

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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AUG 16 5 16 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY West Virginia Code §§ 33-26A-19(d); 33-2-10

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 36

TITLE OF RULE BEING PROPOSED: West Virginia Life and Health  
Insurance Guaranty Association Act Notice Requirements

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*Hanley C. Clark*

Hanley C. Clark  
Insurance Commissioner

7.00



STATE OF WEST VIRGINIA  
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON  
Governor

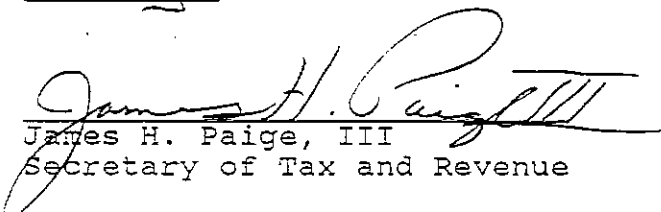
HANLEY C. CLARK  
Insurance Commissioner

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 36, relating to Notice Requirements under the West Virginia Life and Health Guaranty Association Act.

Signed this 8<sup>th</sup> day of July, 1993.

  
James H. Paige, III  
Secretary of Tax and Revenue

Insurance Commissioner  
Legislative Rule  
Title 114, Series 36

**FILE.**  
AUG 16 5 16 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

Title 114, Series 36

**BRIEF SUMMARY OF RULE AND DETAILED STATEMENT  
OF CIRCUMSTANCES REQUIRING PROPOSED LEGISLATIVE RULE**

This proposed rule specifies the form and content of the notice and disclaimer required to be given, pursuant to West Virginia Code § 33-26A-19, to those certain persons identified in Section 3(a) of the West Virginia Life and Health Insurance Guaranty Association Act, as amended and re-enacted by House Bill 2632 (effective July 9, 1993). This notice is to be delivered to policyholders of certain life, health and annuity insurance policies or contracts where any portion of the policy or contract is not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder. The disclaimer must be attached to the face of the Summary Document which describes the general purposes and current limitations of the Guaranty Association Act.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: West Virginia Life and Health Insurance Guaranty Association Act  
Notice Requirements  
 Type of Rule: X Legislative        Interpretive        Procedural  
 Agency: Insurance Commissioner  
 Address: 2019 Washington Street, East  
Post Office Box 50540  
Charleston, WV 25305-0540

**1. Effect of Proposed Rule**

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	NONE				
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT	NONE				
OTHER					

**2. Explanation of above estimates:**

The rule will have no fiscal impact upon state, local or federal government.

**3. Objectives of these rules:**

The objective of this rule is to provide notice and disclosure to policyholders of certain life, health and annuity insurance contracts that the policy, or portion thereof, may not be covered by the West Virginia Life and Health Insurance Guaranty Association Act.

Rule Title: West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The economic impact of the required notice should have minimal impact on the insurance industry.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 13, 1993

Signature of Agency Head or Authorized Representative

Hanley C. Clark

Hanley C. Clark  
Insurance Commissioner

DATE: August 16, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Office of the Insurance Commissioner

LEGISLATIVE RULE TITLE: West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements (Series 36)

1. Authorizing statute(s) citation West Virginia Code

SS 33-26A-19(d); 33-2-10

2. a. Date filed in State Register with Notice of Hearing

July 13, 1993

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Hearing(s) The comment period ended on August

13, 1993

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 16, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Jeffrey W. VanGilder, Associate Counsel

West Virginia Insurance Commissioner

(304) 558-0401

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing: Not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached

114CSR36

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-26A  
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.
- § 114-36-4. Form and Content of Disclaimer.
- Appendix A. Notice of Exclusion from Coverage or Limited Coverage Concerning Coverage Limitations and Exclusions Under the West Virginia Life and Health Insurance Guaranty Association Act.
- ~~Appendix B. West Virginia Life and Health Insurance Guaranty Association Disclaimer.~~

FILED

114CSR36

AUG 16 5 16 PM '93

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

CHAPTER 33-26A  
SERIES 36

WEST VIRGINIA LIFE AND HEALTH INSURANCE  
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS

§ 114-36-1. General.

