

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

Form #6

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2010 APR 14 AM 9:55  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE  
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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: \_\_\_\_\_

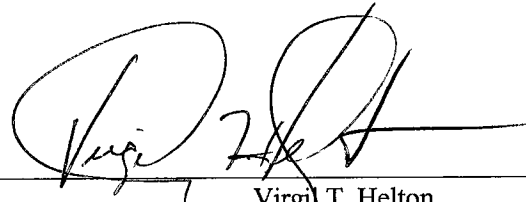
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 407

SECTION 64-7-3, PASSED ON March 13, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: April 14, 2010



Virgil T. Helton  
Cabinet Secretary  
West Virginia Department of Revenue

**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 Summary Document.

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

Appendix B. Notice of Non-Coverage.

TITLE 114  
LEGISLATIVE RULE  
INSURANCE COMMISSIONER

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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 and 33-2-10.

1.3. Filing Date. -- April 14, 2010.

1.4. Effective Date. -- April 14, 2010.

**§114-36-2. Definitions.**

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

2.2. "Disclaimer" means the 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 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 document set forth in Appendix B of this rule entitled "NOTICE OF NON-COVERAGE." The Notice comprises the non-coverage notice 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.a. Direct nongroup life insurance, health insurance, annuities and supplemental policies or contracts;

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

2.5.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 Summary Document .**

3.1. Except with respect to a policy or contract to which subsection 3.6 applies, after October 8, 2009, no Member Insurer or its agent may deliver a Policy or Contract to a Policy or Contract Holder, unless the 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. *Provided*, That for any policy or contract delivered between July 10, 2009 and October 7, 2009, the policy or contract holder shall be provided with a copy of the Summary Document prior to October 8, 2009.

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

3.3. The Summary Document shall be printed on a separate sheet of paper. The 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 Summary Document shall be identical to that prescribed by the Commissioner in Appendix A of this rule.

3.5 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. Delivery of the Notice set forth in Appendix B shall be made with respect to any policy or contract that is fully excluded from coverage under the Guaranty Association Act because it is not guaranteed by the insurer or the risk is borne by the policy or contract holder,

and such delivery satisfies the requirements set forth in W. Va. Code §33-26A-19(d) with respect to any policy or contract delivered after October 7, 2009, to which such subsection applies: *Provided*, That for any policy or contract delivered between July 10 and October 7, 2009, the policy or contract holder shall be provided with a copy of the Notice prior to October 8, 2009.

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 Summary Document required by this rule to the contract or policy holders receiving the excluded coverages or services:

3.7.a. Any policy or contract of reinsurance, unless assumption certificates have been issued;

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:

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;

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

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

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.d. Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation.

Appendix A

**SUMMARY OF THE WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY  
ASSOCIATION ACT AND NOTICE CONCERNING COVERAGE  
LIMITATIONS AND EXCLUSIONS  
(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 any portion OF YOUR CONTRACT 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 1-888-879-9842  
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, 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 \$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 \$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 1-888-879-9842  
TDD 1-800-435-7381