

Combined Life and Health Insurance Company Guaranty Fund – Article VII, Health and Mental Hygiene (HMH), S.4007-C/ A.3007-C, Part Y, Subpart D

SUBPART D

Section 1. Legislative findings. The legislature finds that it is in the best interest of the people of this state to expand article 77 of the insurance law to protect insureds and health care providers against the failure or inability of a health or property/casualty insurer writing health insurance to perform its contractual obligations due to financial impairment or insolvency. The superintendent of financial services has the right and responsibility to enforce the insurance law and the authority to seek redress against any person responsible for the impairment or insolvency of the insurer, and nothing in this act is intended to restrict or limit such right, responsibility, or authority.

§ 2. The article heading of article 77 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

THE LIFE **AND HEALTH** INSURANCE COMPANY GUARANTY CORPORATION OF NEW YORK ACT

§ 3. Section 7701 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

§ 7701. Short title. This article shall be known and may be cited as "The Life **and Health** Insurance Company Guaranty Corporation of New York Act".

§ 4. Section 7702 of the insurance law, as amended by chapter 454 of the laws of 2014, is amended to read as follows:

§ 7702. Purpose. The purpose of this article is to provide funds to protect policy owners, insureds, **health care providers**, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, funding agreements and supplemental contracts issued by life insurance companies, **health insurance companies, and property/casualty insurance companies**, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies, contracts, or funding agreements. In the judgment of the legislature, the foregoing objects and purposes not being capable of accomplishment by a corporation created under general laws, the creation of a not-for-profit corporation of insurers is provided for by this article to enable the guarantee of payment of benefits and of continuation of coverages, and members of the corporation are subject to assessment to carry out the purposes of this article.

§ 5. Paragraphs 1 and 2 of subsection (a) of section 7703 of the insurance law, as added by chapter 454 of the laws of 2014, are amended to read as follows:

(1) This article shall apply to direct life insurance policies, health insurance policies, annuity contracts, funding agreements, and supplemental contracts issued by a life insurance company, **health insurance company, or property/casualty insurance company** licensed to transact life or health insurance or annuities in this state at the time the policy, contract, or funding agreement was issued or on the date of

entry of a court order of liquidation or rehabilitation with respect to such a company that is an impaired or insolvent insurer, as the case may be.

(2) Except as otherwise provided in this section, this article shall apply to the policies, contracts, and funding agreements specified in paragraph one of this subsection with regard to a person who is:

(A) an owner or certificate holder under a policy, contract, or funding agreement and in each case who:

(i) is a resident of this state; or

(ii) is not a resident of this state, but only under all of the following conditions:

(I) the insurer that issued the policy, contract, or agreement is domiciled in this state;

(II) the state or states in which the person resides has or have a guaranty entity similar to the corporation created by this article; and

(III) the person is not eligible for coverage by a guaranty entity in any other state because the insurer was not licensed or authorized in that state at the time specified in that state's guaranty entity law; ~~or~~

(B) the beneficiary, assignee, or payee of the person specified in subparagraph (A) of this paragraph, regardless of where the person resides; or

(C) a health care provider that has rendered services to a person specified in subparagraph (A) of this paragraph.

§ 6. Subsections (c), (d), (e), (h) and (i) of section 7705 of the insurance law, subsections (c), (e) and (i) as added by chapter 802 of the laws of 1985 and subsections (d) and (h) as amended by chapter 454 of the laws of 2014, are amended and a new subsection (m) is added to read as follows:

(c) "Corporation" means The Life and Health Insurance Company Guaranty Corporation of New York created under section seven thousand seven hundred six of this article unless the context otherwise requires.

(d) "Covered policy" means any of the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter, any supplemental contract, or any funding agreement referred to in section three thousand two hundred twenty-two of this chapter, or any portion or part thereof, within the scope of this article under section seven thousand seven hundred three of this article, except that any certificate issued to an individual under any group or blanket policy or contract shall be considered to be a separate covered policy for purposes of section seven thousand seven hundred eight of this article.

(e) "Health insurance" means the kinds of insurance specified under items (i) and (ii) of paragraph three and paragraph thirty-one of subsection (a) of section one thousand one hundred thirteen of this chapter, and section one thousand one hundred seventeen of this chapter; medical expense indemnity, dental expense indemnity, hospital service, or health service under article forty-three of

this chapter; and comprehensive health services under article forty-four of the public health law. "Health insurance" shall not include hospital, medical, surgical, prescription drug, or other health care benefits pursuant to: (1) part C of title XVIII of the social security act (42 U.S.C. § 1395w-21 et seq.) or part D of title XVIII of the social security act (42 U.S.C. § 1395w-101 et seq.), commonly known as Medicare parts C and D, or any regulations promulgated thereunder; (2) titles XIX and XXI of the social security act (42 U.S.C. § 1396 et seq.), commonly known as the Medicaid and child health insurance programs, or any regulations promulgated thereunder; (3) the basic health program under section three hundred sixty-nine-gg of the social services law; (4) chapter 55 of part II of subtitle A of title X (10 U.S.C §§ 1071-1110(b)), commonly known as TRICARE, or any regulations promulgated thereunder; or (5) subpart G of part III of title V (5 U.S.C. §§ 8101-9009), commonly known as the Federal Employees Program, or any regulations promulgated thereunder.

