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HOUSE BILL 291
56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY
Elizabeth "Liz" Thomson

AN ACT

RELATING TO INSURANCE; AMENDING THE LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT TO INCLUDE HEALTH MAINTENANCE
ORGANIZATIONS AS MEMBERS OF THE LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION; REPEALING SECTION 59A-46-15 NMSA 1978
(BEING LAWS 1993, CHAPTER 266, SECTION 15).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-42-3 NMSA 1978 (being Laws 2012,
Chapter 9, Section 6, as amended) is amended to read:

"59A-42-3. DEFINITIONS.--As used in the Life and Health
Insurance Guaranty Association Act:

A. "account" means either of the two accounts
maintained pursuant to Section 59A-42-5 NMSA 1978;

B. "association" means the life and health
insurance guaranty association created pursuant to Section

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1 59A-42-5 NMSA 1978;

2 C. "authorized assessment", or the term
3 "authorized" when used in the context of assessments, means
4 that a resolution by the board has been passed whereby an
5 assessment will be called immediately or in the future from
6 member insurers for a specified amount. An assessment is
7 authorized when the resolution is passed;

8 D. "benefit plan" means a specific employee, a
9 union or an association of natural persons benefit plan;

10 E. "board" means the board of directors organized
11 pursuant to Section 59A-42-6 NMSA 1978;

12 F. "called assessment", or the term "called" when
13 used in the context of assessments, means that a notice has
14 been issued by the association to member insurers requiring
15 that an authorized assessment be paid within the time frame set
16 forth within the notice. An authorized assessment becomes a
17 called assessment when notice is mailed by the association to
18 member insurers;

19 G. "contractual obligation" means an obligation
20 under a policy or contract or a certificate under a group
21 policy or contract, or portion thereof, for which coverage is
22 provided pursuant to Section 59A-42-4 NMSA 1978;

23 H. "covered policy" and "covered contract" means a
24 policy or contract or portion of a policy or contract for which
25 coverage is provided pursuant to Section 59A-42-4 NMSA 1978;

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1 I. "domiciliary state" means the state in which an
2 insurer is incorporated or organized or, as to an alien
3 insurer, the state in which at commencement of delinquency
4 proceedings the larger amount of the insurer's assets are held
5 in trust or on deposit for the benefit of its policyholders and
6 creditors in the United States;

7 J. "extra-contractual claims" includes claims
8 relating to bad faith in the payment of claims, punitive or
9 exemplary damages or attorney fees and costs;

10 K. "health benefit plan" means any hospital or
11 medical expense policy or certificate or health maintenance
12 organization subscriber contract or any other similar health
13 contract. "Health benefit plan" does not include:

- 14 (1) accident-only insurance;
15 (2) credit insurance;
16 (3) dental-only insurance;
17 (4) vision-only insurance;
18 (5) medicare supplement insurance;
19 (6) benefits for long-term care, home health
20 care, community-based care or any combination thereof;
21 (7) disability income insurance;
22 (8) coverage for on-site medical clinics; or
23 (9) specified disease, hospital confinement
24 indemnity or limited benefit health insurance if the health
25 benefit plans do not provide coordination of benefits and are

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1 provided under separate policies or contracts;

2 [K-] L. "impaired insurer" means a member insurer
3 that, after the effective date of the Life and Health Insurance
4 Guaranty Association Act, is not an insolvent insurer and is
5 placed under an order of rehabilitation or conservation by a
6 court of competent jurisdiction;

7 [L-] M. "insolvent insurer" means a member insurer
8 that, after the effective date of the Life and Health Insurance
9 Guaranty Association Act, is placed under an order of
10 liquidation by a court of competent jurisdiction with a finding
11 of insolvency;

12 [M-] N. "member insurer" means an insurer or health
13 maintenance organization that is licensed or that holds a
14 certificate of authority to transact in this state any kind of
15 insurance or health maintenance organization business for which
16 coverage is provided pursuant to Section 59A-42-4 NMSA 1978 and
17 includes an insurer or health maintenance organization whose
18 license or certificate of authority in this state may have been
19 suspended, revoked, not renewed or voluntarily withdrawn, but
20 does not include:

21 (1) a health care plan, whether profit or
22 nonprofit;

23 [~~(2)~~] ~~a health maintenance organization~~

24 [~~(3)~~] (2) a prepaid dental plan;

25 [~~(4)~~] (3) a fraternal benefit society;

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- 1 [~~(5)~~] (4) a mandatory state pooling plan;
- 2 [~~(6)~~] (5) a mutual assessment company or other
- 3 person that operates on an assessment basis;
- 4 [~~(7)~~] (6) an insurance exchange;
- 5 [~~(8)~~] (7) a charitable organization that is in
- 6 good standing with the superintendent pursuant to Section
- 7 59A-1-16.1 NMSA 1978;
- 8 [~~(9)~~] (8) any insurer that was insolvent or
- 9 unable to fulfill its contractual obligations as of April 9,
- 10 1975; or
- 11 [~~(10)~~] (9) an entity similar to any of the
- 12 above;
- 13 [~~N.~~] O. "Moody's corporate bond yield average"
- 14 means the monthly average corporates as published by Moody's
- 15 investors service, incorporated, or its successor;
- 16 [~~Q.~~] P. "owner" of a policy or contract, "policy
- 17 owner", "policy holder" and "contract owner" means the person
- 18 who is identified as the legal owner under the terms of the
- 19 policy or contract or who is otherwise vested with legal title
- 20 to the policy or contract through a valid assignment completed
- 21 in accordance with the terms of the policy or contract and
- 22 properly recorded as the owner on the books of the member
- 23 insurer. The terms "owner", "policy owner", "policy holder"
- 24 and "contract owner" do not include persons with a mere
- 25 beneficial interest in a policy or contract;

