

## Article - Insurance

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§9-403.

(a) This subtitle is intended to provide coverage to a person who is a resident of this State and, in special circumstances, to a nonresident.

(b) (1) For contracts other than structured settlement annuities, subject to paragraph (2) of this subsection, coverage shall be provided under this subtitle for the policies or contracts specified in subsection (g) of this section to a person who is:

(i) a resident and an owner of or certificate holder or enrollee under the policy or contract; or

(ii) a nonresident and an owner of or certificate holder or enrollee under the policy or contract, if:

1. the member insurer that issued the policy or contract is domiciled in this State;

2. the state in which the nonresident resides has an insurance guaranty corporation or its equivalent similar to the Corporation established by § 9-405 of this subtitle; and

3. the nonresident is not eligible for coverage by the insurance guaranty corporation or its equivalent in the state in which the nonresident resides because the insurer or health maintenance organization was not licensed in that state at the time specified in that state's guaranty corporation or association law.

(2) Coverage shall be provided under this subtitle for the policies or contracts specified in paragraph (1) of this subsection to a beneficiary, assignee, or payee, including a health care provider rendering services covered under health insurance policies, contracts, or certificates, of a person covered under paragraph (1) of this subsection, regardless of the person's residence.

(c) Except as provided in subsections (a), (d), and (e) of this section, this subtitle shall provide coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if:

(1) (i) the payee is a resident, regardless of where the contract owner resides; or

(ii) the payee is not a resident and:

1. the contract owner of the structured settlement annuity is a resident; or

2. A. the contract owner of the structured settlement annuity is not a resident;

B. the insurer that issued the structured settlement annuity is domiciled in this State; and

C. the state in which the contract owner resides has an association similar to the Corporation; and

(2) the payee or beneficiary, and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(d) This subtitle does not provide coverage to:

(1) a person who is a payee or beneficiary of a contract owner who is a resident of this State, if the payee or beneficiary is provided any coverage by the association of another state;

(2) a person who otherwise would receive coverage under this subtitle, if the person is provided coverage under the laws of another state; or

(3) a person who acquires the right to receive payments through a structured settlement factoring transaction, as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction occurred before or after the effective date of 26 U.S.C. § 5891(c)(3)(A).

(e) To determine coverage under this section under circumstances in which a person could be covered by the association of more than one state, whether as an owner, a payee, an enrollee, a beneficiary, or an assignee, this subtitle shall be construed in conjunction with other state laws to result in coverage by only one association.

(f) (1) To determine coverage under this section, a person may be a resident of only one state.

(2) To determine coverage under this section, a person shall be treated as a resident of the state of domicile of the insurer or health maintenance organization that issued the relevant policy or contract if:

(i) the person is a citizen of the United States and is a resident of a foreign country; or

(ii) the person is a resident of a United States possession, territory, or protectorate that does not have an association similar to the Corporation.

(g) (1) Except as provided in paragraph (2) of this subsection or otherwise limited by this subtitle, coverage shall be provided under this subtitle to persons specified in subsections (b) and (c) of this section for the following policies and contracts issued by member insurers:

(i) direct, nongroup life insurance, health insurance, which for the purposes of this subtitle includes health maintenance organization subscriber contracts and group master certificates, annuities, including structured settlement annuities, and supplemental policies or contracts to any of these; or

(ii) certificates under direct, group policies or contracts, and supplemental policies or contracts to any of these.

(2) Coverage may not be provided under this subtitle for:

(i) any part of a policy or contract that is not guaranteed by the member insurer, or under which the risk is borne by the policyholder or contract holder;

(ii) a policy or contract of reinsurance, unless assumption certificates have been issued;

(iii) except for a part of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits, any part of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

1. averaged over the period of 4 years before the date on which the Corporation becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average for the 4-year period before the date on which the Corporation became obligated or, if the policy or contract was issued less than 4 years before the Corporation became obligated, for that period; or

2. on or after the date on which the Corporation becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from the most recent published Moody's corporate bond yield average;

(iv) a 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 benefits payable by an employer, association, or similar entity under:

1. a multiple employer welfare arrangement, as defined in 29 U.S.C. § 1002(40);

2. a minimum premium group insurance plan;

3. a stop-loss group insurance plan; or

4. an administrative services only contract;

(v) any part of a policy or contract to the extent that it provides dividends or experience rating credits or provides that a fee or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(vi) a policy or contract issued in the State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in the State;

(vii) an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by an insurer under the annuity contract or group certificate, including the following contracts:

1. unallocated funding agreements;

2. unallocated annuity contract benefits;

3. deposit administration contracts; or

4. guaranteed investment contract accounts;

(viii) a policy issued by an organization as provided in § 1-202(3) of this article;

(ix) an annuity agreement issued under § 16–114 of this article;

(x) a portion of a policy or contract to the extent that the assessments required by § 9–409 of this subtitle with respect to the policy or contract are preempted by federal or state law;

(xi) an obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including without limitation:

1. claims made on marketing materials;
2. claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy form or contract filing or approval requirements;
3. misrepresentations of or regarding policy or contract benefits;
4. extra–contractual claims; and
5. a claim for penalties or consequential or incidental damages;

(xii) subject to paragraph (3) of this subsection, a portion of a policy or contract to the extent that it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner’s rights are subject to forfeiture, as of the date the member insurer becomes an impaired insurer or insolvent insurer under this subtitle, whichever is earlier;

(xiii) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits under any of the following provisions or regulations adopted under one of the following provisions:

1. Title 42, Chapter 7, Subchapter XVIII, Part C or Part D of the United States Code (“Medicare Part C & D”);
2. Title 42, Chapter 7, Subchapter XIX of the United States Code (“Medicaid”); or
3. Title 15, Subtitle 3 of the Health – General Article;

or

(xiv) a structured settlement annuity benefit to which a payee, or beneficiary of a payee if the payee is deceased, has transferred the rights in a structured settlement factoring transaction, as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction occurred before or after the effective date of 26 U.S.C. § 5891(c)(3)(A).

(3) If a policy's or contract's interest or changes in value are credited less frequently than annually, then to determine the values that have been credited and are not subject to forfeiture under this subsection, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

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