LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT

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Section 1. Title

This Act shall be known and may be cit # M t # 1 itations, the persons specified in Sectio
al obligations, under life, health, and annuity policies, plans,
of the impairment or insolvency of the member insurer that

member insurers is created to pay benefits and to continue
ers of the Association are subject to assessment to provide

Drafting Note: The primary purpose of this model act is to protect policy or contract owners, insureds, beneficiaries, health care providers, annuitants, payees and assignees against losses (both in terms of paying claims and continuing coverage) which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability lines of business, life and annuity contracts in particular are long-term arrangements for security. An insured may have impaired health or be at an advanced age so as to be unable to obtain new and similar coverage from other insuril- fril- a su
assesses insurers in a fair and reasonable n

Section 3. Coverage and Limitations

A. This Act shall provide coverage for the policies and contracts specified in Subsection B:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders 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 Paragraph (2);

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(2) To persons who are owners of or certificate holders or enrollees under the policies or contracts (other than unallocated annuity contracts, and structured settlement annuities) and in each case who:

(a) Are residents; or

(b) Are not residents, 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 Act;

(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.

(3) For unallocated annuity contracts specified in Subsection B; Paragraphs (1) and (2) of this subsection shall not apply, and this Act shall (except as provided in Paragraphs (5) and (6) of this subsection) provide coverage to:

(a) Persons who are the owners of the unallocated annuity contracts if 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

(b) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.

Drafting Note: It is believed that coverage of unallocated annuities is a policy decision that should be made by each individual State. Attached as an Appendix are alternative Sections 3, 5 and 6, which specifically exclude all unallocated annuities from coverage.

(4) For structured settlement annuities specified in Subsection B; Paragraphs (1) and (2) of this subsection shall not apply, and this Act shall (except as provided in Paragraphs (5) and (6) of this subsection) provide coverage to a person who is a payee under a structured settlement annuity (or beneficiary of a payee if the payee is deceased), if the payee:

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

(b) Is not a resident, but only under both of the following conditions:

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

(II) The contract owner of the structured settlement annuity is not a resident; but

a. The insurer that issued the structured settlement annuity is domiciled in this State; and

b. The State in which the contract owner resides has an association similar to the association created by this Act; and

(ii) Neither the payee (or beneficiary) nor the contract owner is eligible for coverage by the association of the State in which the payee or contract owner resides.

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(5) This Act shall not provide coverage to:

(a) 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; or

(b) A person covered under Paragraph (3) of this subsection, if any coverage is provided by the association of another State to the person; or

(c) 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.

(6) This Act 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 Act is provided coverage under the laws of any other State, the person shall not be provided coverage under this Act. In determining the application of the provisions of this paragraph 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 Act shall be construed in conjunction with other State laws to result in coverage by only one association.

Drafting Note: The exclusion from coverage in Section 3A(5)(c) of any person who has purchased from an original structured settlement annuity payee his or her rights to receive structured settlement annuity benefits and the exclusion of such benefits from covered benefits under Section 3B(2)(n) recognize that the protections afforded by guaranty associations are intended for insurance consumers, such as the original payees of structured settlement annuities. Guaranty association protection does not extend to sophisticated investors who acquire rights to receive structured settlement annuity benefits in the secondary market. These exclusions, however, do not apply to structured settlement annuity benefits that are transferred to children, present or former spouses or other dependents as part of domestic relations settlements or orders, or to other transferees (including donees) who acquire rights to receive structured settlement annuity benefits without providing any monetary consideration. Thus, Section 3A(5)(c) and Section 3B(2)(n) clarify that guaranty association coverage protects structured settlement annuity benefits to which the original payee and his or her family members retain the rights.

B. (1) This Act shall provide coverage to the persons specified in Subsection A for policies or contracts

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(i) Averaged over the period of four (4) years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this Act, whichever is earlier, exceeds the rate of interest determined b

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(i) Claims based on marketing materials;

(ii) 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;

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C. The benefits that the Association may become obligated to cover shall in no 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 an impaired or insolvent insurer; or

(2) (a) With respect to one life, regardless of the number of policies or contracts:

(i) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) For health insurance benefits:

(I) $100,000 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance as defined in [section

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(e) With respect to either (i) one contract owner provided coverage under Subsection A(3)(b) of this section; or (ii) one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Paragraph (2)(b) of this subsection, $5,000,000 in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this Act and are owned by a trust or other entity for the benefit of two (2) or more plan sponsors, coverage shall be afforded by the

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Subsection B(2)(k) is intended to exclude from coverage those products commonly referred to as "financial guaranty" products.