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[P-] Q. "plan sponsor" means:

(1) the employer in the case of a benefit plan established or maintained by a single employer;

(2) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

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

[Q-] R. "premiums" means amounts or considerations, by whatever name used, received on covered policies or contracts less returned premiums, considerations and deposits and less dividends and experience credits. "Premiums" does not include:

(1) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to Subsection E of Section 59A-42-4 NMSA 1978, except that assessable premiums shall not be reduced on account of Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978, relating to interest limitations, or Paragraph (2) of Subsection F of Section 59A-42-4 NMSA 1978, relating to

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1 limitations, with respect to one individual, one participant,
2 one policy holder or one contract owner;

3 (2) premiums in excess of five million dollars
4 (\$5,000,000) on an unallocated annuity contract not issued
5 under a governmental retirement benefit plan, or its trustee,
6 established pursuant to Section 401, 403(b) or 457 of the
7 federal Internal Revenue Code of 1986; or

8 (3) with respect to multiple non-group
9 policies of life insurance owned by one owner, whether the
10 policy holder or contract owner is an individual, firm,
11 corporation or other person, and whether the persons insured
12 are officers, managers, employees or other persons, premiums in
13 excess of five million dollars (\$5,000,000) with respect to
14 these policies or contracts, regardless of the number of
15 policies or contracts held by the owner;

16 [R-] S. "principal place of business" means:

17 (1) in the case of a plan sponsor or a person
18 other than a natural person, the single state in which the
19 natural person who establishes a policy for the direction,
20 control and coordination of the operations of the entity as a
21 whole primarily exercises that function, as determined by the
22 association in its reasonable judgment by considering the
23 following factors:

24 (a) the state in which the primary
25 executive and administrative headquarters of the entity is

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1 located;

2 (b) the state in which the principal
3 office of the chief executive officer of the entity is located;

4 (c) the state in which the board, or
5 similar governing person or persons, of the entity conducts the
6 majority of its meetings;

7 (d) the state in which the executive or
8 management committee of the board, or similar governing person
9 or persons, of the entity conducts the majority of its
10 meetings;

11 (e) the state from which the management
12 of the overall operations of the entity is directed; ~~[and]~~

13 (f) in the case of a benefit plan
14 sponsored by affiliated companies comprising a consolidated
15 corporation, the state in which the holding company or
16 controlling affiliate has its principal place of business as
17 determined using the factors in this subsection; ~~[but]~~ and

18 (g) in the case of a plan sponsor, if
19 more than fifty percent of the participants in the benefit plan
20 are employed in a single state, that state shall be deemed to
21 be the principal place of business of the plan sponsor; and

22 (2) in the case of a plan sponsor of a benefit
23 plan described in Paragraph (3) of Subsection [P] Q of this
24 section, the principal place of business of the association,
25 committee, joint board of trustees or other similar group of

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1 representatives of the parties that establish or maintain the
2 benefit plan that, in lieu of a specific or clear designation
3 of a principal place of business, shall be deemed to be the
4 principal place of business of the employer or employee
5 organization that has the largest investment in the benefit
6 plan in question;

7 ~~[S.]~~ T. "receivership court" means the court in the
8 insolvent or impaired insurer's domiciliary state having
9 jurisdiction over the conservation, rehabilitation or
10 liquidation of the member insurer;

11 ~~[F.]~~ U. "resident" means a person to whom a
12 contractual obligation is owed and who resides in this state on
13 the date of entry of a court order that determines a member
14 insurer to be an impaired insurer or a court order that
15 determines a member insurer to be an insolvent insurer. A
16 person may be a resident of only one state, which, in the case
17 of a person other than a natural person, shall be its principal
18 place of business. Citizens of the United States that are
19 either residents of foreign countries or residents of United
20 States possessions, territories or protectorates that do not
21 have an association similar to the association created by the
22 Life and Health Insurance Guaranty Association Act shall be
23 deemed residents of the state of domicile of the member insurer
24 that issued the policies or contracts;

25 ~~[U.]~~ V. "structured settlement annuity" means an

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1 annuity purchased in order to fund periodic payments for a
2 plaintiff or other claimant in payment for or with respect to
3 personal injury suffered by the plaintiff or other claimant;

4 W. "structured settlement factoring transaction"
5 means a transfer of structured settlement payment rights,
6 including portions of structured settlement payments made for
7 consideration by means of sale, assignment, pledge or other
8 form of encumbrance or alienation;

9 [V-] X. "supplemental contract" means a written
10 agreement entered into for the distribution of proceeds under a
11 life, health or annuity policy or contract; and

12 [W-] Y. "unallocated annuity contract" means an
13 annuity contract or group annuity certificate that is not
14 issued to and owned by an individual, except to the extent of
15 annuity benefits guaranteed to an individual by an insurer
16 under the contract or certificate."

17 SECTION 2. Section 59A-42-4 NMSA 1978 (being Laws 2012,
18 Chapter 9, Section 7) is amended to read:

19 "59A-42-4. COVERAGE--LIMITATIONS.--

20 A. Coverage shall be provided for the policies and
21 contracts specified in Subsection D of this section:

22 (1) to persons who, regardless of where they
23 reside, except for nonresident certificate holders under group
24 policies or contracts, are the beneficiaries, assignees or
25 payees, including health care providers rendering services

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1 covered under health insurance policies or certificates, of the
2 persons covered pursuant to Paragraph (2) of this subsection;

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

7 (a) are residents; or

8 (b) are not residents, but only under
9 the following conditions: 1) the member insurer that issued
10 the policies or contracts is domiciled in this state; 2) the
11 states in which the persons reside have associations similar to
12 this state's association; and 3) the persons are not eligible
13 for coverage by an association in another state due to the fact
14 that the insurer or the health maintenance organization was not
15 licensed in that state at the time specified in that state's
16 guaranty association law;

