summary Document set forth in Appendix A satisfies the requirements set forth in W. Va. Code §33-26A-19(b) and (c).~~

~~3.6. A form filing is not required for the Notice. Delivery of the Notice set forth in Appendix B satisfies the requirements set forth in W. Va. Code §33-26A-19(d).~~

3.7. Member Insurers and their agents that provide the following types of excluded coverages or services excluded from coverage under the West Virginia Life and Health Insurance Guaranty Act are not required to provide the Notice Summary Document required by this rule to the contract or policy holders receiving the excluded coverages or services:

~~3-7-1~~ 3.7.a. Any policy or contract of reinsurance, unless assumption certificates have been issued;

~~3-7-2~~ 3.7.b. Any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

a 3.7.b.1. A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

3.7.b.2. A minimum premium group insurance plan;

e 3.7.b.3. A stop-loss group insurance plan;

d 3.7.b.4. An administrative services only contract;

~~3-7-3~~ 3.7.c. Any policy or contract issued in this state by a Member Insurer at a time when the member insurer was not licensed or did not have a certificate of authority to issue the policy or contract in West Virginia;

~~3-7-4~~ 3.7.d. Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation.

**SUMMARY OF THE WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY
ASSOCIATION ACT AND NOTICE CONCERNING COVERAGE
LIMITATIONS AND EXCLUSIONS UNDER THE WEST VIRGINIA
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT**
(Effective July 10, 2009)

Residents of West Virginia who purchase life insurance, annuities or health insurance should know that the insurance companies licensed in this state to write these types of insurance are members of the West Virginia Life and Health Insurance Guaranty Association. The purpose of this association is to assure that policy holders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the Guaranty Association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the Guaranty Association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

The West Virginia Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in West Virginia. You should not rely on coverage by the West Virginia Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy. For a complete description of coverage, consult Article 26A, Chapter 33 of the West Virginia Code.

Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk.

Insurance companies or their agents are required by law to give or send you this notice. *However, insurance companies and their agents are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy.*

The Guaranty Association or the West Virginia Insurance Commission will respond to questions you may have which are not answered by this document. Policyholders with additional questions may contact:

West Virginia Life and Health Insurance Guaranty Association
P.O. Box 816
Huntington, West Virginia 25712

West Virginia Insurance Commissioner
Consumer Services Division
1124 Smith Street, Rm 309
P.O. Box 50540
Charleston, West Virginia 25305-0540
(304) 558-3386
Toll Free 1-800-642-9004
TDD 1-800-435-7381

The state law that provides for this safety-net coverage is called the West Virginia Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law nor does it in any way change anyone's rights or obligations under the act or the rights or obligations of the Guaranty Association.

COVERAGE

Generally, individuals will be protected by the West Virginia Life and Health Insurance Guaranty Association if they live in West Virginia and hold a life or health insurance contract, annuity contract, unallocated annuity contract, or if they are insured under a group life, health or annuity insurance contract, issued by a member insurer. Member insurer also includes non-profit service corporations (W. Va. Code §33-24) and health care corporations (W. Va. Code §33-25). The beneficiaries, payees or assignees of insured persons are protected as well, even if they live in another state.

EXCLUSIONS FROM COVERAGE

However, persons holding such policies are not protected by this association if:

- They are eligible for protection under the laws of another state (this may occur when the insolvent insurer was incorporated in another state whose guaranty association protects insureds who live outside that state);
- The insurer was not authorized to do business in this state;
- The policy was issued at a time when the insurer was not licensed or authorized to do business in the state;
- Their policy was issued by an HMO, a fraternal benefit society, mandatory state pooling plan, a mutual protective association or similar plan in which the policy holder is subject to future assessments, an insurance exchange, or any entity similar to the above.