Subsection C provides the maximum limitations of the Association's liability by type of contract or policy or line of business and overall per one life, plan sponsor or owner. The limits may be reached through cash surrender payments, benefit payments, or continuing coverage or a combination thereof. The maximum limits for each type of coverage should be set at an appropriate level after review by each State.

Section 4. Construction

This Act shall be construed to effect the purpose under Section 2.

Section 5. Definitions

As used in this Act:

A. "Account" means either of the two accounts created under Section 6.

B. "Association" means the [Sta

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(3) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

R. "Premiums" means amounts or considerations (by whatever name called) received on covered policies or contracts less returned premiums, considerations and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for w e6 vered # nd Montp p

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T. "Receivership court" means the court in the insolvent or impaired insurer's State having jurisdiction over the conservation, rehabilitation or liquidation of the member insurer.

U. "Resident" means a person to whom a contractual obligation is owed and who resides in this State on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one State, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories or protectorates that do not have an association similar to the Association created by this Act, shall be deemed residents of the State of domicile of the member insurer that issued the policies or contracts.

V. "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

W "State" means a State, the District of Columbia, Puerto Rico, and a United States possession, territory or

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(iii) Any alternative policy or contract issued by the Association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the Association.

(f) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the Association in accordance with the amount of insurance or coverage provided and the age and class of risk[, subject to prior approval of the commissioner];

(g) The Association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the Association;

(h) When proceeding under this Subsection B(2) with respect to a policy or contract carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with Section 3B(2)(c).

C. Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the Association's obligations under the policy, contract, or coverage under this Act with respect to the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this Act.

D. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association. If the liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator regarding such premium collected by the Association. The Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

E. The protection provided by this Act shall not apply where any guaranty protection is provided to residents of this State by the laws of the domiciliary State or jurisdiction of the impaired or insolvent insurer other than this State.

F. In carrying out its duties under Subsection B, the Association may:

(1) Subject to approval by a court in this State, impose permanent policy or contract liens in connection with a guarantee, assumption or reinsurance agreement, if the Association finds that the amounts which can be assessed under this Act are less than the amounts needed to assure full and prompt performance of the Association's duties under this Act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest;

(2) Subject to approval by a court in this State, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association may defer the payment of cash values, policy loans or other rights by the Association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the Association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

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N. (1) (a) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

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(iii) Within thirty (30) days following the Association's election (the "election date"), the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies, contracts, or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to Subparagraph (c)(ii) of this Paragraph (1), the receiver shall remit the same to the Association as promptly as practicable.

(iv) If the Association or receiver, on the Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies, contracts, or annuities covered, in whole or in part, by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

(2) During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation),

(a) (i) Neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Associatim e datocidas sÂM athe a

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D. The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association.

E. (1) (a) Subject to the provisions of Subparagraph (b) of thi

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I. (1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(2) Within sixty (60) days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within thirty (30) days after a final decision has been made, the Association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the

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Section 11. Duties and Powers of the Commissioner

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(a) Revocation of license;

(b) Suspension of license; or

(c) Makes a formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the State, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

(2) To report to the board of directors when the commissioner has taken any of the actions set forth in Paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another State. The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) To report to the board of directors when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

B. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the commissioner regarding the financial condition of member insurers and insurers or health maintenance organizations seeking admission to transact business in this State.

C. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in this State. The reports and recommendations shall not be considered public documents.

D. The board of directors may, upon majority vote, notify the commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

E. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of member insurer insolvencies.

[Section 13. Credits for Assessments Paid (Tax Offsets)—OPTIONAL

A. A member insurer may offset against its [premium, franchise or income] tax liability to this State an assessment described in Section 9H to the extent of twenty percent (20%) of the amount of the assessment for each of the five (5) calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its [premium, franchise, or income] tax liability for the year it ceases doing business.