17 (3) for unallocated annuity contracts
18 specified in Subsection D of this section, to which Paragraphs
19 (1) and (2) of this subsection shall not apply, and except as
20 provided in Subsections B and C of this section:

21 (a) to persons who are the owners of the
22 unallocated annuity contracts if the contracts are issued to or
23 in connection with a specific benefit plan whose plan sponsor
24 has its principal place of business in this state; and

25 (b) to persons who are the owners of

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1 unallocated annuity contracts issued to or in connection with
2 government lotteries if the owners are residents; and

3 (4) for structured settlement annuities
4 specified in Subsection D of this section, to which Paragraphs
5 (1) and (2) of this subsection shall not apply, and except as
6 provided in Subsections B and C of this section, to a person
7 who is a payee under a structured settlement annuity, or a
8 beneficiary of a payee if the payee is deceased, if the payee:

9 (a) is a resident, regardless of where
10 the contract owner resides; or

11 (b) is not a resident, but only under
12 the following conditions: 1) the contract owner of the
13 structured settlement annuity is a resident or is not a
14 resident, but the insurer that issued the structured settlement
15 annuity is domiciled in this state and the state in which the
16 contract owner resides has an association similar to this
17 state's association; and 2) neither the payee, the payee's
18 beneficiary or the contract owner is eligible for coverage by
19 the association of the state in which the payee or contract
20 owner resides.

21 B. Coverage shall not be provided to:

22 (1) a person who is a payee or beneficiary of
23 a contract owner resident of this state, if the payee or
24 beneficiary is afforded coverage by the association of another
25 state; ~~[or]~~

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1 (2) a person covered pursuant to Paragraph (3)
2 of Subsection A of this section, if coverage is provided by the
3 association of another state to that person; or

4 (3) a person who acquires rights to receive
5 payments through a structured settlement factoring transaction.

6 C. Coverage is intended to be provided to a person
7 who is a resident of this state and, in special circumstances,
8 to a nonresident. In order to avoid duplicate coverage, if a
9 person who would otherwise receive coverage pursuant to the
10 Life and Health Insurance Guaranty Association Act is provided
11 coverage under the laws of another state, the person shall not
12 be provided coverage in this state. In determining the
13 application of the provisions of this subsection in situations
14 where a person could be covered by the association of more than
15 one state, whether as an owner, payee, enrollee beneficiary or
16 assignee, the Life and Health Insurance Guaranty Association
17 Act shall be construed in conjunction with other state laws to
18 result in coverage by only one association.

19 D. Coverage shall be provided to the persons
20 specified in Subsection A of this section for policies or
21 contracts of direct, non-group life insurance, health insurance
22 or ~~[annuity policies or contracts]~~ annuities and supplemental
23 contracts to any of these, for certificates under direct group
24 policies and contracts and supplemental contracts to these and
25 for unallocated annuity contracts issued by member insurers,

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1 except as limited by the Life and Health Insurance Guaranty
2 Association Act. Annuity contracts and certificates under
3 group annuity contracts include guaranteed investment
4 contracts, deposit administration contracts, unallocated
5 funding agreements, allocated funding agreements, structured
6 settlement annuities, annuities issued to or in connection with
7 government lotteries and immediate or deferred annuity
8 contracts.

9 E. ~~[Coverage]~~ Except for portions of a policy or
10 contract that provides long-term care, coverage shall not be
11 provided for:

12 (1) a portion of a policy or contract not
13 guaranteed by the member insurer or under which the risk is
14 borne by the policy or contract owner;

15 (2) a policy or contract of reinsurance,
16 unless assumption certificates have been issued pursuant to the
17 reinsurance policy or contract;

18 (3) a portion of a policy or contract to the
19 extent that the rate of interest on which it is based, or the
20 interest rate, crediting rate or similar factor determined by
21 use of an index or other external reference stated in the
22 policy or contract employed in calculating returns or changes
23 in value:

24 (a) averaged over the period of four
25 years prior to the date on which the member insurer becomes an

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1 impaired or insolvent insurer pursuant to the Life and Health
2 Insurance Guaranty Association Act, whichever is earlier,
3 exceeds the rate of interest determined by subtracting two
4 percentage points from Moody's corporate bond yield average
5 averaged for that same four-year period or for such lesser
6 period if the policy or contract was issued less than four
7 years before the member insurer becomes an impaired or
8 insolvent insurer under the Life and Health Insurance Guaranty
9 Association Act, whichever is earlier; and

10 (b) on and after the date on which the
11 member insurer becomes an impaired or insolvent insurer
12 pursuant to the Life and Health Insurance Guaranty Association
13 Act, whichever is earlier, exceeds the rate of interest
14 determined by subtracting three percentage points from Moody's
15 corporate bond yield average as most recently available;

16 (4) a portion of a policy or contract issued
17 to a plan or program of an employer, association or other
18 person to provide life, health or annuity benefits to its
19 employees, members or others, to the extent that the plan or
20 program is self-funded or uninsured, including but not limited
21 to benefits payable by an employer, association or other person
22 under:

23 (a) a multiple employer welfare
24 arrangement;

25 (b) a minimum premium group insurance

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1 plan;

2 (c) a stop-loss group insurance plan; or

3 (d) an administrative services only

4 contract;

5 (5) a portion of a policy or contract to the
6 extent that it provides for:

7 (a) dividends or experience rating

8 credits;

9 (b) voting rights; or

10 (c) payment of fees or allowances to a
11 person, including the policy or contract owner, in connection
12 with the service to or administration of the policy or
13 contract;

14 (6) a policy or contract issued in this state
15 by a member insurer at a time when it was not licensed or did
16 not have a certificate of authority to issue the policy or
17 contract in this state;