1.1. Scope. -- This rule applies to ~~insurance companies~~ Member Insurers and their agents that provide insurance coverage ~~to those certain individuals defined in Code § 33-26A-3(a) for~~ direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts, ~~if any portion of the policy or contract is not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.~~ to those persons specified in subsection (a), section three of the Act (W. Va. Code § 33-26A-3(a)).

1.2. Authority. -- West Virginia Code §§ 33-26A-19(d); 33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-36-2. Definitions.

As used in this legislative rule:

2.1. "Act" means the West Virginia Life and Health Insurance Guaranty Association Act, West Virginia Code §§ 33-26A-1 et seq.

2.2. "Association" means the West Virginia Life and Health Insurance Guaranty Association created under section six of the Act.

2.3. "Code" means the Code of West Virginia.

2.4. "Commissioner" means the Commissioner of Insurance of West Virginia.

2.5. "Covered Policy" means any policy or contract described in subdivision (1) of subsection (B) of section three of the Act Code § 33-26A-3(b)(1), unless paragraph D, subdivision 2(d) of

Subsection Bb of Section three of the Act (Code § 33-26A-3(b)) (2)(A) applies to such policy or contract.

2.6. "Disclaimer" means the disclaimer required to be placed on the face of the Summary Document pursuant to subsection c, section nineteen of the Act [Code § 33-26A-19(c)].

2.7. "Excluded Policy" means any policy or contract of insurance described in subdivision (1) of subsection (b) of section 3 of the Act [Code § 33-26A-3(b)(1)] and excluded from coverage in whole or in part, under paragraph (a), subdivision (2), subsection (b) of section three of the Act [Code § 33-26A-3(b)(2)(A)].

2.8. "Notice" means the notice required to be given to a policyholder of an Excluded Policy pursuant to Section 19(d) of the Act and as set forth in Appendix A of this rule.

2.9. "Summary Document" means the document, required by Subsection (b), Section 19 of the Act, as prepared by the Association and approved by the Commissioner which describes the general purposes and current limitations of the Act.

2.10 "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, 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 article twenty-five of this chapter: Provided, That the term "member insurer" does not include a health maintenance organization, a fraternal benefit society, a mandatory state polling plan, a mutual assessment company or any entity that operates on an assessment basis, an insurance exchange, or any entity similar to any of the above excluded entities.

### § 114-36-3. Form and Content of Notice.

3.1. Sixty (60) days after approval of the Summary Document by the Commissioner, ~~on or after August 2, 1993,~~ no insurer or agent may deliver an Excluded Policy to a policy or contract holder, unless the Notice required by Code § 33-26A-19(d) is delivered to the policy or contract holder prior to or at the time of delivery of the Excluded Policy.

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

3.3. The Notice shall be printed on a separate sheet of paper in a minimum 10 point type. The Notice may not include the name and address of the insurance company issuing the Excluded

Insurance Commissioner  
Legislative Rule  
Title 114, Series 36

Policy or the name and address of the agent who procured the Excluded Policy.

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

3.5. A form filing is not required for the Notice.

**§ 114-36-4. Form and Content of Disclaimer.**

4.1. Sixty (60) days after approval of the Summary Document by the Commissioner, no insurer or its agent may deliver a Covered Policy to a policy or contract holder unless the Summary Document and Disclaimer is delivered to the policy or contract holder prior to or at the time of delivery of the Covered Policy.

4.2. If a "free look" period is not required by state law for the type of policy coverage being solicited, the Summary Document and Disclaimer must be delivered by the insurer or agent to the applicant at the time of solicitation or preliminary negotiations.

4.3. An insurer or its agent shall make the Summary Document and Disclaimer available to a policyholder upon request.

4.4. The insurer or agent making the delivery of the Disclaimer and Summary Document shall maintain a record of such delivery.