B. A member insurer that is exempt from taxes referenced in Subsection A above may recoup its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the commissioner. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission. If a member insurer collects excess surcharges, the insurer shall remit the excess amount to the associatio M i t thhc th ssessm e t the a bo biate

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Subsection F, which should be deleted if the State has adopted Section 602 of the NAIC Insurers Receivership Model Act dealing with affiliated transactions, is designed to recapture excessive dividend payments to affiliates that exercised control over the impaired or insolvent insurer. The NAIC Insurance Holding Company System Regulatory Model Act in large measure prevents improper distribution of dividends by an insurer to its holding company since extraordinary dividends are subject to the prior approval of the commissioner, and ordinary dividends are required to be reported to the commissioner. If, however, dividends are paid under circumstances that the member insurer should have reasonably known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, contract owners, certificate holders, or enrollees the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

If a State has the NAIC Insurance Holding Company System Regulatory Model Act, the definitions therein could be referred to by this subsection. States without the Model Act could incorporate the relevant definitions in this subsection.

Section 15. Examination of the Association; Annual Report

The Association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than 120 days after the Association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon the request of a member insurer, the Association shall provide the member insurer with a copy of the report.

Section 16. Tax Exemptions

The Association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real property.

Section 17. Immunity

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this Act. This immunity shall extend to the participation in any organization of one or more other State associations of similar purposes and to any such organization and its agents or employees.

Drafting Note: This drafting note is for the purpose of clarifying the intent of the drafters of Section 17. As the courts have indicated, this provision was never intended to protect the Association from actions seeking to enforce its statutory obligations to pay covered claims. See, e.g., Mendes v. Hawaii Insurance Guaranty Association, 950 P.2d 1214, 1218 (Haw. Sup. Ct. 1998), ("HIGA is amenable to suit for the limited purpose of compelling it to perform its statutory duty to deal with the covered claims of insolvent insurers"); PIE Mutual Insurance Company v. Ohio Insurance Guaranty Association, 611 N.E. 2d. 313, 317 (Ohio Sup. Ct. 1993) (" … insured or third-party claimant is entitled to judicial relief to force OIGA to perform its statutory duties").

Nor was the provision ever intended to protect the Association from contract actions to enforce express obligations of the Association under contracts entered into by the Association.

Each State may wish to review its own statutes to determine whether its Tort Claims Act, if it has one, could be used as an alternative to this section insofar as it applies to the commissioner or his representative.

Section 18. Stay of Proceedings; Reopening Default Judgments

All proceedings in which the insolvent insurer is a party in any court in this State shall be stayed one hundred eighty (180) days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding
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Section 19. Prohibited Advertisement of Insurance Guaranty Association Act in Insurance Sales; Notice to Policy Owners

A. No person, including a member insurer, agent or affiliate of a member insurer shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the Insurance Guaranty Association of this State for the purpose of sales, solicitation or inducement to purchase any form of insurance or other coverage covered by the [State] Life and Health Insurance Guaranty Association Act. However, this section shall not apply to the [State] Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

B. Within one hundred eighty (180) days of the effective date of this Act, the Association shall prepare a summary document describing the general purposes and current limitations of the Act and complying with Subsection C of this section. This document shall be submitted to the commissioner for approval. At the expiration of the sixtieth day after the date on which the commissioner approves the document, a member insurer may not deliver a policy or contract to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee at the time of delivery of the policy or contract. The document shall also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery or contents or interpretation of this document does not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the Association as amendments to the Act may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this Act.

C. The document prepared under Subsection B shall contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer shall:

(1) State the name and address of the Life and Health Insurance Guaranty Association and insurance department;

(2) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that the Life and Health Insurance Guaranty Association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this State;

(3) State the types of policies or contracts for which guaranty funds will provide coverage;

(4) State that the member insurer and its agents are prohibited by law from using the existence of the Life and Health Insurance Guaranty Association for the purpose of sales, solicitation or inducement to purchase any form of insurance or health maintenance organization coverage;

(5) State that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the Life and Health Insurance Guaranty Association when selecting an insurer or health maintenance organization;

(6) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this Act; and

(7) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under that State’s public records law.

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APPENDIX
ALTERNATIVE PROVISIONS

Drafting Note: The underlining and overstrikes in the following provisions show the necessary changes from the model if a State decides to eliminate coverage for unallocated annuities.