18 (7) an unallocated annuity contract issued to
19 or in connection with a benefit plan protected under the
20 federal pension benefit guaranty corporation, regardless of
21 whether that corporation has yet become liable to make payments
22 with respect to the benefit plan;

23 (8) a portion of an unallocated annuity
24 contract that is not issued to or in connection with a specific
25 employee, union or association of natural persons benefit plan

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1 or a government lottery;

2 (9) a portion of a policy or contract to the
3 extent that the assessments required by Section 59-42-8 NMSA
4 1978 with respect to the policy or contract are preempted by
5 federal or state law;

6 (10) an obligation that does not arise under
7 the express written terms of the policy or contract issued by
8 the member insurer to the enrollee, certificate holder,
9 contract owner or policy owner, including without limitation:

10 (a) claims based on marketing materials;

11 (b) claims based on side letters, riders
12 or other documents that were issued by the member insurer
13 without meeting applicable policy or contract form filing or
14 approval requirements;

15 (c) misrepresentations of or regarding
16 policy or contract benefits;

17 (d) extra-contractual claims; or

18 (e) a claim for penalties or
19 consequential or incidental damages;

20 (11) a contractual agreement that establishes
21 the member insurer's obligations to provide a book value
22 accounting guaranty for defined contribution benefit plan
23 participants by reference to a portfolio of assets that is
24 owned by the benefit plan or its trustee, which in each case is
25 not an affiliate of the member insurer;

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1 (12) a portion of a policy or contract to the
2 extent that it provides for interest or other changes in value
3 to be determined by the use of an index or other external
4 reference stated in the policy or contract, but which have not
5 been credited to the policy or contract, or as to which the
6 policy or contract owner's rights are subject to forfeiture, as
7 of the date the member insurer becomes an impaired or insolvent
8 insurer pursuant to the Life and Health Insurance Guaranty
9 Association Act, whichever is earlier. If a policy or
10 contract's interest or changes in value are credited less
11 frequently than annually, then for purposes of determining the
12 values that have been credited and that are not subject to
13 forfeiture pursuant to this paragraph, the interest or change
14 in value determined by using the procedures defined in the
15 policy or contract will be credited as if the contractual date
16 of crediting interest or changing values were the date of
17 impairment or insolvency, whichever is earlier, and will not be
18 subject to forfeiture; or

19 (13) a policy or contract providing hospital,
20 medical, prescription drug or other health care benefits
21 pursuant to Part C or Part D of Subchapter 18 of Chapter 7 of
22 Title 42 of the United States Code, commonly known as medicare
23 parts c and d, or Subchapter 19 of Chapter 7 of Title 42 of the
24 United States Code, commonly known as medicaid, or any
25 regulations promulgated pursuant to [~~Part C or Part D~~] those

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1 acts.

2 F. The benefits that the association may become
3 obligated to cover shall in no event exceed the lesser of:

4 (1) the contractual obligations for which the
5 member insurer is liable or would have been liable if it were
6 not an impaired or insolvent insurer; ~~[or]~~

7 (2) with respect to one person's life,
8 regardless of the number of policies or contracts:

9 (a) for life insurance death benefits,
10 three hundred thousand dollars (\$300,000) but not more than one
11 hundred thousand dollars (\$100,000) in net cash surrender and
12 net cash withdrawal values;

13 (b) for health insurance benefits: 1)
14 one hundred thousand dollars (\$100,000) for coverages not
15 constituting disability income insurance, ~~[or basic hospital,~~
16 ~~medical and surgical insurance or major medical insurance]~~
17 health benefit plans or long-term care insurance, including net
18 cash surrender and net cash withdrawal values; 2) three hundred
19 thousand dollars (\$300,000) for disability income insurance; 3)
20 three hundred thousand dollars (\$300,000) for long-term care
21 insurance as defined in Section 59A-23A-4 NMSA 1978; and 4)
22 five hundred thousand dollars (\$500,000) for ~~[basic hospital,~~
23 ~~medical and surgical insurance or major medical insurance]~~
24 health benefit plans; or

25 (c) for annuity benefits, two hundred

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1 fifty thousand dollars (\$250,000) in present value, including
2 net cash surrender and net cash withdrawal values;

3 (3) with respect to each individual
4 participating in a governmental retirement benefit plan
5 established pursuant to Section 401, 403(b) or 457 of the
6 federal Internal Revenue Code of 1986 covered by an unallocated
7 annuity contract or the beneficiaries of each such individual
8 if deceased, in the aggregate, two hundred fifty thousand
9 dollars (\$250,000) in present value annuity benefits, including
10 net cash surrender and net cash withdrawal values; or

11 (4) with respect to each payee of a structured
12 settlement annuity, or beneficiary or beneficiaries of the
13 payee if the payee is deceased, two hundred fifty thousand
14 dollars (\$250,000) in present value annuity benefits, in the
15 aggregate, including net cash surrender and net cash withdrawal
16 values, if any.

17 G. In no event shall the association be obligated
18 to cover:

19 (1) more than an aggregate of three hundred
20 thousand dollars (\$300,000) in benefits with respect to one
21 person's life pursuant to Paragraphs (2), (3) and (4) of
22 Subsection F of this section, except with respect to benefits
23 for ~~[basic hospital, medical and surgical insurance and major~~
24 ~~medical insurance]~~ health benefit plans pursuant to
25 Subparagraph (b) of Paragraph (2) of Subsection F of this

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1 section, in which case the aggregate liability of the
2 association shall not exceed five hundred thousand dollars
3 (\$500,000) with respect to one person's life; or

4 (2) with respect to one owner of multiple
5 non-group policies of life insurance, whether the policy holder
6 or contract owner is an individual, firm, corporation or other
7 person, and whether the persons insured are officers, managers,
8 employees or other persons, more than five million dollars
9 (\$5,000,000) in benefits, regardless of the number of policies
10 and contracts held by the owner.

