

§4603. Scope

1. Application. This chapter applies to direct nongroup life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts and to certificates under direct group life insurance policies, health insurance policies and annuity contracts, except as limited by this chapter. For the purposes of this chapter:

A. Health insurance policies include individual and group health maintenance organization enrollment contracts, and health maintenance organizations are considered to be health insurers; [PL 2017, c. 382, §2 (NEW).]

B. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities and any immediate or deferred annuity contracts; and [PL 2017, c. 382, §2 (NEW).]

C. Benefits provided by a long-term care rider to a life insurance policy or annuity contract are considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates. [PL 2017, c. 382, §2 (NEW).]

[PL 2017, c. 382, §2 (AMD).]

1-A. Persons covered. This chapter provides coverage for the policies and contracts specified in subsection 1:

A. To any person, regardless of where the person resides, except for a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee or payee, including a health care provider rendering services covered under a health insurance policy or certificate, of a person covered under paragraph B; [PL 2017, c. 382, §3 (AMD).]

B. To any person who owns, or is a certificate holder or enrollee under, a policy or contract specified in subsection 1, other than a structured settlement annuity, who:

(1) Is a resident; or

(2) Is not a resident, if all the following conditions are met:

(a) The insurer that issued the policy or contract is domiciled in this State;

(b) The insurer never held a license or certificate of authority in the state in which the person resides;

(c) The state in which the person resides has an association similar to the Maine Life and Health Insurance Guaranty Association; and

(d) The person is not eligible for coverage by the association in that state; and [PL 2017, c. 382, §3 (AMD).]

C. To any person who is a payee under a structured settlement annuity, or to a beneficiary or beneficiaries of a payee if the payee is deceased, if the payee:

(1) Is a resident, regardless of where the contract owner resides; or

(2) Is not a resident, if all of the conditions of either division (a) or (b) are met:

(a) The contract owner of the structured settlement annuity is a resident; or

(b) The contract owner of the structured settlement annuity is not a resident, but:

(i) The insurer that issued the structured settlement annuity is domiciled in this State;

(ii) The state in which the contract owner resides has an association similar to the association created by this chapter; and

- (iii) 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.

This chapter does not provide coverage to 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 afforded any coverage by a similar association of another state. [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]

This chapter is intended to provide coverage to a person who is a resident, and, in special circumstances as provided by this section, to a person who is not a resident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person may not be provided coverage under this chapter. In determining the application of the provisions of this subsection in a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, enrollee or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.

[PL 2017, c. 382, §3 (AMD).]

2. Exceptions. This chapter does not apply to:

A. That portion of a policy or contract not guaranteed by an insurer; [PL 2005, c. 346, §2 (AMD); PL 2005, c. 346, §16 (AFF).]

B. Any policies or contracts, or any part of these policies or contracts, under which the risk is borne by the policyholder; [PL 2005, c. 346, §2 (AMD); PL 2005, c. 346, §16 (AFF).]

C. Any contract of reinsurance, other than reinsurance for which assumption certificates have been issued; [PL 2005, c. 346, §2 (AMD); PL 2005, c. 346, §16 (AFF).]

D. Any policy or contract issued by assessment mutuals and nonprofit hospital and medical service plans; [PL 2005, c. 346, §2 (AMD); PL 2005, c. 346, §16 (AFF).]

E. With the exception of a policy or contract or portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits, any portion of a policy or contract to the extent that the rate of interest on which it is based, 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 a period of 4 years before the date on which the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged over the same 4-year period or for a lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired insurer or becomes an insolvent insurer, whichever is earlier; and

(2) On or after the date on which the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently available; [PL 2017, c. 382, §4 (AMD).]

F. Any portion of a policy or contract issued to a plan or program of an employer, association or other person to provide life, health or annuity benefits to its employees, members or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association or other person under:

(1) A multiple employer welfare arrangement as defined in 29 United States Code, Section 1144;

(2) A minimum premium group insurance plan;

