



# Ohio Legislative Service Commission

## Final Analysis

Nick Thomas

### Sub. S.B. 223

131st General Assembly  
(As Passed by the General Assembly)

**Sens.** Bacon, Hottinger, Tavares, Brown, Burke, Coley, Eklund, Hughes, Oelslager, Patton, Sawyer, Seitz

**Reps.** Hackett, Bishoff, Anielski, Blessing, Buchy, Burkley, Green, Grossman, Henne, S. O'Brien, Rogers, Schaffer, Sears, R. Smith, Stinziano, Terhar

**Effective date:** Emergency: provisions relating to subrogation and the Ohio Life and Health Insurance Guaranty Association effective December 22, 2015; other provisions effective March 23, 2016

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## ACT SUMMARY

### Ohio Life and Health Insurance Guaranty Association

- Increases Ohio Life and Health Insurance Guaranty Association coverage limitations for certain types of covered policies.
- Expands coverage to specified non-Ohio residents.
- Provides for coverage of structured settlement annuities.
- Specifically excludes Medicare Managed Care plans from Guaranty Association coverage.
- Revises the definition of "impaired insurer."

### Prompt payment requirements

- Updates the list of claim codes used by a third-party payer in processing a health insurance claim under Ohio's Prompt Pay Law.

### Reinsurance contract requirements

- Rephrases requirements relative to which reinsurance contracts require Superintendent of Insurance approval.

- Excludes from the approval requirement a reinsurance agreement (1) if the reinsurance premium or change in the domestic life insurance company's liability are less than 5% of the company's surplus, or (2) that is the result of a facultative provision with an authorized reinsurer.
- Revises the standard by which a domestic life insurance company obtains consent to enter into a contract for assumption reinsurance.

### **Subrogation – health insurance contracts**

- Exempts certain health insurance policies, issued or renewed beginning December 22, 2015, through December 31, 2016, from the application of a provision requiring proportional reduction of a subrogated claim if less than full value of tort action is recovered.

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## **CONTENT AND OPERATION**

### **Ohio Life and Health Insurance Guaranty Association**

The act amends the law concerning the Ohio Life and Health Insurance Guaranty Association, which provides benefits to covered individuals in the case of default on the part of certain life and health insurers.

#### **Coverage limit increases**

The Ohio Guaranty Association Law imposes maximum payout limitations for the various types of insurance policies covered. The act increases certain of these limitations as follows:

- Basic hospital, medical, and surgical insurance and major medical insurance – from \$100,000 to \$500,000;
- Disability and long-term care insurance – from \$100,000 to \$300,000.<sup>1</sup>

The act also adds a \$250,000 maximum coverage limitation (present value) for each payee of a structured settlement annuity or the beneficiary of such an annuity.<sup>2</sup>

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<sup>1</sup> R.C. 3956.04(C)(2)(a)(ii), (iii), (iv), and (v) and (C)(2)(b).

<sup>2</sup> R.C. 3956.04(C)(2)(d).



## Coverage for certain non-Ohio residents

The act specifies that the Guaranty Association is to provide coverage for Ohio residents and, under certain, limited situations, nonresidents. However, it specifies that the Guaranty Association is not intended to provide duplicate coverage. If any person who would otherwise receive coverage under the Ohio Guaranty Association Law receives coverage under another state's laws, that person is not to be provided coverage by the Guaranty Association. The act specifies that Ohio Guaranty Association Law is to be construed in conjunction with other state laws to result in coverage by only one association.<sup>3</sup> It modifies the definition of "resident" to reflect this change. Under the act, U.S. citizens who either reside in a foreign country or reside in a U.S. possession, territory, or protectorate that does not have an association similar to the Guaranty Association are to be considered residents of the state of domicile of the insurer that issued the policy or contract.<sup>4</sup>

## Structured settlement annuities

The act modifies the Ohio Guaranty Association Law to directly address structured settlement annuities. It defines "structured settlement annuity" as an annuity purchased in order to fund periodic payments for a claimant in payment for or with respect to personal injury suffered by the claimant.<sup>5</sup> The act makes distinct Guaranty Association eligibility requirements with regard to structured settlement annuities. Under the act, persons who are payees, or the beneficiary of deceased payee, under a structured settlement annuity are eligible for Guaranty Association benefits if the payee is an Ohio resident, regardless of where the contract owner of the structured settlement resides. If such a payee is *not* an Ohio resident, the payee or the payee's beneficiary is still eligible if both:

- The contract owner resides in Ohio, unless the payee is afforded any coverage by another state's association (if the contract owner does *not* reside in Ohio, this requirement is satisfied if the insurer issuing the annuity resides in Ohio and the state in which the contract owner resides has an association similar to the Guaranty Association);

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<sup>3</sup> R.C. 3956.04(A).

<sup>4</sup> R.C. 3956.01(H).

<sup>5</sup> R.C. 3956.01(I).