Alternative Section 3. Coverage and Limitations

A. This Act shall provide coverage for the policies and contracts specified in Subsection B:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders 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 Paragraph (2);

(2) To persons who are owners of or certificate holders or enrollees under the policies or contracts (other than structured settlement annuities) and in each case who

(a) Are residents; or

(b) Are not residents, but only under all of the following conditions:

(i) The member insurer that issued the policies or contracts is domiciled in this State;

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(5) This Act 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 Act is provided coverage under the laws of any other State,

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(ii) Voting rights; or

(iii) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administra

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(ii) For health insurance benefits:

(I) $100,000 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance as defined in [section of State law dealing with health insurance/disability income insurance/long-term care insurance] including any net cash surrender and net cash withdrawal values;

(II) $300,000 for disability income insurance as defined in [section of State law dealing with health insurance/disability income insurance] and $300,000 for long-term care insurance as defined in [section of State law dealing with health insurance/long-term care insurance];

(III) $500,000 for health benefit plans;

(iii) $250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(b) 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;

(c) However, in no event shall the Association be obligated to cover more than (i) an aggregate of $300,000 in benefits with respect to any one life under Paragraphs 2(a), 2(b) and 2(c) of this subsection except with respect to benefits for health benefit plans under Paragraph 2(a)(ii) of this subsection, in which case the aggregate liability of the Association shall not exceed $500,000 with respect to any one individual, or (ii) with respect to one owner of multiple non-group 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, more than $5,000,000 in benefits, regardless of the number of policies and contracts held by the owner;

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

(e) For purposes of this Act, 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.

D. In performing its obligations to provide coverage under Section 8 of this Act, the Association shall not be 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.

Drafting Note: This section and Section 8 are key sections of the Act. Section 3 identifies who and what are covered and not covered by the Act. Section 8 specifies the responsibilities of the Association toward covered persons with covered policies.

Protection of this Act is primarily extended to resident persons but certain nonresidents under specific circumstances will be protected by this Act if the insolvent insurer was domiciled in this State.

This model does not apply to reinsurance unless assumption certificates were issued to the direct insureds or enrollees. Furthermore, it applies only to direct individual or group certificate insurance issued or written by member insurers licensed to transact business in this State at any time.

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Persons to whom coverage is typically provided are resident enrollees, policy or contract owners, or their beneficiaries, assignees or payees. For group contracts or policies, coverage is provided to resident enrollees, and certificate holders and not to the owners of the group

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(1) Accident only insurance:

(2) Credit insurance;

(3) Dental only insurance;

(4) Vision only insurance;

(5) Medicare Supplement insurance;

(6) Benefits for long-term care, home health care, community-based care, or any combination thereof;

(7) Disability income insurance;

(8) Coverage for on-site medical clinics; or

(9) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

K. "Impaired insurer" means a member insurer which, after the effective date of this Act, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

L. "Insolvent insurer" means a member insurer which after the effective date of this Act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

M. "Member insurer" means an insurer or health maintenance organization licensed or that holds a certificate of authority to transact in this State any kind of insurance or health maintenance organization business for which coverage is provided under Section 3, and includes an insurer or health maintenance organization whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

(1) A hospital or medical service organization, whether profit or non-profit;

(2) A fraternal benefit society;

(3) A mandatory State pooling plan;

(4) A mutual assessment company or other person that operates on an assessment basis;

(5) An insurance exchange;

(6) An organization that has a certificate or license limited to the issuance of charitable gift annuities under [insert the appropriate section of the State code]; or

(7) An entity similar to any of the above.

Drafting Note: States that license Health Care Service Corporations or similar organizations that undertake to provide basic health care services may want to address these entities in this Act.

N. "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

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(2) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

S. "Receivership court" means the court in the insolvent or impaired insurer's State having jurisdiction over the conservation, rehabilitation or liquidation of the member insurer.