- (3) A stop loss group insurance plan; or
 - (4) An administrative-services-only contract; [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]
- G. Any portion of a policy or contract to the extent that it provides for:
- (1) Dividends or experience rating credits;
 - (2) Voting rights; or
 - (3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract; [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]
- H. Any policy or contract issued in this 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 this State; [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]
- I. Any portion of a policy or contract to the extent that the assessments required by section 4609 with respect to the policy or contract are preempted by federal or state law; [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]
- J. Any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner, policy owner, enrollee or certificate holder, including without limitation:
- (1) Claims based on marketing materials;
 - (2) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable form filing or approval requirements;
 - (3) Misrepresentations of or regarding policy or contract benefits;
 - (4) Extra-contractual claims; or
 - (5) Claims for penalties or consequential or incidental damages; [PL 2017, c. 382, §5 (AMD).]
- K. Any contractual agreement that establishes the member insurer's obligations 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 its trustee, neither of which is an affiliate of the member insurer; [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]
- L. Any unallocated annuity contract, except any annuity, whether allocated or unallocated, issued to a governmental retirement benefit plan established under the United States Internal Revenue Code, 26 United States Code, Section 401, 403(b) or 457; [PL 2017, c. 382, §6 (AMD).]
- M. Any portion of a policy or contract to the extent 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 that 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 becomes an insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph, 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; and [PL 2017, c. 382, §7 (AMD).]

N. Any policy or contract providing hospital, medical, prescription drug or other health care benefits pursuant to 42 United States Code, Chapter 7, Subchapter XVIII, Part C or D (2018), also known as Medicare Part C or D, or pursuant to 42 United States Code, Chapter 7, Subchapter XIX (2018), also known as Medicaid, or any regulations issued pursuant thereto. [PL 2017, c. 382, §8 (NEW).]

[PL 2017, c. 382, §§4-8 (AMD).]

3. Benefits; limitations of coverage. The benefits that the association may become obligated to cover may not exceed the least of:

A. The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; [PL 2017, c. 382, §9 (AMD).]

B. With respect to one life, regardless of the number of policies or contracts:

(1) Three hundred thousand dollars in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(2) The following limits for health insurance benefits:

(a) Three hundred thousand dollars for coverages not defined as disability income insurance, long-term care insurance or health plans as defined in section 4301-A, subsection 7, including any net cash surrender and net cash withdrawal values;

(b) Three hundred thousand dollars for disability income and long-term care insurance; or

(c) Five hundred thousand dollars for health plans as defined in section 4301-A, subsection 7; or

(3) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; [PL 2017, c. 382, §10 (AMD).]

C. With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values; and [PL 2009, c. 652, Pt. A, §35 (RPR).]

D. With respect to each individual participating in a governmental retirement benefit plan established under the United States Internal Revenue Code, 26 United States Code, Section 401, 403(b) or 457, or the beneficiaries of each individual if deceased, the financial interest of such participant allocated to an annuity contract by either the member insurer that issued the annuity or the plan, but not to exceed in the aggregate \$250,000 in present value of annuity benefits, including net cash surrender and net cash withdrawal values under all such annuities issued by the same member insurer. [PL 2009, c. 118, §4 (NEW); PL 2009, c. 118, §5 (AFF).]

[PL 2017, c. 382, §§9, 10 (AMD).]

4. Maximum obligation in benefits. Notwithstanding subsection 3, the association is not in any event obligated to cover more than:

A. An aggregate of \$300,000 in benefits with respect to any one life under subsection 3, paragraph B except with respect to benefits for health plans under subsection 3, paragraph B, subparagraph (2), in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one individual; or [PL 2017, c. 382, §11 (AMD).]

B. Five million dollars in benefits, regardless of the number of policies and contracts held by the owner, with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons. [PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]

[PL 2017, c. 382, §11 (AMD).]

5. Subrogation and assignment rights. The limitations set forth in subsections 3 and 4 are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

[PL 2005, c. 346, §2 (NEW); PL 2005, c. 346, §16 (AFF).]

6. Material economic benefits; contractual obligations. In performing its obligations to provide coverage under section 4608, the association is not required to guarantee, assume, reinsure, reissue or perform, or cause to be guaranteed, assumed, reinsured, reissued or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

[PL 2017, c. 382, §12 (AMD).]

SECTION HISTORY

PL 1983, c. 846 (NEW). PL 1989, c. 751, §§8-10 (AMD). PL 2005, c. 346, §2 (AMD). PL 2005, c. 346, §16 (AFF). PL 2009, c. 77, §§1, 2 (AMD). PL 2009, c. 118, §§1-4 (AMD). PL 2009, c. 118, §5 (AFF). PL 2009, c. 652, Pt. A, §§34, 35 (AMD). PL 2017, c. 382, §§2-12 (AMD).

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