- The payee, beneficiary, and the contract owner are not eligible for coverage by a guaranty association in which the payee or contract owner resides.<sup>6</sup>

### **Medicare managed care exclusion**

The act adds policies issued in relation to Medicare Parts C and D to the list of policies or contracts that are specifically excluded from Guaranty Association eligibility. These are Medicare managed care plans and are commonly referred to as Medicare Advantage plans and Medicare Prescription Drug plans.<sup>7</sup>

### **"Impaired insurer" definition**

The act changes the definition of "impaired insurer" to remove discretion on the part of the Superintendent of Insurance as to whether an insurer is impaired. Under prior law, an "impaired insurer" was any insurer that was solvent, but that had either (1) been judged by the Superintendent as being unable to meet its contractual obligations or (2) been placed under an order of rehabilitation or conservation by a court. The act removes the first prong of the definition.<sup>8</sup>

### **Prompt payment requirements**

Ohio's Prompt Pay Law generally imposes a series of requirements and penalties on health insurers and third-party payers to ensure that health care professionals are paid in a timely fashion. The act updates the list of claim codes used by a third-party payer in processing a health insurance claim under the Prompt Pay Law to include the most current International Classification of Diseases (ICD) 10 code. Prior law required the most current ICD-9 code.<sup>9</sup>

### **Reinsurance contract requirements**

The act repeals and reenacts in a revised form a provision relating to reinsurance contracts. It prohibits a domestic life insurance company (as opposed to a domestic legal reserve life insurance company under prior law) from reinsuring either of the following without prior approval of the Superintendent of Insurance (similar to prior law):

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<sup>6</sup> R.C. 3956.04(A)(3), (4), and (5).

<sup>7</sup> R.C. 3956.04(B)(2)(I).

<sup>8</sup> R.C. 3956.01(D).

<sup>9</sup> R.C. 3901.381(B)(2)(d).



- More than 80% of an individual risk to a company authorized to transact the business of insurance in Ohio;
- Any part of an individual risk to a company not authorized to do business in Ohio.

The act excludes both of the following from the above prohibition, however:

- Reinsurance agreements if (1) the reinsurance premium or change in the domestic life insurance company's liabilities is less than 5% of the company's surplus as of the next preceding December 31 or (2) the projected reinsurance premium or change in the domestic life insurance company's liabilities in any of the next three years is less than 5% of the company's surplus as of the next preceding December 31;
- Reinsurance agreements as the result of a facultative provision<sup>10</sup> with an authorized reinsurer.<sup>11</sup>

### **Assumption reinsurance permitted**

The act permits a domestic life insurance company to enter into a contract for assumption reinsurance with the written consent of the Superintendent. An assumption reinsurance contract is a contract where all or a portion of a domestic life insurance company's obligations or risks are assumed by another life insurance company.

Under prior law, repealed by the act, a domestic company could enter into an assumption reinsurance contract with the consent of a commission. The commission consisted of the Governor or his designee, the Attorney General or an assistant attorney general, and the Superintendent.<sup>12</sup>

### **Repealed provision**

The act repeals a provision authorizing a domestic legal reserve life insurance company, without the written permission of the Superintendent, to reinsure the whole

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<sup>10</sup> "Facultative reinsurance" is a form of reinsurance whereby each exposure the ceding company wishes to reinsure is offered to the reinsurer and is contained in a single transaction. The submission, acceptance, and resulting agreement is required on each individual risk that the ceding company seeks to reinsure. (International Risk Management Institute, Glossary, <https://www.irmi.com/online/insurance-glossary/terms/f/facultative-reinsurance.aspx>.)

<sup>11</sup> R.C. 3907.12.

<sup>12</sup> R.C. 3907.12.



of any individual risk in a company authorized to transact business in Ohio if that domestic company had been authorized for such purpose by the Superintendent.<sup>13</sup>

## **Subrogation – health insurance contracts**

Subrogation is the right of an insurer to take the place of an insured and pursue legal action against a third party that caused an insurance loss to the insured. R.C. 2323.44 provides that, in a tort action where a subrogee asserts a subrogation claim against a third party, if less than the full value of the tort action is recovered for specified reasons, the subrogee's claim is also reduced proportionally. This provision was repealed and re-enacted in substantially the same form in H.B. 259 of the 131st General Assembly, effective March 23, 2016.

Under the act, this provision does not apply to specified health insurers with respect to health insurance policies issued or renewed beginning December 22, 2015, through December 31, 2016. The specified health insurers are: multiple employer welfare arrangements, health insuring corporations, and sickness and accident insurers authorized to do business in Ohio. Beginning January 1, 2017, the provision applies to those specified health insurers with respect to any health insurance policy issued or renewed on or after that date.<sup>14</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-07-15
Reported, S. Insurance	10-21-15
Passed Senate (31-0)	10-21-15
Reported, H. Insurance	12-08-15
Passed House (92-0)	12-09-15
Senate concurred in House amendments (33-0)	12-09-15

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<sup>13</sup> R.C. 3907.12, repealed by the act.

<sup>14</sup> Sections 3, 4, and 5 of the act.