T. "Resident" means a person to whom a contractual obligation is owed and who resides in this State on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, wh

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Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1971 Proc. I 54, 58, 134, 159, 160-173 (adopted).
1976 Proc. I 2, 9, 270, 296-297, 298-312 (amended and reprinted).
1977 Proc. II 19, 21, 355, 363 (amended).
1978 Proc. I 13, 15, 211, 241 (corrected).
1986 Proc. I 9-10, 22, 149, 294-295, 306-322 (amended and reprinted).
1987 Proc. II 15, 22, 160, 320 (decertification of 4-account approach).
1988 Proc. I 9, 18-19, 157-159, 337-338, 339-354 (amended to create 2 accounts and reprinted).
1993 Proc. 2nd Quarter 12, 33, 227, 600, 602, 620-621 (amended).
1993 Proc. 3rd Quarter 7, 30, 333-334, 341-343, 350-352 (amended).
1995 Proc. 1st Quarter 7, 10, 461, 466 (amended).
1995 Proc. 3rd Quarter 4, 18, 582, 585-586 (amended).
1996 Proc. 4th Quarter 11, 45-46, 938, 956, 959-981 (amended and reprinted).
1997 Proc. 4th Quarter 25, 27-28, 645, 646-647 (amended).
1998 Proc. 1st Quarter 15, 17, 598, 602, 603-616 (amended to add appendix).
1999 Proc. 1st Quarter 8, 9, 443, 445-446 (amended).
1999 Proc. 2nd Quarter 10, 11, 435, 436-438 (amended).
2009 Proc. 1st Quarter, Vol. I 111, 135, 139, 188, 240-287, 293, 821-835 (amended).
2016 Proc. 4th Quarter (amended).
2017 Proc. 4th Quarter (amended)

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This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Delaware	DEL. CODE ANN. tit. 18 §§ 4401 to 4419 (1982/2019).	
District of Columbia		D.C. CODE §§ 31-5401 to 31-5416 (1992/2015) (previous version of model); BULLETIN 04-003-IB (2006).
Florida	FLA. STAT. §§ 631.711 to 631.735 (1979/2019).	
Georgia	H.B. 1050 (2020).	GA. CODE ANN. §§ 33-38-1 to 33-38-22 (1981/2019) (2 accounts with subaccounts) (previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431:16-201 to 431:16-219 (1987/2012) (3 accounts) (previous version of model); HAW. CODE R. §§ 16-18-1 to 16-18-4 (1992) (notice to policyholders).
Idaho	IDAHO CODE ANN. §§ 41-4301 to 41-4320 (1977/2018).	
Illinois	215 ILL. COMP. STAT. 5/531.01 to 5/531.20 (1981/2018) (2 accounts with subaccounts).	ILL. ADMIN. CODE tit. 50, §§ 3401.10 to 3401.40; Illus. A (2014/2019); BULLETIN 2010-7 (2010).
Indiana	IND. CODE §§ 27-8-8-2 to 27-8-8-18 (1978/2019).	BULLETIN 249 (2019).
Iowa	IOWA CODE §§ 508C.1 to 508C.19 (1987/2019).	BULLETIN 2012-2 (2012); BULLETIN 2012-3 (2012).
Kansas		KAN. STAT. ANN. §§ 40-3001 to 40-3018 (1972/2011) (3 accounts) (portions of previous version of model).
Kentucky	KY. REV. STAT. ANN. §§ 304.42-010 to 304.42-190 (1978/2019).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Louisiana	LA. REV. STAT. ANN. §§ 22:2081 to 22:2099 (2008/2018).	LA. ADMIN. CODE tit. 37,

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New Hampshire	S.B. No. 251 (2019).	N.H. REV. STAT. ANN. §§ 408-B:1 to 408-B:20 (1995/2015) (2 accounts with subaccounts) (previous version of model).
New Jersey		N.J. STAT. ANN. §§ 17B:32A-1 to 17B-32A-19 (1991) (2 accounts with subaccounts) (previous version of model).
New Mexico		N.M. STAT. ANN. §§ 59A-42-1 to 59A-42-17 (1985/2014) (2 accounts) (previous version of model).
New York		N.Y. INS. LAW §§ 7701 to 7719 (1985/2014) (2 accounts) (previous version of model); N.Y. INS. LAW §§ 7501 to 7507 (1984/2014).

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changes to the model including the changes to the coverage limits

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th **Quarter Vol. II 10-5**.

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Section 3. Coverage and Limitations

A. The model as originally enacted had a Section 3 entitled "Scope." As urged by the industry spokespersons, it extended to all policyholders, wherever located, of a domestic company in the state of enactment. Also, they urged, in order for an insurance department to carry out its responsibility to residents of its state who hold policies of foreign and alien companies, a guaranty measure should apply to resident policyholders of such companies. **1970 Proc. II 1073**. The model as originally adopted covered any policies or contracts issued by persons authorized to transact insurance in the state at any time. **1971 Proc. I 161**.