11 H. With respect to either one contract owner
12 provided coverage pursuant to Subparagraph (b) of Paragraph (3)
13 of Subsection A of this section or one plan sponsor whose plans
14 own directly or in trust one or more unallocated annuity
15 contracts not included in Paragraph (3) of Subsection F of this
16 section, the benefits the association may become obligated to
17 cover shall not exceed five million dollars (\$5,000,000)
18 irrespective of the number of contracts with respect to the
19 contract owner or plan sponsor. However, in the case where one
20 or more unallocated annuity contracts are covered contracts
21 pursuant to the Life and Health Insurance Guaranty Association
22 Act and are owned by a trust or other entity for the benefit of
23 two or more plan sponsors, coverage shall be afforded by the
24 association if the largest interest in the trust or entity
25 owning the contract or contracts is held by a plan sponsor

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1 whose principal place of business is in this state. In no
2 event shall the association be obligated to cover more than
3 five million dollars (\$5,000,000) in benefits with respect to
4 all of these unallocated contracts.

5 I. The limitations set forth in Subsections F, G
6 and H of this section are limitations on the benefits for which
7 the association is obligated before taking into account either
8 its subrogation and assignment rights or the extent to which
9 those benefits could be provided out of the assets of the
10 impaired or insolvent insurer attributable to covered policies.
11 The costs of the association's obligations may be met by the
12 use of assets attributable to covered policies or reimbursed to
13 the association pursuant to its subrogation and assignment
14 rights.

15 J. In performing its obligations to provide
16 coverage pursuant to Sections 59A-42-4 and 59A-42-7 NMSA 1978,
17 the association shall not be required to guarantee, assume,
18 reinsure, reissue or perform, or cause to be guaranteed,
19 assumed, reinsured, reissued or performed, the contractual
20 obligations of the insolvent or impaired insurer under a
21 covered policy or contract that do not materially affect the
22 economic values or economic benefits of the covered policy or
23 contract."

24 SECTION 3. Section 59A-42-5 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 754, as amended) is amended to read:

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1 "59A-42-5. ORGANIZATION OF ASSOCIATION--PARTICIPATION.--

2 A. All insurers shall organize and remain members
3 of the association as a condition of their authority to
4 transact insurance or a health maintenance organization
5 business covered by Section 59A-42-4 NMSA 1978. The
6 association may take any appropriate form of legal entity
7 available under the laws of this state and approved by the
8 superintendent. The association shall perform its functions
9 under the plan of operation established and approved pursuant
10 to Section 59A-42-9 NMSA 1978 and shall exercise its powers
11 through the board. For purposes of assessment and
12 administration, the association shall maintain two accounts:

13 (1) the life insurance and annuity account,
14 which includes the following subaccounts:

15 (a) a life insurance account;
16 (b) an annuity account, which includes
17 annuity contracts owned by a governmental retirement benefit
18 plan, or its trustee, established pursuant to Section 401,
19 403(b) or 457 of the federal Internal Revenue Code of 1986, but
20 otherwise excludes unallocated annuities; and

21 (c) an unallocated annuity account,
22 which excludes contracts owned by a governmental retirement
23 benefit plan, or its trustee, established pursuant to Section
24 401, 403(b) or 457 of the federal Internal Revenue Code of
25 1986; and

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1 (2) the health [~~insurance~~] account.

2 B. The association shall be supervised by the
3 superintendent and shall be subject to the applicable
4 provisions of the insurance laws of New Mexico. Meetings or
5 records of the association may be opened to the public upon
6 majority vote of the board of the association."

7 SECTION 4. Section 59A-42-6 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 755, as amended) is amended to read:

9 "59A-42-6. BOARD OF DIRECTORS.--

10 A. The board of directors of the association shall
11 consist of not less than [~~five~~] seven nor more than [~~nine~~]
12 eleven member insurers serving terms as established in the plan
13 of operation. The insurer members of the board shall be
14 selected by member insurers subject to the approval of the
15 superintendent. In addition, two persons who are public
16 representatives shall be appointed by the superintendent to the
17 board. A public representative shall not be an officer,
18 director or employee of an insurance company or a health
19 maintenance organization or a person engaged in the business of
20 insurance. Vacancies on the board shall be filled for the
21 remaining period of the term by a majority vote of the
22 remaining board members for member insurers, subject to
23 approval of the superintendent, and by the superintendent for
24 public representatives.

25 B. In approving insurer member selections, the

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1 superintendent shall consider among other things whether all
2 member insurers are fairly represented.

3 C. Members of the board may be reimbursed from the
4 assets of the association for reasonable and necessary expenses
5 incurred by them as members of the board, but the amount of
6 that reimbursement shall not exceed the guidelines provided by
7 the approved plan of operation."

8 SECTION 5. Section 59A-42-7 NMSA 1978 (being Laws 2012,
9 Chapter 9, Section 10) is amended to read:

10 "59A-42-7. POWERS AND DUTIES OF THE ASSOCIATION.--

11 A. If a member insurer is an impaired insurer, the
12 association may, in its discretion, and subject to conditions
13 imposed by the association that do not impair the contractual
14 obligations of the impaired insurer and that are approved by
15 the superintendent:

16 (1) guarantee, assume, reissue or reinsure, or
17 cause to be guaranteed, assumed, reissued or reinsured, any or
18 all of the policies or contracts of the impaired insurer; and

19 (2) provide such money, pledges, loans, notes,
20 guarantees or other means as are proper to effectuate Paragraph
21 (1) of this subsection and assure payment of the contractual
22 obligations of the impaired insurer pending action pursuant to
23 Paragraph (1) of this subsection.