4.5. The Disclaimer shall be printed in a minimum 10 point type and printed on the face of the Summary Document. ~~This~~The Disclaimer may not include the name and address of the insurance company issuing the Covered Policy or the name and address of the agent who procured the Covered Policy.

4.6. The Disclaimer shall be identical to that prescribed by the Commissioner in Appendix ~~BA~~ of this rule. The Disclaimer and Summary Document shall be a single document.

4.7. A form filing is not required for the Summary Document ~~or~~ and the Disclaimer.

APPENDIX A

~~NOTICE OF EXCLUSION FROM COVERAGE OR LIMITED  
COVERAGE UNDER THE WEST VIRGINIA LIFE AND HEALTH  
INSURANCE GUARANTY ASSOCIATION ACT~~

~~Residents of West Virginia who purchase life insurance, annuities, or health insurance should know that insurance companies licensed in West Virginia to write these types of insurance are members of the West Virginia Life and Health Insurance Guaranty Association (the "Guaranty Association"). The purpose of the Guaranty Association is assure that policyholders will be protected, within limits, in the event that a member insurance company becomes financially unable to meet its obligations. If this should happen, the Guaranty Association will assess its member insurance companies for the money to pay the claims of insured persons living in this State and, in some cases, to keep coverage in force. The valuable extra protection provided by insurers through the Guaranty Association is not unlimited, however.~~

~~The Guaranty Association may NOT provide coverage for this policy, or a portion of this policy. If coverage is provided by the Guaranty Association, it may be subject to substantial limitations or exclusions.~~

~~Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurance company or for which you have assumed the risk, such as a variable contract sold by prospectus.~~

~~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.~~

~~Insurance companies and 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 West Virginia Life and Health Insurance Guaranty Association to induce you to purchase any kind of insurance policy.~~

~~Inquiries concerning this Notice may be directed to the following:~~

~~West Virginia Insurance Commission  
Consumer Services Division  
2019 Washington Street, East  
P.O. Box 50540  
Charleston, West Virginia 25305-0540  
(304) 558-3386  
Toll Free 1-800-435-7381~~

~~West Virginia Life and Health Insurance Guaranty Association  
Post Office Box 816  
Huntington, West Virginia 25712~~

~~This Notice does not change anyone's rights or obligations under the Guaranty Act or the rights or obligations of the Guaranty Association.~~

~~APPENDIX B~~

~~WEST VIRGINIA LIFE AND HEALTH INSURANCE  
GUARANTY ASSOCIATION DISCLAIMER~~

~~The West Virginia Life and Health Insurance Guaranty Association (the "Guaranty Association") provides coverage of claims under some types of life, health and annuity policies if the insurer becomes financially unable to meet its obligations. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is provided, there are substantial limits and exclusions. Coverage may be conditioned on residence in West Virginia. Other conditions may also preclude coverage.~~

~~Your insurer and its agents are prohibited by law from using the existence of the Guaranty Association or its coverage to sell you an insurance policy. You should not rely on availability of coverage under the Guaranty Association when selecting an insurer or an 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 Insurance Commission  
Consumer Services Division  
2019 Washington Street, East  
Post Office Box 50540  
Charleston, West Virginia 25305-0540  
(304) 558-0401  
Toll Free 1-800-435-7381~~

~~or~~

~~West Virginia Life and Health Insurance Guaranty Association  
Post Office Box 816  
Huntington, West Virginia 25712~~

~~This document does not change anyone's right or obligations under the Guaranty Act or the rights and obligations of the Guaranty Association.~~

APPENDIX A

**NOTICE CONCERNING COVERAGE  
LIMITATIONS AND EXCLUSIONS UNDER THE WEST VIRGINIA  
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT**

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 and 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. You should check with your insurance company representative to determine if you are only covered in part or not covered at all.

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  
Martinsburg, West Virginia 25712

West Virginia Insurance Commissioner  
Consumer Services Division  
2019 Washington Street, East  
P. O. Box 50540  
Charleston, West Virginia 25305-0540  
(304) 558-0401  
Toll Free 1-800-435-7381

ATTACHMENT TO QUESTION 2(d):

Comments concerning the proposed rule were received from the following: American Council of Life Insurance (ACLI), Mountain State Blue Cross Blue Shield (MSBCBS), and West Virginia Life & Health Insurance Guaranty Association (WVLHIGA).