The association also does not provide coverage for:

- Any policy or portion of a policy which is not guaranteed by the insurer or for which the individual or contract holder has assumed the risk;
- Any policy of reinsurance (unless an assumption certificate was issued);
- Interest rate yields that exceed an average rate;
- Dividends;
- Credits given in connection with the administration of a policy by a group contractholder;
- Employer or association plans to the extent they are self-funded (that is, not insured by an insurance company, even if an insurance company administers them) or uninsured, including:
 - i. multiple employer welfare arrangement;
 - ii. minimum premium group insurance plan;
 - iii. stop loss group insurance plan; or
 - iv. administrative services only contract.
- Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension guaranty corporation;
- Any portion of any unallocated contract which is not issued to or in connection with a specific

- employee, union or association's benefit plan or a governmental lottery.
- Any policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Medicare Part C and D;
- An obligation that does not arise under the written terms of the policy, including claims based on marketing materials; claims based on side letters or riders not approved by the Commissioner; misrepresentations regarding policy benefits; extracontractual claims or claims for penalties or consequential or incidental damages
- A contractual agreement that establishes the member insurer's obligation to provide a book value guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or trustee, which is not an affiliate of the insurer

LIMITS ON AMOUNT OF COVERAGE

The act also limits the amount the association is obligated to pay out: The association cannot pay more than what the insurance company would owe under a policy or contract. Also, for any one insured life, ~~the association will pay a maximum of \$300,000 — no matter how many policies and contracts there were with the same company, even if they provided different types of coverages. Within this overall \$300,000 limit, the association will not pay more than \$100,000 in cash surrender values, \$100,000 in health insurance benefits, \$100,000 in present value of annuities, or \$300,000 in life insurance death benefits — again, no matter how many policies and contracts there were with the same company, and no matter how many different types of coverages. regardless of the number of policies or contracts, the association will only pay:~~

- \$300,000 in life insurance benefits, but no more than \$100,000 in net cash surrender and net cash withdrawal values;
- \$300,000 for disability insurance;
- \$300,000 for long term care insurance;
- \$250,000 in the present value annuity benefits, including net cash surrender and net cash withdrawal values;
- \$500,000 for basic major hospital medical and surgical insurance or major medical insurance, and;
- \$100,000 for all other types of accident and sickness insurance than those listed above (disability, long term care, and major medical).

Also for any one insured life, the association will only pay a maximum of \$300,000 — no matter how many policies and contracts there were with the same company for all policies or contracts other than major medical insurance, in which case the aggregate limit shall not exceed \$500,000 with respect to any one individual.

Note to benefit plan trustees or other holders of unallocated annuities (GICs, DACs, etc.) covered by the act: for unallocated annuities that fund governmental retirement plans under §§ 401(k), 403 (b) or 457 of the Internal Revenue Code, the limit is ~~\$150,000~~ \$250,000 in present value of annuity benefits including net cash surrender and net cash withdrawal per participating individual. In no event shall the association be liable to spend more than \$300,000 in the aggregate per individual; for covered unallocated annuities that fund other plans, a special limit of ~~\$1,000,000~~ \$5,000,000 applies to each contract holder, regardless of the number of contracts held with the same company or number of persons covered. In all cases, of course, the contract limits also apply.

Appendix B

NOTICE OF NON-COVERAGE
(Effective July 10, 2009)

The West Virginia Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent.

THE POLICY OR CONTRACT YOU ARE PURCHASING IS NOT COVERED BY THE WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

If the company providing this policy or contract is unable to meet its obligation by reason of insolvency or financial impairment, the West Virginia Life and Health Insurance Guaranty Association will not be available to protect the policy or contract holder or his/her beneficiaries, payees or assignees.

If you have any questions concerning this Notice, you may contact:

West Virginia Life and Health Insurance Guaranty Association
P.O. Box 816
Huntington, West Virginia 25712

or

West Virginia Insurance Commissioner
Consumer Services Division
1124 Smith Street, Rm 309
P.O. Box 50540
Charleston, West Virginia 25305-0540
(304) 558-3386
Toll Free 1-800-642-9004
TDD 1-800-435-7381