(h) (1) "Member insurer" means:

(A) any life insurance company licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article; provided, however, that the term "member insurer" also means any life insurance company formerly licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article; and

(B) an insurer licensed or formerly licensed to write accident and health insurance or salary protection insurance in this state, corporation organized pursuant to article forty-three of this chapter, reciprocal insurer organized pursuant to article sixty-one of this chapter, cooperative property/casualty insurance company operating under or subject to article sixty-six of this chapter, nonprofit property/casualty insurance company organized pursuant to article sixty-seven of this chapter, and health maintenance organization certified pursuant to article forty-four of the public health law.

(2) "Member insurer" shall not include a municipal cooperative health benefit plan established pursuant to article forty-seven of this chapter, an employee welfare fund registered under article forty-four of this chapter, a fraternal benefit society organized under article forty-five of this chapter, an institution of higher education with a certificate of authority under section one thousand one hundred twenty-four of this chapter, or a continuing care retirement community with a certificate of authority under article forty-six or forty-six-A of the public health law.

(i) "Premiums" means direct gross insurance premiums and annuity and funding agreement considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders or contract holders on such direct business, subject to such modifications as the superintendent may establish by regulation or order as necessary to facilitate the equitable administration of this article. Premiums do not include premiums and considerations on contracts between insurers and reinsurers. For the purposes of determining the assessment for an insurer under this article, the term "premiums", with respect to a group annuity contract (or portion of any such contract) that does not guarantee annuity benefits to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan, means the lesser of one million dollars or the premium attributable to that portion of such group contract that does not guarantee benefits to any specific individuals or such agreements that fund benefits under any employee benefit plan.

(m) "Long-term care insurance" means an insurance policy, rider, or certificate advertised, marketed, offered, or designed to provide coverage, subject to eligibility requirements, for not less than twenty-four consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis and provides at least the benefits set forth in part fifty-two of title eleven of the official compilation of codes, rules and regulations of this state.

§ 7. Subsection (a) of section 7706 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(a) There is created a not-for-profit corporation to be known as "The Life and Health Insurance Company Guaranty Corporation of New York". To the extent that the provisions of the not-for-profit corporation law do not conflict with the provisions of this article or the plan of operation of the corporation hereunder the not-for-profit corporation law shall apply to the corporation and the corporation shall be a type C corporation pursuant to the not-for-profit corporation law. If an applicable provision of this article or the plan of operation of the corporation hereunder relates to a matter embraced in a provision of the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply. All member insurers shall be and remain members of the corporation as a condition of their authority to transact insurance in this state. The corporation shall perform its functions under the plan of operation established and approved under section seven thousand seven hundred ten of this article and shall exercise its powers through a board of directors established under section seven thousand seven hundred seven of this article. For purposes of administration and assessment the corporation shall maintain two accounts:

- (1) the health insurance account; and
- (2) the life insurance, annuity and funding agreement account.

§ 8. Subsection (d) of section 7707 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(d) The superintendent shall be ex-officio [~~chairman~~] chair of the board of directors but shall not be entitled to vote.

§ 9. Paragraph 7 of subsection (h) of section 7708 of the insurance law, as amended by chapter 454 of the laws of 2014, is amended to read as follows:

(7) exercise, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life, health, or property/casualty insurance company, but in no case may the corporation issue insurance policies or contracts or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

§ 10. Paragraph 2 of subsection (c) of section 7709 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(2) The amount of any class B or class C assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies or contracts covered by each

account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bears to the premiums received by such insurer for such calendar year on all covered policies. The amount of any class B or class C assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the superintendent. The methodology shall provide for fifty percent of the assessment to be allocated to health insurance company member insurers and fifty percent to be allocated to life insurance company member insurers; provided, however, that a property/casualty insurer that writes health insurance shall be considered a health insurance company member for this purpose. Class B and class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the three calendar years preceding the assessment bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

§ 11. Subsection (a) of section 7712 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(a) The superintendent shall annually, within six months following the close of each calendar year, furnish to the commissioner of taxation and finance and the director of the division of the budget a statement of operations for the life insurance guaranty corporation and the life and health insurance company guaranty corporation of New York. Such statement shall show the assessments, less any refunds or reimbursements thereof, paid by each insurance company pursuant to the provisions of article seventy-five or section seven thousand seven hundred nine of this article, for the purposes of meeting the requirements of this chapter. Each statement, starting with the statement furnished in the year nineteen hundred eighty-six and ending with the statement furnished in the year two thousand, shall show the annual activity for every year commencing from nineteen hundred eighty-five through the most recently completed year. Each statement furnished in each year after the year two thousand shall reflect such assessments paid during the preceding fifteen calendar years. The superintendent shall also furnish a copy of such statement to each such insurance company.

