§ 58-62-21. Coverage and limitations.

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section to all of the following:

(1) To persons other than persons specified in subdivisions (2a), (3) and (4) of this subsection who, regardless of where they reside, except for nonresident certificate holders or enrollees under group policies or contracts, are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under subdivision (2) of this subsection.

(2) To persons other than persons specified in subdivisions (2a), (3) and (4) of this subsection who are owners of or certificate holders or enrollees under the policies or contracts, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the member insurer that issued the policies or contracts is domiciled in this State; (ii) the states in which the persons reside have associations similar to the association created by this Article; and (iii) the persons are not eligible for coverage by an association in any other state due to the fact that the insurer or the health maintenance organization was not licensed in the state at the time specified in the state's guaranty association law.

(2a) To persons who are the owners of unallocated annuity contracts, provided that the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this State, and persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents of this State, unless coverage is excluded pursuant to subsection (a1) or (a2) of this section.

(3) To persons who are payees, or beneficiaries of payees if the payees are deceased, under structured settlement annuities, except as provided in subsections (a1) and (a2) of this section, if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside.

(4) To persons who are payees, or beneficiaries of payees if the payees are deceased, under structured settlement annuities, except as provided in subsections (a1) and (a2) of this section, if the payees are not residents of this State, but only if all of the following conditions are met:

a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article.

b. Neither the payees, or beneficiaries of payees if the payees are deceased, nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside.

(a1) This Article shall not provide coverage to any of the following:

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

(2) A person covered under subdivision (2a) of subsection (a) of this section, if any coverage is provided by the association of another state to the person.

(3) A person who acquires rights 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 such section became effective.

(a2) This Article is intended to provide coverage to a person who is a resident of this State and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this Article is provided coverage under the laws of any other state, the person shall not be provided coverage under this Article. In determining the application of the provisions of subsection (a) of this section in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this Article shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) This Article provides coverage to the persons specified in subsection (a) of this section for policies or contracts of direct, nongroup life insurance, health insurance, or annuities, and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.

(c) Except as provided for in subsection (c1) of this section, this Article does not provide coverage for any of the following:

(1) Any part of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract owner.

(2) Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract.

(3) 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 the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

a. Averaged over the period of four years before the date on which the member insurer becomes an impaired or insolvent insurer under this Article, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this Article, whichever is earlier; and

b. On and after the date on which the member insurer becomes an impaired or insolvent insurer under this Article, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available.

(4) 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 entity under any of the following:

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

b. A minimum premium group insurance plan.
c. A stop-loss group insurance plan.
d. An administrative services only contract.

(5) Any part of a policy or contract to the extent that it provides dividends or experience-rating credits, voting rights, or provides that any fees or allowances be paid to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract.

(6) Any policy or contract issued in this State by a member insurer at a time when it was not licensed to issue the policy or contract in this State.

(7) Any unallocated annuity contract issued to, or in connection with, a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan.

(8) Any part of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(8a) Any part of a policy or contract to the extent that the assessments required by G.S. 58-62-41 with respect to the policy or contract are preempted by federal or state law.

(8b) 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:

a. Claims based on marketing materials.
b. Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements.
c. Misrepresentations of or regarding policy or contract benefits.
d. Extra-contractual claims.
e. A claim for penalties or consequential or incidental damages.

(8c) A 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, which in each case is not an affiliate of the member insurer.

(9) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly known as Medicare Parts C & D, Subchapter XIX, Chapter 7 of Title 42 of the United States Code, commonly referred to as Medicaid, or any regulations issued pursuant thereto.

(10) A 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 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 or insolvent insurer under this Article, 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 subdivision, 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.

(11) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits under the State's Medicaid program.

(12) Structured settlement annuity benefits to which a payee or beneficiary has transferred his or her 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 such section became effective.

(c1) The exclusion for coverage referenced in subdivision (3) of subsection (c) of this section shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not a delinquent insurer.

(2) With respect to any one life, regardless of the number of policies or contracts, three hundred thousand dollars ($300,000) for all benefits, including cash values.

(2a) With respect to health insurance benefits for any one life, regardless of the number of policies:

a. Three hundred thousand dollars ($300,000) for coverages not defined as health benefit plans.

b. Five hundred thousand dollars ($500,000) for health benefit plans.

(3) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code covered by an unallocated annuity contract, or the beneficiaries of each individual if deceased, in the aggregate, three hundred thousand dollars ($300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(4) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (3) of this subsection, five million dollars ($5,000,000) in benefits, regardless of the number of such contracts held by that contract holder; or

(5) With respect to any one payee (or beneficiaries of one payee if the payee is deceased) of a structured settlement annuity, one million dollars ($1,000,000) for all benefits, including cash values.

(6) However, in no event shall the Association be obligated to cover more than (i) an aggregate of three hundred thousand dollars ($300,000) in benefits with respect to any one life under subdivisions (2) and (3) and sub-subdivision (2a)a. except with respect to benefits for health benefit plans under sub-subdivision (2a)b. of this subsection, in which case the aggregate liability of the Association shall not exceed five hundred thousand dollars ($500,000) with respect to any one life.

(7) The limitations set forth in this subsection 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 Article

may be met by the use of assets attributable to covered policies or reimbursed to the Association pursuant to its subrogation and assignment rights.

(8) For the purposes of this Article, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(e) Repealed by Session Laws 2010-11, s. 2, effective June 23, 2010, and applicable to claims submitted to the North Carolina Life and Health Insurance Guaranty Association on or after August 7, 2009. (1991, c. 681, s. 56; c. 720, s. 93; 1993, c. 452, s. 61; 2009-448, ss. 2, 3, 4; 2010-11, ss. 1, 2; 2013-136, s. 1; 2018-49, s. 2(b); 2018-120, s. 1.1(c); 2022-74, s. 9D.15(z).)