24 B. If a member insurer is an insolvent insurer, the
25 association shall, in its discretion, either:

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1 (1) guarantee, assume, reissue or reinsure, or
2 cause to be guaranteed, assumed, reissued or reinsured, the
3 policies or contracts of the insolvent insurer, or assure
4 payment of the contractual obligations of the insolvent
5 insurer, and provide money, pledges, loans, notes, guarantees
6 or other means reasonably necessary to discharge the
7 association's duties; or

8 (2) provide benefits and coverages in
9 accordance with the following provisions:

10 (a) with respect to [~~life and health~~
11 ~~insurance policies and annuities~~] policies and contracts,
12 assure payment of benefits [~~for premiums identical to the~~
13 ~~premiums and benefits, except for terms of conversion and~~
14 ~~renewability~~] that would have been payable under the policies
15 or contracts of the insolvent insurer, for claims incurred: 1)
16 with respect to group policies and contracts, not later than
17 the earlier of the next renewal date under those policies or
18 contracts or forty-five days, but in no event less than thirty
19 days, from the date on which the association becomes obligated
20 with respect to the policies and contracts; and 2) with respect
21 to non-group policies, contracts and annuities, not later than
22 the earlier of the next renewal date, if any, under the
23 policies or contracts or one year, but in no event less than
24 thirty days, from the date on which the association becomes
25 obligated with respect to the policies or contracts;

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1 (b) make diligent efforts to provide all
2 known insureds, enrollees or annuitants, for non-group policies
3 and contracts, or group policy holders or contract owners with
4 respect to group policies and contracts, thirty days' notice of
5 the termination, pursuant to Subparagraph (a) of this
6 paragraph, of the benefits provided;

7 (c) with respect to non-group [~~life and~~
8 ~~health insurance policies and annuities~~] policies or contracts
9 covered by the association, and with respect to an individual
10 formerly insured, enrolled or formerly an annuitant under a
11 group policy or contract who is not eligible for replacement
12 group coverage, make available to each known insured, enrollee
13 or annuitant, or owner if other than the insured, enrollee or
14 annuitant, substitute coverage on an individual basis in
15 accordance with the provisions of Subparagraph (d) of this
16 paragraph if the insureds, enrollees or annuitants had a right
17 under law or the terminated policy, contract or annuity to
18 convert coverage to individual coverage or to continue an
19 individual policy, contract or annuity in force until a
20 specified age or for a specified time, during which the insurer
21 or health maintenance organization had no right unilaterally to
22 make changes in any provision of the policy, contract or
23 annuity or had a right only to make changes in premium by
24 class;

25 (d) in providing the substitute coverage

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1 required pursuant to Subparagraph (c) of this paragraph, the
2 association may offer either to reissue the terminated coverage
3 or to issue an alternative policy or contract at actuarially
4 justified rates. Alternative or reissued policies or contracts
5 shall be offered without requiring evidence of insurability and
6 shall not provide for a waiting period or exclusion that would
7 not have applied under the terminated policy or contract. The
8 association may reinsure an alternative or reissued policy or
9 contract;

10 (e) alternative policies or contracts
11 adopted by the association shall be subject to the approval of
12 the ~~[domiciliary insurance]~~ superintendent ~~[and the~~
13 ~~receivership court]~~. The association may adopt alternative
14 policies or contracts of various types for future issuance
15 without regard to a particular impairment or insolvency.
16 Alternative policies or contracts shall contain at least the
17 minimum statutory provisions required in this state and provide
18 benefits that shall not be unreasonable in relation to the
19 premium charged. The association shall set the premium in
20 accordance with a table of rates that it shall adopt. The
21 premium shall reflect the amount of insurance to be provided
22 and the age and class of risk of each insured but shall not
23 reflect changes in the health of the insured after the original
24 policy or contract was last underwritten. An alternative
25 policy or contract issued by the association shall provide

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1 coverage of a type similar to that of the policy or contract
2 issued by the impaired or insolvent insurer, as determined by
3 the association;

4 (f) if the association elects to reissue
5 terminated coverage at a premium rate different from that
6 charged under the terminated policy or contract, the premium
7 shall be actuarially justified and set by the association in
8 accordance with the amount of insurance provided and the age
9 and class of risk, subject to the approval of the [~~domiciliary~~
10 ~~insurance~~] superintendent [~~and the receivership court~~];

11 (g) the association's obligations with
12 respect to coverage under a policy or contract of the impaired
13 or insolvent insurer or under a reissued or alternative policy
14 or contract shall cease on the date the coverage or policy is
15 replaced by another similar policy by the policy owner,
16 contract owner, enrollee, the insured or the association; and

17 (h) when proceeding under this
18 subsection with respect to a policy or contract carrying
19 guaranteed minimum interest rates, the association shall assure
20 the payment or crediting of a rate of interest consistent with
21 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978.

22 C. Nonpayment of premiums within thirty-one days
23 after the date required under the terms of a guaranteed,
24 assumed, alternative or reissued policy or contract or
25 substitute coverage shall terminate the association's

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1 obligations under the policy, contract or coverage pursuant to
2 the Life and Health Insurance Guaranty Association Act with
3 respect to the policy, contract or coverage, except with
4 respect to claims incurred or net cash surrender value that may
5 be due in accordance with the provisions of that act.

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

14 E. The protection provided by the Life and Health
15 Insurance Guaranty Association Act shall not apply where
16 guaranty protection is provided to residents of this state by
17 the laws of the domiciliary state or jurisdiction of the
18 impaired or insolvent insurer other than this state.

