LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT

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Section 1. Title

This Act shall be known and may be cited as the [State] Life and Health Insurance Guaranty Association Act.

Section 2. Purpose

A. The purpose of this Act is to protect, subject to certain limitations, the persons specified in Section 3A against failure in the performance of contractual obligations, under life, health, and

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(d) 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 or contract 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;

(e) With respect to either (i) one contract owner provided coverage under

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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whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

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(1) The life insurance and annuity account which includes the following subaccounts:

(a) Life insurance account;

(b) Annuity account which shall include annuity contracts owned by a governmental

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Drafting Note: Subsection A provides that the number and term of the members of the board of directors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting which will be called

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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.

G. A deposit in this State, held pursuant to law or required by the commissioner for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this State or in a reciprocal State, pursuant to [insert citation to this State's law dealing with the handling of special deposits] shall be promptly paid to the Association. The Association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related

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(7) Organize itself as a corporation or in other legal form permitted by the laws of the State;

(8) Request information from a person seeking coverage from the Association in order to aid the Association in determining its obligations under this Act with respect to the person, and the person shall promptly comply with the request;

(9) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this Act; and

(10) Take other necessary or appropriate action to discharge its duties and obligations under this Act or to exercise its powers under this Act.

M. The Association may join an organization of one or more other State associations of similar purposes, to further the purposes and administer the powers and duties of the Association.

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.

(b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contacts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(c) The following Subparagraphs (i) through (iv) shall apply to reinsurance contracts so assumed by the Association:

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies, contracts, or annuities covered, in whole or in part, by the Association. The Association may charge policies, contracts, or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall

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provide notice and an accounting of these charges to the liquidator;

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy, contracts, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

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section shall limit or affect the Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

O. The Board of Directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this Act in an economical and efficient manner.

P. Where the Association has arranged or offered to provide the benefits of this Act to a covered person under a plan or arrangement that fulfills the Association's obligations under this Act, the person shall not be entitled to benefits from the Association in addition to or other than those provided under the plan or arrangement.

Q. Venue in a suit against the Association arising under the Act shall be in [insert name of county] County. The Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this Act.

Drafting Note:

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2. The Court approves the use of the specific lien, moratorium, etc.

This provides a highly flexible mechanism while at the same time it avoids impairing the contractual obligations of the impaired or insolvent insurer as a routine matter under ordinary economic and financial conditions. The provision also recognizes that while contractual rights of policy owners, contract owners, certificate holders, or enrollees may not constitutionally be impaired, when the impaired or insolvent insurer's obligation under the contract is assumed by another insurer the policy owner, contract owners, certificate holders, or enrollees has two options. The policy owner, contract owners, certificate holders, or enrollees may accept the new contract with such liens or moratoriums as permitted by the court, or accept such pro rata payment as is available from the estate of the insolvent insurer.

Furthermore, to provide added flexibility in a temporary situation (e.g., run on assets), Subsection F(2) provides for temporrmorele .4 (psT

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Section 9. Assessments

A. For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at [insert amount] percent per annum on and after the due date.

B. There shall be two (2) classes of assessments, as follows:

(1)

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insurer." HA represents the guaranty association Health Account and LIAA represents the guaranty association Life Insurance and Annuity Account.

(4)

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(c) If the maximum assessment, together with the other assets of the Association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to Subsection C(2), the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in Paragraph (1) above.

F. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses claims.

G. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenance organization business within the scope of this Act, to consider the amount reasonably necessary to meet its assessment obligations under this Act.

H. The Association shall issue to each member insurer paying an assessment under this Act, other than a Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

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.

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(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 commissioner.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer protests to the commissioner for a final decision, with or without a recommendation from the Association.

(5) If the protest or appeal on the assessment is upheld, the amount paid1.2 (is)-2.4dt-1.224e /P <</M6 (t

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Section 10. Plan of Operation

A. (1) The Association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless it has not been disapproved within thirty (30) days.