After reviewing the comments, the Department determined to make amendments to its proposed rule.

American Council of Life Insurance's (ACLI) comment addressed the summary document and disclaimer form. ACLI suggested using the National Organization of Life and Health Insurance Guaranty Association's "Model Summary Document and Disclaimer." The Insurance Commissioner agrees and has amended the proposed regulation to reflect the use of a single document as both the summary document disclaimer and notice.

ACLI also suggests that the requirement to maintain a separate record of delivery of the summary document and disclaimer to be incorporated to reflect that the maintenance of records of policy also constitute a record of delivery of the summary document and disclaimer. The Insurance Commissioner believes that to maintain consistent accountability, of both the insurer and agent, separate records of delivery should be kept.

Mountain State Blue Cross Blue Shield's (MSBCBS) comments address the requirements of a notice or disclaimer to be sent to subscribers under a self-funded health benefits plan. They believe that the rule may be pre-empted by the Employee's Retirement Income Security Act of 1974 ("ERISA"). The Insurance Commissioner

believes that this concern is addressed by the amended definition of "covered policy" in section 2.5 of this rule, which definition excludes self-funded or self-insured programs as defined by West Virginia Code §33-26A-3(b)(2)(D).

MSBCBS also expressed concern regarding the Summary Document, required in Section 4.1 through 4.7, and the disclaimer form. The Summary Document is not due to be filed by the WVLHIGA with the Insurance Commissioner until 180 days after July 9, 1993, the effective date of Act (West Virginia Code §33-26A-19(b)). The WVLHIGA intends to file a proposed Summary Document with the Commissioner for approval in the near future. The Insurance Commissioner is amending this rule to reflect a single disclaimer and notice form. Insurers will be notified by the Commissioner when the summary document has been approved.

West Virginia Life & Health Insurance Guaranty Association's (WVLHIGA) comments address changes in the Scope, Section 1.1; a definition change of "covered policy" in Section 2.5; adding a definition of "member insurer", subsection 2.10; and combining Appendix A and B to form a single document.

The Insurance Commissioner agrees to amend Section 1.1. In Section 2.5 the Insurance Commissioner agrees to the changes with the exception of "paragraph (A)," which should read "paragraph (D)."

The Insurance Commissioner agrees to add a new subsection 2.10 which defines the term "member insurer."

The Insurance Commissioner will amend Appendices A and B by withdrawing both and adding a new Appendix A.

As previously discussed, the Insurance Commissioner will adopt a single disclaimer and notice form and has amended this rule to reflect same.



**American Council of Life Insurance**

J. Bruce Ferguson  
Legislative Director

August 10, 1993

**RECEIVED**  
AUG 11 1993  
LEGAL DIVISION  
W. VA. INS. DEPT.

**VIA FACSIMILE AND EXPRESS MAIL**

Jeffrey W. Van Gilder, Esq.  
Associate Counsel  
State of West Virginia  
Department of Insurance  
2019 Washington Street East  
Charleston, WV 25305

**Re: Proposed Regulation Title 114, Series 36 -- West Virginia  
Life and Health Insurance Guaranty Association Act Notice  
Requirement**

Dear Jeff:

This statement is submitted on behalf of the member companies of the American Council of Life Insurance ("ACLI"). The ACLI is a trade association whose 634 member companies account for approximately 90 percent of the life insurance in force in the United States. Three hundred and ninety-seven of the ACLI's member companies are licensed to do business in West Virginia, and account for approximately 92 percent of the life insurance in force in the state. We appreciate the opportunity to comment on the above-captioned proposed regulation.

As you know, the ACLI supported the enactment of the West Virginia Life and Health Insurance Guaranty Association Act, which is based on the most recent NAIC Model Act and which provides the authority for this proposed regulation. Accordingly, we support this proposed regulation, but would like to raise some concerns we have with respect to the content of the summary document/disclaimer form and its effective date.