19 F. In carrying out its duties pursuant to
20 Subsection B of this section, the association may:

21 (1) subject to approval by a court in this
22 state, impose permanent policy or contract liens in connection
23 with a guaranty, assumption or reinsurance agreement if the
24 association finds that the amounts that can be assessed are
25 less than the amounts needed to assure full and prompt

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1 performance of the association's duties, or if it finds that
2 the economic or financial conditions as they affect member
3 insurers are sufficiently adverse to render the imposition of
4 such permanent policy or contract liens to be in the public
5 interest; or

6 (2) subject to approval by a court in this
7 state, impose temporary moratoriums or liens on payments of
8 cash values and policy loans, or another right to withdraw
9 funds held in conjunction with policies or contracts, in
10 addition to contractual provisions for deferral of cash or
11 policy loan value. In addition, in the event of a temporary
12 moratorium or moratorium charge imposed by the receivership
13 court on payment of cash values or policy loans, or on another
14 right to withdraw funds held in conjunction with policies or
15 contracts, out of the assets of the impaired or insolvent
16 insurer, the association may defer the payment of cash values,
17 policy loans or other rights by the association for the period
18 of the moratorium or moratorium charge imposed by the
19 receivership court, except for claims covered by the
20 association to be paid in accordance with a hardship procedure
21 established by the liquidator or rehabilitator and approved by
22 the receivership court.

23 G. A deposit in this state, held pursuant to law or
24 required by the superintendent for the benefit of creditors,
25 including policy or contract owners, not turned over to the

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1 domiciliary liquidator upon the entry of a final order of
2 liquidation or order approving a rehabilitation plan of ~~[an]~~ a
3 member insurer domiciled in this state or in a reciprocal
4 state, pursuant to Chapter 59A, Article 10 NMSA 1978, shall be
5 promptly paid to the association. The association is entitled
6 to retain a portion of an amount paid to it equal to the
7 percentage determined by dividing the aggregate amount of
8 policy or contract owners' claims related to that insolvency
9 for which the association has provided statutory benefits by
10 the aggregate amount of all policy or contract owners' claims
11 in this state related to that insolvency and shall remit to the
12 domiciliary receiver the amount so paid to the association less
13 the amount retained pursuant to this subsection. An amount
14 paid to the association and retained by it shall be treated as
15 a distribution of estate assets pursuant to the Insurers
16 Conservation, Rehabilitation and Liquidation Law or similar
17 provision of the state of domicile of the impaired or insolvent
18 insurer.

19 H. If the association fails to act within a
20 reasonable period of time with respect to an insolvent insurer,
21 as provided in Subsection B of this section, the superintendent
22 shall have the powers and duties of the association with
23 respect to the insolvent insurer.

24 I. The association may render assistance and advice
25 to the superintendent, upon the superintendent's request,

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1 concerning rehabilitation, payment of claims, continuance of
2 coverage or the performance of other contractual obligations of
3 an impaired or insolvent insurer.

4 J. The association shall have standing to appear or
5 intervene before a court or agency in this state with
6 jurisdiction over an impaired or insolvent insurer concerning
7 which the association is or may become obligated pursuant to
8 the Life and Health Insurance Guaranty Association Act or with
9 jurisdiction over a person or property against which the
10 association may have rights through subrogation or otherwise.
11 Standing shall extend to all matters germane to the powers and
12 duties of the association, including proposals for reinsuring,
13 modifying or guaranteeing the policies or contracts of the
14 impaired or insolvent insurer and the determination of the
15 policies or contracts and contractual obligations. The
16 association shall also have the right to appear or intervene
17 before a court or agency in another state with jurisdiction
18 over an impaired or insolvent insurer for which the association
19 is or may become obligated or with jurisdiction over a person
20 or property against whom the association may have rights
21 through subrogation or otherwise.

22 K. The association shall have subrogation rights
23 under the Life and Health Insurance Guaranty Association Act as
24 follows:

- 25 (1) a person receiving benefits pursuant to

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1 the Life and Health Insurance Guaranty Association Act shall be
2 deemed to have assigned the rights under, and any causes of
3 action against any person for losses arising pursuant to,
4 resulting from or otherwise relating to, the covered policy or
5 contract to the association to the extent of the benefits
6 received, whether the benefits are payments of or on account of
7 contractual obligations, continuation of coverage or provision
8 of substitute or alternative policies, contracts or coverages.
9 The association may require an assignment to it of those rights
10 and causes of action by [æ] an enrollee, payee, policy or
11 contract owner, beneficiary, insured or annuitant as a
12 condition precedent to the receipt of a right or benefit
13 conferred upon the person;

14 (2) the subrogation rights of the association
15 pursuant to this subsection shall have the same priority
16 against the assets of the impaired or insolvent insurer as that
17 possessed by the person entitled to receive benefits;

18 (3) in addition to Paragraphs (1) and (2) of
19 this subsection, the association shall have all common law
20 rights of subrogation and any other equitable or legal remedy
21 that would have been available to the impaired or insolvent
22 insurer or owner, beneficiary, enrollee or payee of a policy or
23 contract with respect to the policy or contracts;

24 (4) if Paragraph (1), (2) or (3) of this
25 subsection is invalid or ineffective with respect to a person

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1 or claim for any reason, the amount payable by the association
2 with respect to the related covered obligations shall be
3 reduced by the amount realized by another person with respect
4 to the person or claim that is attributable to the policies or
5 contracts, or to the portion of the policies or contracts,
6 covered by the association; and

7 (5) if the association has provided benefits
8 with respect to a covered obligation and a person recovers
9 amounts as to which the association has rights as described in
10 this subsection, the person shall pay to the association the
11 portion of the recovery attributable to the policies, or to the
12 portion of the policies, covered by the association.