(2) If the Association fails to submit a suitable plan of operation within 120 days following the effective date of this Act or if at any time thereafter the Association fails to submit

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In drafting this model guaranty act, particular effort was made to avoid (to the extent possible) disrupting existing State liquidation and rehabilitation laws. However, each individual State may want to consider adopting the Insurers Rehabilitation and Liquidation Model Act or the Uniform Insurers Liquidation Act, if it has not already done so.

Section 12. Prevention of Insolvencies

To aid in the detection and prevention of member insurer insolvencies or impairments,

A. It shall be the duty of the commissioner:

(1) To notify the commissioners of all the other States, territories of the United States and the District of Columbia within thirty (30) days following the action taken or the date the action occurs, when the commissioner takes any of the following actions against a member insurer:

(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

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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

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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

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(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.

D. A member insurer shall retain evidence of compliance with Subsection B for so long as the policy or contract for which the notice is given remains in effect.

Drafting Note: Subsection A continues the prohibition of using the existence of the Association in the inducement of sale of insurance or health maintenance organization coverage. However, Subsection B requires notification to new policyholders concerning the general parameters of the association law and responsibility thereunder.

The following form for the disclaimer notice is suggested:

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION DISCLAIMER

The [insert name of the Life and Health Insurance Guaranty Association] provides coverage of claims under some types of policies or contracts if the insurer or health maintenance organization becomes impaired or insolvent. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is provided, there are significant limits and exclusions. Coverage is always conditioned on residence in this State. Other conditions may also preclude coverage.

The Life and Health Insurance Guaranty Association will respond to any questions you may have which are not answered by this document. Your insurer or health maintenance organization and agent are prohibited by law from using the existence of the association or its coverage to sell you an insurance policy or health maintenance organization coverage.

You should not rely on availability of coverage under the Life and Health Insurance Guaranty Association when selecting an insurer or a health maintenance organization.

[Insert addresses of the Association and department.]

Insurers, health maintenance organizations and agents should be required to deliver the document and disclaimer described under Subsections B and C when a customer is solicited if a "free look" period is not required by State law.

Computer programs or other evidence of established procedures for including the notice required under Subsection 19B in the policy or contract in the printing, assembly or issue process would be considered evidence of the compliance required under Subsection 19D.

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Section 20. Prospective Application

This Act shall not apply to any

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APPENDIX
ALTERNATIVE PROVISIONS

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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

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Subsection A(3) providing structured settlement annuity coverage to resident payees is a significant change from previous versions of this Model Act intended to place the coverage in the State of the resident persons to be protected rather than in the State where the nominal owner of the contract resides. Subsections A(4) and (5) avoid the possibility of double coverage due to differing approaches for determining the covered persons in different State statutes and provide mechanisms for resolving which State's statutes will be used to determine the existence and limits of coverage.

Policies and contracts covered by the model act are life insurance, health insurance and annuity policies and contracts and policies or contracts supplemental thereto. The use of the term health insurance is intended to include "accident and health" insurance, "sickness and accident" insurance, "disability income" insurance, health maintenance organization contracts, etc. The use of the term disability income insurance is intended to include insurance policies and contracts that cover the loss of income due to a disability. The individual State may want to adjust this language to fit its particular terminology.

Subsection B(2) identifies certain types of contracts or policies or portions of contracts or policies that are specifically not covered by this Act. If a portion of a contract or policy is not covered, the remainder of the contract or policy is covered unless excluded otherwise. Subsection B(2) also provides a ready means by which an individual State can exempt from the Act those policies and contracts issued by member insurers or similar organizations deemed appropriate for exemption by the State.

Subsection B(2)(i) 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.

Alternative Section 5. Definitions

As used in this Act:

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

B. "Association" means the [State] Life and Health Insurance Guaranty Association created under Section 6.

C. "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the Board of Directors has been passed whereby an assessment will be

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I. "Extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorneys' fees and costs.

J. "Health benefit plan" means any hospital or medical expense policy or certificate, or health maintenance organization subscriber contract or any other similar health contract. "Health benefit plan" does not include:

(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

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(6) An organization that has a certificate or license limited to the issuance of charitable gift

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(c) The State in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(d) The State in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(e) The State from which the management of the overall operations of the entity is directed; and

(f)

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X. “Unallocated annuity contract” means an annuity contract or group annuity certificate which is

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