Section 33-26A-19, which provides the authority for this proposed regulation, is based on Section 19 of the NAIC Model Act. This section establishes several disclosure requirements with respect to the nature and scope of guaranty association coverage, some of which appear to overlap with one another and therefore are

difficult to implement. To illustrate, Section 19(b) requires the guaranty association, within 180 days of the effective date of the Act, to prepare a summary document describing the general purposes and current limitations of the coverage under the Act. The summary document is to be submitted to the Commissioner for approval, and, 60 days after such approval, must accompany all policies delivered in the state. Section 19(c) requires the summary document to contain a prescribed disclaimer relating to coverage, the form and content of which are to be established via promulgation of a rule by the Commissioner. Thus, while the statute envisions that a single disclosure document accompany all policies, part of that document (the summary) is required to be drafted by the guaranty association and submitted to the Commissioner for approval, and the other part of the document (the disclaimer) is required to be established by the Commissioner via regulation.

To further complicate things, Section 19(d) requires insurers and agents, prior to or at the time of delivery of the policy, to give the policyholder written notice separate from the policy disclosing that the policy is not covered by the guaranty association if such is the case. The form and content of the notice are to be specified by regulation of the Commissioner; in this case, by August 2, 1993.

All of this has led to questions about how many disclosure forms there must be, who is responsible for drafting them, how they are implemented and when they become effective. For example, insurers would be unsure whether and when they should send one disclosure form, or two. Policyholders would be confused when they received a document stating that their policy may not be protected, followed by another one that stated that their policy was not protected. The Insurance Department would be caught in the middle trying to resolve the conflict between the two.

To remedy this confusion, the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") established a task force in 1989 to study the issue, which resulted in the development of a Model Summary Document and Disclaimer meeting the requirements of Section 19. In providing clear and meaningful information to policyholders in a single form, this Model also minimizes the burden on insurers, insurance departments and agents in complying with the law.

As you will note from the compilation in Attachment A, most states have adopted the NOLHGA approach and its single disclosure document. Attachment B is a draft of a disclosure form developed by

Jeffrey W. Van Gilder, Esq.  
August 10, 1993  
Page 3

the West Virginia guaranty association which follows the NOLHGA approach. The ACLI recommends that this disclosure form be used to satisfy all the disclosure requirements prescribed in Section 19 once it is adopted by the guaranty association and submitted to the Commissioner for approval. This regulation, in essence, would become the vehicle for approval of the single disclosure form.

From a timing perspective, adoption of the NOLHGA approach to disclosure will make it easier for insurers to begin to comply with, since it is already in place in many states. We do recommend, however, that a reasonable period of time be given to insurers to comply with the disclosure requirement -- preferably 60 days after Commissioner has approved the document submitted to him by the guaranty association.

Our final comment relates to the requirement that insurers maintain a record of delivery of the summary document and disclaimer. Insurers routinely keep a record of when a policy is delivered; under the disclosure approach we are recommending, the summary document/disclaimer will automatically accompany the policy. We therefore respectfully recommend that the proposed regulation be amended to reflect that maintenance of records of policy delivery also constitutes a record of delivery of the summary document and disclaimer.

We appreciate the opportunity to comment on this proposed regulation. If you have any questions or would like additional information, please let me know.

Very truly yours,

  
J. Bruce Ferguson

JBF  
Attachments



STATE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
ADVERTISING AND DISCLOSURE REQUIREMENTS

STATE	ADVERTISING PROHIBITION	SUMMARY DOCUMENT AND DISCLAIMER REQUIRED BY LAW	SUMMARY DOCUMENT AND DISCLAIMER PROMULGATED BY INSURANCE DEPT'T	SUMMARY DOCUMENT AND DISCLAIMER SIMILAR TO NOLHGA FORM	OTHER DISCLOSURE REQUIRED BY LAW	OTHER DISCLOSURE PROMULGATED BY INSURANCE DEPT'T
AL	NO	NO				
AK	YES	NO				
AZ	NO	NO				
AR	YES	YES	YES	YES		
CA	YES	YES	YES	YES		
CO	YES	YES	YES	YES		
CT	YES	NO				
DE	YES	NO				
DC	YES	YES	YES	YES		
FL	YES	NO				
GA	YES	NO				
HI	YES	YES	YES	NO		TWO FORMS REQUIRED
ID	YES	NO				
IL	YES	NO				
IN	YES	NO				
IA	YES	NO				
KS	YES	YES	YES	NO		VARIATION OF NOLHGA



