

§ 58-30-262. Administration of large deductible policies and insured collateral.

(a) Definitions. – The following definitions apply in this section:

- (1) Association. – As defined in G.S. 58-48-20.
- (2) Collateral. – Any cash, letters of credit, surety bond, or any other form of security posted by or on behalf of the insured or any person to secure the obligation of the insured under the large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.
- (3) Commercially reasonable. – To act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.
- (4) Deductible claim. – Any claim, including a claim for loss and defense and cost containment expense, unless those expenses are excluded, under a large deductible policy that is within the deductible.
- (5) Large deductible policy. – Includes any of the following:
 - a. A combination of one or more workers' compensation policies and endorsements issued to an insured and contracts or security agreements entered into between the insurer and the insured in which the insured has agreed with the insurer to do either of the following:
 1. Pay directly the initial portion of any claim under the policy up to a specified dollar amount, or the expenses related to any claim.
 2. Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.
 - b. Any policy which contains an aggregate limit on the insured's liability for all deductible claims in addition to a per claim deductible limit. The primary purpose and distinguishing characteristic of a large deductible policy is the shifting of a portion of the ultimate financial responsibility under the large deductible policy to pay claims from the insurer to the insured, even though the obligation to initially pay claims may remain with the insurer.
 - c. Any policy with a deductible of one hundred thousand dollars (\$100,000) or greater.

"Large deductible policy" does not include: (i) policies, endorsements, or agreements which provide that the initial portion of any covered claim shall be self-insured and further that the insurer shall have no payment obligation within the self-insured retention or (ii) policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent that those arrangements assume, secure, or pay the large deductible obligations of an insured.
- (6) Other secured obligations. – Obligations of an insured to an insurer other than those under or resulting from a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations the performance of which is secured by collateral that also secures obligations of an insured under a large deductible policy.

(b) Applicability. – This section shall apply to workers' compensation large deductible policies insuring workers' compensation liabilities under the Workers' Compensation Act of this State issued by an insurer subject to an order of liquidation as set forth in G.S. 58-30-105 that has

become final in the state of entry, whether the liquidation order is entered in this State or in a reciprocal state.

(c) Exceptions. – This section shall not apply to claims funded by the Association or a foreign guaranty association net of the deductible unless subsection (d) of this section applies.

(d) Handling of Large Deductible Claims. – Large deductible policies shall be administered in accordance with their terms, except to the extent those terms conflict with this section. All large deductible claims resulting from the handling or administration of one or more covered claims of a claimant as defined by G.S. 58-48-20 or the applicable guaranty laws of a foreign guaranty association, including those that may have been funded by an insured before liquidation, shall be turned over to the Association for handling and administration or shall be turned over to the foreign guaranty association in the state where the claim is pending for handling and administration. To the extent the insured funds or pays the deductible claim, pursuant to an agreement with the Association or a foreign guaranty association or otherwise, the funding or payment of a deductible claim directly or to the Association or a foreign guaranty association by or on behalf of the insured will extinguish the obligations, if any, of the liquidator, the Association, or the foreign guaranty association to pay the claim. No charge or claim of any kind shall be made against the liquidator, the Association, or a foreign guaranty association on the basis of the funding or payment of a deductible claim by or on behalf of an insured.

(e) Deductible Claims Paid by the Association or a Foreign Guaranty Association. –

- (1) To the extent the Association or a foreign guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, the Association or foreign guaranty association shall be entitled to the full amount of the reimbursement and available collateral as provided for under this section to the extent necessary to reimburse the Association or the foreign guaranty association. Reimbursements paid to the Association or to a foreign guaranty association pursuant to this subdivision shall not be included in any proposal submitted to the court to disburse assets under G.S. 58-30-180 in any report submitted to the court under G.S. 58-30-225, or as any distribution of assets by the liquidator in the domiciliary state.
- (2) To the extent that the Association or a foreign guaranty association pays a deductible claim that is not reimbursed either from collateral or by payments by an insured, or incurred expenses in connection with large deductible policies that are not reimbursed under this section, the Association or a foreign guaranty association shall be entitled to assert a claim for those amounts in the liquidation proceeding in this State or in the domiciliary state.
- (3) Nothing in this subsection limits any rights of the Association or a foreign guaranty association that may otherwise arise or exist under applicable law to obtain reimbursement from insureds for claim payments made by the Association or the foreign guaranty association under policies of the insurer or for the Association's or foreign guaranty association's related expenses, including without limitation, those rights arising under G.S. 58-48-35 and G.S. 58-48-50, or those arising or existing under similar laws of other states.