§ 12. Subsections (a), (d) and (g) of section 7719 of the insurance law, as added by chapter 454 of the laws of 2014, are amended to read as follows:

(a) The corporation may incorporate one or more not-for-profit corporations, known as a resolution facility, in connection with the liquidation of an insolvent domestic life insurance company, health insurance company, or property/casualty insurance company under article seventy-four of this chapter for the purpose of administering and disposing of the business of the insolvent [~~domestic life~~] insurance company.

(d) A resolution facility may:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to the covered policies;

(2) exercise, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life insurance company, health insurance company, or property/casualty

insurance company but in no case may the resolution facility issue insurance policies, annuity contracts, funding agreements, or supplemental contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(3) assure payment of the contractual obligations of the insolvent insurer; and

(4) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge its duties.

(g) (1) If the superintendent determines that the resolution facility is not administering and disposing of the business of an insolvent domestic life insurance company, **health insurance company, or property/casualty insurance company** consistent with the resolution facility's certificate of incorporation, plan of operation, or this section, then the superintendent shall provide notice to the resolution facility and the resolution facility shall have thirty days to respond to the superintendent and cure the defect.

(2) If, after thirty days, the superintendent continues to believe that the resolution facility is not administering and disposing of the business of an insolvent domestic life insurance company, **health insurance company, or property/casualty insurance company** consistent with the resolution facility's certificate of incorporation, plan of operation, or this section, then the superintendent may apply to the court for an order directing the resolution facility to correct the defect or take other appropriate actions.

§ 13. The insurance law is amended by adding a new section 7720 to read as follows:

§ 7720. Penalties. (a) If any member insurer fails to make any payment required by this article, or if the superintendent has cause to believe that any other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, the superintendent may examine all the books and records of the member insurer to ascertain the facts and determine the correct amount to be paid. Based on such finding, the corporation may proceed in any court of competent jurisdiction to recover for the benefit of the fund any sums shown to be due upon such examination and determination.

(b) Any member insurer that fails to make any such required statement, or to make any payment to the fund when due, shall forfeit to the corporation for deposit in the fund a penalty of five percent of the amount determined to be due plus one percent of such amount for each month of delay, or fraction thereof, after the expiration of the first month of such delay. If satisfied that the delay was excusable, the corporation may remit all or any part of the penalty.

(c) The superintendent, in the superintendent's discretion, may revoke the certificate of authority to do business in this state of any foreign member insurer that fails to comply with this article or to pay any penalty imposed hereunder.

§ 14. The insurance law is amended by adding a new section 3245 to read as follows:

§ 3245. Liability to providers in the event of an insolvency. In the event an insurance company authorized to do an accident and health insurance business in this state is deemed insolvent, as provided in section one thousand three hundred nine of this chapter, no insured covered under a

policy delivered or issued for delivery in this state by the insurance company shall be liable to any provider of health care services for any covered services of the insolvent insurance company. No provider of health care services or any representative of such provider shall collect or attempt to collect from the insured sums owed by such insurance company, and no provider or representative of such provider may maintain any action at law against an insured to collect sums owed to such provider by such insurance company.

§ 14-a. The superintendent of financial services, in consultation with the director of the budget and other appropriate agencies as appropriate, shall be authorized and required to develop an assessment offset plan to limit the impact of the assessments imposed pursuant to section 7709 of the insurance law on not-for-profit member insurers. Such offset shall be comparable, to the extent possible, to the tax credit available to for-profit member insurers. The plan shall consider tax, assessment or other credits or financial benefits to offset such assessments in a manner that has a comparable impact as the tax credits applicable to for-profit insurers; the feasibility of a cap or limit on premium rate increases, cost-sharing requirements, or any other surcharges passed on to policyholders due to the assessments pursuant to section 7709 of the insurance law; and any other mechanism that minimizes the costs to policyholders while addressing the need to provide relief to not-for-profit member insurers subject to article 77 of the insurance law. The superintendent of financial services shall transmit the written plan to the governor, the temporary president of the senate, and the speaker of the assembly by January 15, 2024, and the superintendent may promulgate regulations to implement such plan for not-for-profit member insurers. Notwithstanding the foregoing, the Life and Health Insurance Company Guaranty Corporation of New York shall not impose any assessments on not-for-profit member insurers pursuant to article 77 of the insurance law until the offset plan has been implemented.

§ 15. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2023; provided, however, that the amendments made by this act shall not apply to the estate of an insurer for which a court entered a final order of liquidation prior to the effective date of this act.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately; provided, however, that the applicable effective date of Subparts A through D of this act shall be as specifically set forth in the last section of such Subparts.