



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

May 31, 2019

Maureen Lewis, Assistant Director
Administrative Law
Office of the Secretary of State
State Capitol Building
Charleston, WV 25305

FILED
2019 MAY 31 P 12:30
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**Re: Title 114, Series 36
West Virginia Life and Health Insurance Guaranty Association Act
Notice Requirements**

Dear Ms. Lewis:

This letter is to advise the Office of the Secretary of State that W.Va. Code §§ 33-26A-19(c) and (d) were amended by the Legislature in 2019 to strikethrough/repeal the West Virginia Offices of the Insurance Commissioner's rulemaking authority for its Title 114, Series 36 Legislative rule, "West Virginia Life and Health Insurance Guaranty Association Act Requirements," which became effective on April 14, 2010.

W.Va. Code §§ 33-26A-19(c) and (d) were amended via House Bill 2690 (2019). The amendments became effective on May 29, 2019. Therefore, in accordance with West Virginia Code §29A-1-3b, the agency believes that this rule is now void.

I have enclosed a highlighted copy of House Bill 2690 and a copy of the voided rule for your convenience. Please do not hesitate to contact our office if you have any questions.

Sincerely,

Erin K. Hunter
Deputy Commissioner/General Counsel

EKH/jlz
Enclosures



§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

(a) A person, including a member insurer, agent, or affiliate of a member insurer, 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 any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by the West Virginia Life and Health Insurance Guaranty Association Act: *Provided*, That this section shall not apply to the association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

(b) Within 180 days of the effective date of this article, the association shall prepare a summary document describing the general purposes and current limitations of the act and complying with §33-26A-19(c) of this code. This document ~~should~~shall be submitted to the commissioner for approval. Sixty days after receiving such approval, no member insurer may deliver a policy or contract described in §33-26A-3(b)(1) of this code to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee prior to or at the time of delivery of the policy or contract ~~except if §33-26A-19(d) of this code applies.~~ The document ~~should~~shall also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery, or contents or interpretation of this document shall not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the article may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this article.

(c) The document prepared under §33-26A-19(b) of this code shall contain a clear and conspicuous disclaimer on its face. The commissioner shall ~~propose rules for legislative approval in accordance with the provisions of §20A-3-1 et seq. of this code establishing~~establish the form and content of the disclaimer. The disclaimer shall:

(1) State the name and address of the association and insurance department;

(2) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that the association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(3) State the types of policies or contracts for which guaranty funds will provide coverage;

(4) State that the member insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage;

(5) Emphasize that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the association when selecting an insurer or health maintenance organization;

(6) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this article; and

(7) Provide other information as directed by the commissioner.

~~(d) An insurer or agent may not deliver a policy or contract described in §33-26A-3(b)(1) of this code and excluded under §33-26A-3(b)(2)(A) of this code from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policy owner, contract owner, certificate holder, or enrollee a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the association. The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code specifying the form and content of the notice.~~
(d) A member insurer shall retain evidence of compliance with §33-26A-19(b) of this code for so long as the policy or contract for which the notice is given remains in effect.

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2690

BY DELEGATES WESTFALL, AZINGER, NELSON, WILLIAMS

AND PORTERFIELD

[Passed February 28, 2019; in effect ninety days from

passage.]

1 AN ACT to amend and reenact §33-26A-19 of the Code of West Virginia, 1931, as amended,
2 relating to guaranty associations; and making revisions consistent with the National
3 Association of Insurance Commissioners Life and Health Insurance Guaranty Association
4 Model Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY.

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

1 (a) A person, including a member insurer, agent, or affiliate of a member insurer, shall not
2 make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to
3 be made, published, disseminated, circulated, or placed before the public, in any newspaper,
4 magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or
5 over any radio station or television station, or in any other way, any advertisement,
6 announcement, or statement, written or oral, which uses the existence of the insurance guaranty
7 association of this state for the purpose of sales, solicitation, or inducement to purchase any form
8 of insurance or other coverage covered by the West Virginia Life and Health Insurance Guaranty
9 Association Act: *Provided*, That this section shall not apply to the association or any other entity
10 which does not sell or solicit insurance or coverage by a health maintenance organization.

11 (b) Within 180 days of the effective date of this article, the association shall prepare a
12 summary document describing the general purposes and current limitations of the act and
13 complying with §33-26A-19(c) of this code. This document shall be submitted to the commissioner
14 for approval. Sixty days after receiving such approval, no member insurer may deliver a policy or
15 contract described in §33-26A-3(b)(1) of this code to a policy owner, contract owner, certificate
16 holder, or enrollee unless the summary document is delivered to the policy owner, contract owner,
17 certificate holder, or enrollee prior to or at the time of delivery of the policy or contract. The
18 document shall also be available upon request by a policy owner, contract owner, certificate

19 holder, or enrollee. The distribution, delivery, or contents or interpretation of this document shall
20 not guarantee that either the policy or the contract or the policy owner, contract owner, certificate
21 holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer.
22 The description document shall be revised by the association as amendments to the article may
23 require. Failure to receive this document does not give the policy owner, contract owner,
24 certificate holder, enrollee, or insured any greater rights than those stated in this article.

25 (c) The document prepared under §33-26A-19(b) of this code shall contain a clear and
26 conspicuous disclaimer on its face. The commissioner shall establish the form and content of the
27 disclaimer. The disclaimer shall:

28 (1) State the name and address of the association and insurance department;

29 (2) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that
30 the association may not cover the policy or contract or, if coverage is available, it will be subject
31 to substantial limitations and exclusions and conditioned on continued residence in the state;

32 (3) State the types of policies or contracts for which guaranty funds will provide coverage;

33 (4) State that the member insurer and its agents are prohibited by law from using the
34 existence of the association for the purpose of sales, solicitation, or inducement to purchase any
35 form of insurance or health maintenance organization coverage;

36 (5) Emphasize that the policy owner, contract owner, certificate holder, or enrollee should
37 not rely on coverage under the association when selecting an insurer or health maintenance
38 organization;

39 (6) Explain rights available and procedures for filing a complaint to allege a violation of
40 any provisions of this article; and

41 (7) Provide other information as directed by the commissioner.

42 (d) A member insurer shall retain evidence of compliance with §33-26A-19(b) of this code
43 for so long as the policy or contract for which the notice is given remains in effect.