(f) Collections. –

- (1) Unless otherwise agreed to with the liquidator of the insurer in this State or the domiciliary state, the Association or a foreign guaranty association shall collect reimbursements owed for deductible claims as provided for herein and shall take all commercially reasonable actions to collect those reimbursements. The Association or a foreign guaranty association shall promptly bill insureds for reimbursement of covered claims paid by the

- Association or a foreign guaranty association. The liquidator of the insurer in this State or the domiciliary state shall have the obligation to collect all other reimbursements owed for deductible claims and shall promptly bill insureds or the other responsible persons for reimbursement of deductible claims (i) paid by the insurer prior to liquidation or (ii) paid by the liquidator.
- (2) If the insured does not make payment within the time specified in the large deductible policy, or within 60 days after the date of billing if no time is specified, the liquidator, the Association, or a foreign guaranty association shall take all commercially reasonable actions to collect any reimbursements owed.
 - (3) Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the large deductible policy, shall be a defense to the insured's reimbursement obligations under the large deductible policy.
 - (4) Allegations of improper handling or excessive or wrongful payment of a deductible claim by the insurer, by the liquidator of the insurer in this State or the domiciliary state, or by the Association or foreign guaranty association shall not be a defense to the insured's reimbursement obligations under the large deductible policy.
 - (5) The liquidator of the insurer in this State or the domiciliary state is entitled to recover through billings to the insured all reasonable expenses incurred in fulfilling the liquidator's collection obligations pursuant to subdivision (1) of this subsection.
- (g) Collateral. –
- (1) Subject to the provisions of this subsection and the rights of the Association or a foreign guaranty association, the liquidator of the insurer in this State or the domiciliary state shall utilize collateral, when available, to secure the obligation of the insured to fund or reimburse deductible claims or other secured obligations. The Association or a foreign guaranty association shall be entitled to all collateral as provided for in this subsection to the extent needed to reimburse the Association or a foreign guaranty association for the payment of deductible claims. Any distributions made to the Association or to a foreign guaranty association pursuant to this subsection shall not be included in any proposal submitted by the liquidator to the court to disburse assets under G.S. 58-30-180, or in any report submitted to the court under G.S. 58-30-225, or as any distribution of assets in the domiciliary state.
 - (2) All claims against the collateral shall be paid in the order received, and no claim of the liquidator of the insurer in this State or the domiciliary state, including those described in or arising under this subsection, shall supersede or take priority over any other claim against the collateral made by the Association or a foreign guaranty association. However, to the extent that the collateral is subject to other known secured obligations, or if more than one creditor has a valid claim against the same collateral and the available collateral, including future billing and collection efforts, are together insufficient to pay each creditor in full, the liquidator of the insurer in this State or in the domiciliary state may prorate payments from the proceeds of the collateral based on the ratio of the amount of claims each creditor has to the sum or all claims of all creditors with claims against the involved collateral.

- (3) The liquidator of the insurer in this State or the domiciliary state shall draw down collateral to the extent necessary in the event that the insured fails to do any of the following:
 - a. Perform its funding or payment obligations under any large deductible policy.
 - b. Pay deductible claim reimbursements within the time specified in the large deductible policy or within 60 days after the date of the billing if no time is specified.
 - c. Pay amounts due the estate for pre-liquidation obligations.
 - d. Timely fund any other secured obligation.
 - e. Timely pay expenses.
- (4) Excess collateral may be returned to the insured as determined by the liquidator of the insurer in this State or the domiciliary state after a periodic review of claims paid, outstanding case reserves and a factor for incurred but not reported claims.
- (5) This section shall not limit or adversely affect any rights or powers the Association or a foreign guaranty association may have pursuant to other applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the Association or a foreign guaranty association arising under policies of the insolvent insurer, or for related expenses the Association or a foreign guaranty association incurs.
- (6) Notwithstanding any other provision of this section, if the liquidator of the insurer in this State or the domiciliary state and the Association or a foreign guaranty association agree that the liquidator will collect reimbursements owed for deductible claims, the liquidator is entitled to deduct from the large deductible claim collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the large deductible claim collateral and deductible reimbursements. (2023-133, s. 6(a).)