

Article - Insurance

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§9–414.

(a) This subtitle may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer or insolvent insurer operating under a plan with assessment liability.

(b) Assessable premiums may not be reduced because of § 9–403(g)(2)(iii) of this subtitle relating to interest limitations and because of § 9–407(k) of this subtitle relating to limitations with respect to an individual policyholder.

(c) (1) The Corporation shall keep records of all negotiations and meetings in which the Corporation or its representatives are involved to discuss the activities of the Corporation in carrying out its powers and duties under §§ 9–407 and 9–408 of this subtitle.

(2) Records of the negotiations or meetings described in paragraph (1) of this subsection shall be made public only:

(i) after the termination of a liquidation, rehabilitation, or conservation proceeding involving an impaired insurer or insolvent insurer;

(ii) after the termination of the impairment or insolvency of a member insurer; or

(iii) by court order.

(3) This subsection does not limit the duty of the Corporation to submit a report of its activities under § 9–415 of this subtitle.

(d) (1) In this subsection, “assets attributable to covered policies” means that proportion of the impaired insurer’s or insolvent insurer’s assets that the amount of the reserves that should have been established for the covered policies bears to the amount of the reserves that should have been established for all policies written by the impaired insurer or insolvent insurer.

(2) For the purpose of carrying out its obligations under this subtitle, the Corporation is considered a creditor of the impaired insurer or insolvent insurer to the extent of the impaired insurer’s or insolvent insurer’s assets attributable to covered policies reduced by any amounts to which the Corporation is entitled as subrogee under § 9–407(i) of this subtitle.

(3) The assets attributable to covered policies of the impaired insurer or insolvent insurer shall be used to continue the covered policies and pay the contractual obligations of the impaired insurer or insolvent insurer as required by this subtitle.

(e) (1) (i) Before the termination of a liquidation, rehabilitation, or conservation proceeding, the court may consider the contributions of the respective parties, including the Corporation, the stockholders, contract owners, certificate holders, enrollees, and policy owners of the impaired insurer or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired insurer or insolvent insurer.

(ii) In making a determination under subparagraph (i) of this paragraph, the court shall consider the welfare of the policyholders, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) A distribution to any stockholders of an impaired insurer or insolvent insurer may not be made until all of the assessments levied by the Corporation with respect to the impaired insurer or insolvent insurer have been fully recovered by the Corporation.

(f) It is a prohibited unfair method of competition, subject to Title 27 of this article (Unfair Trade Practices), for a person to make use in any manner of the protection afforded by this subtitle in the sale of insurance or health maintenance organization coverage.

(g) (1) Subject to the limitations of paragraphs (2) and (4) of this subsection, if an order for liquidation or rehabilitation of a member insurer domiciled in the State has been entered, the receiver appointed under the order shall have a right to recover on behalf of the member insurer, from any affiliate that controlled the member insurer, the amount of distribution, other than stock dividends paid by the member insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation.

(2) A dividend described in paragraph (1) of this subsection is not recoverable if the member insurer shows that:

(i) the distribution was lawful and reasonable when paid; and

(ii) the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(3) (i) A person that was an affiliate that controlled the member insurer when the distributions described in paragraph (1) of this subsection were paid is liable up to the amount of distributions the person received.

(ii) A person that was an affiliate that controlled the member insurer when the distributions described under paragraph (1) of this subsection were declared is liable up to the amount of distributions the person would have received if the distributions had been paid immediately.

(iii) Two or more persons that are liable with respect to the same distributions are jointly and severally liable.

(4) The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the impaired insurer or insolvent insurer to pay the contractual obligations of the impaired insurer or insolvent insurer.

(5) If a person liable under paragraph (3) of this subsection is insolvent, all of its affiliates that controlled it when the dividend was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(h) (1) A member insurer or insurance producer may not deliver a policy or contract that at the time of delivery exceeds the limitations imposed by § 9–407(k)(3) of this subtitle, or that is not subject to coverage under § 9–403 of this subtitle, unless the member insurer or insurance producer, before or at the time of delivery, provides the policyholder, certificate holder, enrollee, or contract holder with a separate written notice as provided in paragraph (2) of this subsection.

(2) The notice required under this subsection shall disclose clearly and conspicuously that:

(i) the policy or contract is not covered by, or exceeds the limitations of liability applicable to, the Corporation; and

(ii) the Corporation is not a department or unit of the State, and the liabilities or debts of the Corporation are not liabilities or debts of the State.

(3) The Commissioner shall adopt regulations establishing a standard form to be used by insurance producers and member insurers to conform with the provisions of this subsection.

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