STATE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
ADVERTISING AND DISCLOSURE REQUIREMENTS

STATE	ADVERTISING PROHIBITION	SUMMARY DOCUMENT AND DISCLAIMER REQUIRED BY LAW	SUMMARY DOCUMENT AND DISCLAIMER PROMULGATED BY INSURANCE DEP'T	SUMMARY DOCUMENT AND DISCLAIMER SIMILAR TO NOLHGA FORM	OTHER DISCLOSURE REQUIRED BY LAW	OTHER DISCLOSURE PROMULGATED BY INSURANCE DEP'T
KY	YES	NO				
LA	YES	YES	YES	YES		
ME	YES	NO				
MD	YES	NO				
MA	YES	NO				
MI	NO	NO				
MN	YES	YES	NO	NO	YES	REQUIRES INSURERS AND AGENTS TO PROVIDE NOTICE ABOUT ASSOCIATION'S COVERAGE AT TIME OF APPLICATION. FORM OF NOTICE IN S. 2463 (1992).
MS	YES	NO				
MO	YES	YES	YES	YES	YES	IF A POLICY EXCEEDS COVERAGE LIMITATIONS, INSURER SHALL INSCRIBE ON CONTRACT ENDORSEMENT THE ASSOCIATION'S COVERAGE LIMITS



STATE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
ADVERTISING AND DISCLOSURE REQUIREMENTS

STATE	ADVERTISING PROHIBITION	SUMMARY DOCUMENT AND DISCLAIMER REQUIRED BY LAW	SUMMARY DOCUMENT AND DISCLAIMER PROMULGATED BY INSURANCE DEP'T	SUMMARY DOCUMENT AND DISCLAIMER SIMILAR TO NOLHGA FORM	OTHER DISCLOSURE REQUIRED BY LAW	OTHER DISCLOSURE PROMULGATED BY INSURANCE DEP'T
MT	YES	NO				
NE	YES	NO				
NV	YES	YES	YES	YES		
NH	YES	NO				
NJ	YES	YES	YES	YES		
NM	YES	NO				
NY	YES	NO				
NC	YES	YES	YES	YES	YES	
ND	YES	YES	YES	YES	YES	
OH	YES	YES	YES	YES	YES	
OK	YES	YES	YES	YES	YES	
OR	YES	NO				
PA	YES	YES				
PR	YES	NO				
RI	YES	NO				
SC	YES	NO				



STATE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
ADVERTISING AND DISCLOSURE REQUIREMENTS

STATE	ADVERTISING PROHIBITION	SUMMARY DOCUMENT AND DISCLAIMER REQUIRED BY LAW	SUMMARY DOCUMENT AND DISCLAIMER PROMULGATED BY INSURANCE DEPT'T	SUMMARY DOCUMENT AND DISCLAIMER SIMILAR TO NOLHGA FORM	OTHER DISCLOSURE REQUIRED BY LAW	OTHER DISCLOSURE PROMULGATED BY INSURANCE DEPT'T
SD	YES	YES	YES	YES		
TN	YES	YES	YES	YES		
TX	YES	YES	NO			
UT	YES	YES	YES	NO		VARIATION OF NOLHGA - FORM MUST BE FILED WITH DEPARTMENT
VT	YES	NO				
VA	YES	NO				
WA	YES	NO				
WV	YES	NO				
WI	YES	NO				
WY	YES	YES	YES	YES		

**DRAFT****NOTICE CONCERNING COVERAGE  
LIMITATIONS AND EXCLUSIONS UNDER THE WEST VIRGINIA  
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT**

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 and 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. You should check with your insurance company representative to determine if you are only covered in part or not covered at all.

