



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

June, 2019

WEST VIRGINIA INFORMATIONAL LETTER

NO. 204

**TO: All Insurers and Health Maintenance Organizations Defined as a “Member Insurer”
Under the West Virginia Life and Health Insurance Guaranty Association Act**

**RE: West Virginia Life and Health Insurance Guaranty Association Act Summary
Document**

The objective of this Informational Letter is to approve the summary document prepared by the West Virginia Life and Health Insurance Guaranty Association.

West Virginia Code § 33-26A-19(b) requires the Life and Health Insurance Guaranty Association to prepare a summary document describing the general purposes and current limitations of the West Virginia Life and Health Insurance Guaranty Association Act (the “Act”), to revise the document when substantive amendments are made to the Act, and to submit the summary document to the Insurance Commissioner for approval. The West Virginia Legislature amended the Act in 2018 to incorporate amendments made to the Life and Health Insurance Guaranty Association Model Act by the National Association of Insurance Commissioners (“NAIC”) in 2017. The West Virginia Legislature further amended the Act in 2019 to make W. Va. Code § 33-26A-19 consistent with Section 19 of the NAIC’s Model Act.

West Virginia Code § 33-26A-19(c) requires the Insurance Commissioner to establish the form and content of a clear and conspicuous disclaimer to be contained on the face of the summary document prepared pursuant to W. Va. Code § 33-26A-19(b). The statute mandates that the disclaimer:

- (1) State the name and address of the Guaranty Association and the Insurance Commissioner;
- (2) Prominently warn the policy owner, contract owner, certificate holder or enrollee that the Guaranty Association may not cover the policy or contract or, if coverage is available, that 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 the Guaranty Association will provide coverage;
- (4) State that the member insurer and its agents are prohibited by law from using the existence of the Guaranty 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 Guaranty 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 Article 26A, Chapter 33 of the West Virginia Code; and
- (7) Provide other information as directed by the Insurance Commissioner.

No member insurer of the West Virginia Life and Health Insurance Guaranty Association may deliver a policy or contract described in W. Va. Code § 33-26A-3(b)(1) to a policy or contract owner, certificate holder or enrollee on or after July 1, 2019, unless the summary document contained in Appendix A is delivered to the policy or contract owner, certificate holder or enrollee prior to or at the time of delivery of the policy or contract. The summary document shall also be available upon request by a policy owner, contract owner, certificate holder or enrollee.

The summary document shall be printed on a separate sheet of paper and shall be identical to that approved by the Insurance Commissioner in Appendix A. 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. West Virginia Code § 33-26A-19(d) requires member insurers to retain evidence of compliance with W. Va. Code § 33-26A-19(b) for as long as the policy or contract for which the notice is given remains in effect.

Please e-mail any questions concerning this Informational Letter to OICInformationalLetters@wv.gov or call (304) 558-0401.



James A. Dodrill
Insurance Commissioner

**SUMMARY OF THE
WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT
(Effective July 1, 2019)**

Residents of West Virginia who purchase life insurance, annuities or health insurance should know that the insurance companies and health maintenance organizations 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 and contract owners, certificate holders and enrollees of covered policies and contracts 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 insurers for the money to pay the claims of covered persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these member 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 or contract. 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 health maintenance organization or in selecting an insurance policy or contract. 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 and health maintenance organizations or their agents are required by law to give or send you this notice. *However, insurance companies, health maintenance organizations 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 or health maintenance organization coverage.*

The Guaranty Association or the West Virginia Insurance Commission will respond to questions you may have that 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
900 Pennsylvania Avenue
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, health or annuity policy, plan or contract, or if they are insured under a group life, health or annuity policy, plan or contract, issued by a member insurer. Member insurer also includes non-profit service corporations (W. Va. Code §33-24), health care corporations (W. Va. Code §33-25) and health maintenance organizations (W. Va. Code §33-25A). 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, plans or contracts are not protected by this Guaranty Association if:

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

The Guaranty Association also does not provide coverage for:

- Any policy, plan or contract, or portion of a policy, plan or contract that is not guaranteed by the member 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, plan or contract 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;
- Any unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension guaranty corporation;
- Any portion of any unallocated contract that is not issued to or in connection with a specific employee, union or association's benefit plan or a governmental lottery;
- Any policy, plan or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Medicare Part C and D or Medicaid;
- An obligation that does not arise under the written terms of the policy, plan or contract, 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 accounting 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;
- Structured settlement annuity benefits, the rights to which have been transferred by the payee or beneficiary in a structured settlement factoring transaction.

LIMITS ON AMOUNT OF COVERAGE

The Act also limits the amount the Guaranty Association is obligated to pay out. The Guaranty Association cannot pay more than what the member insurer would owe under a policy, plan or contract. Also, for any one insured life, regardless of the number of policies, plans or contracts, the Guaranty 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 income insurance;
- \$300,000 for long term care insurance;
- \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
- \$500,000 for health benefit plans (W. Va. Code §33-26A-5(10)); and
- \$100,000 for all other types of accident and sickness insurance coverages not defined as disability income insurance, long term care insurance, or health benefit plans.

Also, for any one insured life, the Guaranty 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 health benefit plans, 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 the present value of annuity benefits, including net cash surrender and net cash withdrawal values, per participating individual. In no event shall the Guaranty 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.