A memo from an insurance industry organization included a proposal that the guaranty association be responsible for covering only residents of its own state. The major purpose for the suggested change was to increase the assessment capacity of the system. Other important purposes were to encourage the states that did not have statutes providing for guaranty associations to enact them, to protect insureds who did not reside in the insolvent insurer's state with an association in their own state, to avoid litigation over the issue of whether the protection provided by the association in the insolvent insurer's state of domicile is "substantially similar" to that of non-domiciliary states' associations, and to eliminate any justification for failing to provide a tax offset in the law. **1984 Proc. II 461**.

The system provided that the domestic guaranty association should assess its members on the basis of premiums they receive

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Section 3B (cont.)

An amendment to Paragraph (2)(h) was suggested by interested parties in 1996. It had the effect of excluding unallocated annuity contracts issued to a collective investment trust or similar pooled fund. The working group chair questioned whether the participants and trustees of these funds are sophisticated investors. One of the drafters explained that the exclusion was proposed because guaranty associations would otherwise be providing protections for fiduciaries. He pointed out that individuals participating in these funds could look to their plan fiduciary, the trust or pooled fund fiduciary, and possibly the Pension Benefit Guaranty Corporation for protection. **1996 Proc. 3rd Quarter 838**.

At a public hearing on the proposed amendments, an interested party disputed the notion that participants in a collective

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Section 3B (cont.)

Another interested party testified that those who favor exclusion are focusing on the form of the contracts over their substance. He said pension plan participants are not sophisticated investors and need the protection of guaranty association coverage. He said excluding unallocated products from coverage would shrink assessment capacity to a level at which capacity might be insufficient in the event of a large insolvency. © **g d T c 0 T w 9**

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Section 3 (cont.)

C. An industry draft prepared in 1984 suggested this section be changed by adding limitations to terminate the guaranty associations obligation by the next renewal date or 180 days, whichever is earlier. The committee did not look favorably upon this suggestion, indicating that it put life and health company insolvencies in the same mode as property and casualty insolvencies. **1984 Proc. II 445**.

The original model

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Section 5. Definitions

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Section 7. Board of Directors

A. An advisory group was asked to consider the issue of public representation on guaranty association boards in 1992. The committee report recommended against it, but one member proposed that a drafting note be added to include a provision

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Section 7A (cont.)

Before the Executive Committee voted on adoption of the amendment regarding public representatives, further discussion took place. The chair of the Financial Condition Subcommittee said the purpose of the amendment was to improve communication among regulators, the insurance industry and consumers on guaranty fund and insurer insolvency issues. The

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Section 8 (cont.)

B. A policyholder with a life or health insurance contract in an impaired company is concerned with preserving the full benefit of his contract. Any plan which is designed to provide only for the payment of outst ofpla ofnsrauls fer13.78 (s)9.h(o)1 (or)1.9

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Section 8 (cont.)

K. The working group considered an amendment to Subsection 3B to exclude a structured settlement annuity where the liability insurer or other person remains able to pay any remaining amount due The working group decided this placed an inappropriate burden on the injured person but did address the issue by adding a subrogation right to Subsection K(3). **1996 Proc. 3rd Quarter 838**.

A trade association representing structured settlement providers suggested technical amendments to Subsection K. **1997 Proc. 3rd Quarter 1126, 1128**.

L. Paragraph (7) was added to address recent litigation in which a trial court ruled that a discovery request served upon a guaranty association as an unincorporated association should be passed through to each member company of the association. **1996 Proc. 2nd Quarter 596**.

N. The Subsection N added with the 1996 amendments was proposed to make it clear that a guaranty association may elect to succeed to the rights of the insolvent insurer regarding any reinsurance agreements. **1996 Proc. 2nd Quarter 596**.

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Section 9 (cont.)

E. The model contained a two percent cap on assessments from the beginning. It was revised to create two accounts with subaccounts, consideration was given to reducing the cap to one percent. **d1988 PFoisd I 03 (o)12 337 0 (s)23. ( )]TJ -0.006 Tc 0.00**

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