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  
2019 Washington Street, East  
P. O. Box 50540  
Charleston, West Virginia 25305-0540  
(304) 558-0401  
Toll Free 1-800-435-7381

# DRAFT

The state law that provides for this safety-net coverage is called the West Virginia Life and Health Insurance Guaranty Association Act. The following 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
- experience rating credits given in connection with the administration of a policy by a group contract holder;
- 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.

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- 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.

## 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.

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 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 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.

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August 12, 1993

HAND-DELIVERY

Jeffrey W. VanGilder, Esq.  
Associate Counsel  
State of West Virginia  
Department of Insurance  
2019 Washington Street, East  
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LEGAL DIVISION  
W. VA. INS. DEPT.

RE: Proposed Regulation Title 114, Series 36 --  
West Virginia Life and Health Insurance  
Guaranty Association Act Notice Requirement

Dear Mr. VanGilder:

This statement is submitted on behalf of the West Virginia Life and Health Insurance Guaranty Association (the "Association") concerning the above-referenced proposed regulations.

1. The Association proposes that subsection 1.1 (114-36-1.1) be amended and rewritten as follows:

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 to those persons specified in subsection (a), section three of the Act (Code § 33-26A-3(a)).

2. The Association proposes that subsection 2.5 (114-36-2.5) be amended and rewritten as follows:

2.5 "Covered Policy" means any policy or contract described in subdivision (1) of subsection (b) of section 3 of the Act (Code § 33-26A-3(b)(1)), unless paragraph (A), subdivision (2), subsection (b), of section three of

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the Act (Code § 33-26A-3(b)(2)(A)) applies to such policy.

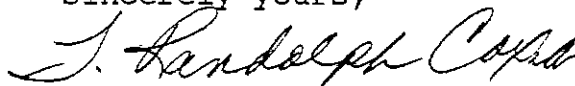
3. The Association proposes that a new subsection 2.10 (114-36-2.10) be added. This new subsection would be a definition for the term "member insurer" and would contain the same definition as that contained in Code § 33-26A-5(8).

4. In paragraph 3 of the Notice (Appendix A), the Commissioner has apparently made the determination that a variable contract sold by prospectus is not covered either in whole or in part by the Association. This is an issue raised by a number of insurers in protests brought against the most recent assessments of the Association.

5. The Association is required to submit to the Commissioner for his approval in accordance with 33-26A-19(b) a summary document within 180 days of the effective date of this new section. Such summary document has been drafted and subject to receiving Board approval will be submitted to the Commissioner in the near future. The Association concurs with the comments submitted by the American Council of Life Insurance regarding disclosure documents. The use of two or three separate documents will be confusing for the consumer and difficult for the member insurers to administer. Accordingly, the Association supports the use of a single disclaimer and summary document.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me.

Sincerely yours,



T. RANDOLPH COX, COUNSEL  
WEST VIRGINIA LIFE & HEALTH  
INSURANCE GUARANTY ASSOCIATION

TRC/lb



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August 13, 1993

Jeffrey W. VanGilder, Esquire  
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Offices of the Insurance Commissioner  
2019 Washington Street, East  
Charleston, West Virginia 25305-0540

RE: WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT  
NOTICE REQUIREMENTS

Dear Mr. VanGilder:

Please accept the following as our comments to the above entitled regulation:

1. Insofar as the regulation requires a notice or disclaimer to be sent to subscribers under a self-funded health benefits plan, such regulation may be pre-empted by the Employee's Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. Section 1001 et. seq.).
2. We have no knowledge concerning the finalization of the Summary Document required by Section 4.1 through 4.7 of the regulation.
3. There is very little distinction in the language between the notice and the disclaimer. Both the disclaimer and the notice should use more definitive language relating to whether coverage is provided by the Association or not.

I hope these comments will be helpful.

Sincerely,

Richard W. Adkins  
Associate Corporate Counsel

RWA/klj