13 L. In addition to its other rights and powers, the
14 association may:

15 (1) enter into contracts that are necessary or
16 proper to carry out the provisions and purposes of the Life and
17 Health Insurance Guaranty Association Act;

18 (2) sue or be sued, including taking legal
19 actions necessary or proper to recover unpaid assessments
20 pursuant to Section 59A-42-8 NMSA 1978 and to settle claims or
21 potential claims against it;

22 (3) borrow money to effect the purposes of the
23 Life and Health Insurance Guaranty Association Act. Notes or
24 other evidence of indebtedness of the association not in
25 default shall be legal investments for domestic member insurers

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1 and may be carried as admitted assets;

2 (4) employ or retain those persons necessary
3 or appropriate to handle the financial transactions of the
4 association and to perform other functions as become necessary
5 or proper;

6 (5) take legal action that may be necessary or
7 appropriate to avoid or recover payment of improper claims;

8 (6) exercise, to the extent approved by the
9 superintendent, the powers of a domestic life ~~[or]~~ insurer,
10 health maintenance organization or health insurer, but in no
11 case may the association issue [~~insurance~~] policies or
12 [~~annuity~~] contracts other than those issued to perform its
13 obligations pursuant to the Life and Health Insurance Guaranty
14 Association Act;

15 (7) organize itself as a corporation or in
16 other legal form permitted by the laws of this state;

17 (8) request information from a person seeking
18 coverage from the association in order to aid the association
19 in determining its obligations with respect to that person, and
20 that person shall promptly comply with the request; [~~and~~]

21 (9) unless prohibited by law, in accordance
22 with the terms and conditions of the policy or contract, file
23 for an actuarially justified rate or premium increase for a
24 policy or contract for which it provides coverage under the
25 Life and Health Insurance Guaranty Association Act; and

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1 [~~(9)~~] (10) take other necessary or appropriate
2 action to discharge its duties and obligations or to exercise
3 its powers.

4 M. The association may join an organization of one
5 or more other state associations with similar purposes to
6 further the purposes and administer the powers and duties of
7 the association.

8 N. The association may succeed to the rights and
9 obligations of an insolvent insurer as follows:

10 (1) at any time within one hundred eighty days
11 of the date of the order of liquidation, the association may
12 elect to succeed to the rights and obligations of the ceding
13 member insurer that relate to policies, contracts or annuities
14 covered, in whole or in part, by the association, in each case
15 under one or more reinsurance contracts entered into by the
16 insolvent insurer and its reinsurers and selected by the
17 association. The assumption shall be effective as of the date
18 of the order of liquidation. The election shall be effected by
19 the association or the national organization of life and health
20 insurance guaranty associations on its behalf sending written
21 notice, return receipt requested, to the affected reinsurers;

22 (2) to facilitate the earliest practicable
23 decision about whether to assume any of the contracts of
24 reinsurance, and in order to protect the financial position of
25 the estate, the receiver and each reinsurer of the ceding

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1 member insurer shall make available, upon request, to the
2 association or to the national organization of life and health
3 insurance guaranty associations on its behalf, as soon as
4 possible after commencement of formal delinquency proceedings:

5 (a) copies of in-force contracts of
6 reinsurance and all related files and records relevant to the
7 determination of whether those contracts should be assumed; and

8 (b) notices of defaults under the
9 reinsurance contracts or a known event or condition that with
10 the passage of time could become a default under the
11 reinsurance contracts;

12 (3) the following shall apply to reinsurance
13 contracts assumed by the association:

14 (a) the association shall be responsible
15 for all unpaid premiums due under the reinsurance contracts for
16 periods both before and after the date of the order of
17 liquidation and shall be responsible for the performance of all
18 other obligations to be performed after the date of the order
19 of liquidation, in each case that relate to policies, contracts
20 or annuities covered, in whole or in part, by the association.
21 The association may charge policies, contracts or annuities
22 covered in part by the association, through reasonable
23 allocation methods, the costs for reinsurance in excess of the
24 obligations of the association and shall provide notice and an
25 accounting of these charges to the liquidator;

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1 (b) the association shall be entitled to
2 amounts payable by the reinsurer under the reinsurance
3 contracts with respect to losses or events that occur in
4 periods after the date of the order of liquidation and that
5 relate to policies, contracts or annuities covered, in whole or
6 in part, by the association, provided that, upon receipt of
7 those amounts, the association shall be obliged to pay to the
8 beneficiary under the policy, contract or annuity on account of
9 which the amounts were paid a portion of the amount equal to
10 the lesser of: 1) the amount received by the association; and
11 2) the excess of the amount received by the association over
12 the amount equal to the benefits paid by the association on
13 account of the policy, contract or annuity less the retention
14 of the insurer applicable to the loss or event;

15 (c) within thirty days following the
16 association's election, the association and each reinsurer
17 under contracts assumed by the association shall calculate the
18 net balance due to or from the association under each
19 reinsurance contract as of the date of election with respect to
20 policies, contracts or annuities covered, in whole or in part,
21 by the association, which calculation shall give full credit to
22 all items paid by either the member insurer or its receiver or
23 the reinsurer prior to the election date. The reinsurer shall
24 pay the receiver amounts due for losses or events prior to the
25 date of the order of liquidation, subject to a setoff for

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1 premiums unpaid for periods prior to that date, and the
2 association or reinsurer shall pay any remaining balance due
3 the other, in each case within five days of the completion of
4 the calculation described in this subparagraph. A dispute over
5 the amounts due to either the association or the reinsurer
6 shall be resolved by arbitration pursuant to the terms of the
7 affected reinsurance contracts or, if the contract contains no
8 arbitration clause, as otherwise provided by law. If the
9 receiver has received amounts due the association pursuant to
10 Subparagraph (b) of this paragraph, the receiver shall remit
11 those amounts to the association as promptly as practicable;
12 and

13 (d) if the association or receiver, on
14 the association's behalf, within sixty days of the election
15 described in Subparagraph (c) of this paragraph, pays the
16 unpaid premiums due for periods both before and after the date
17 of election that relate to policies, contracts or annuities
18 covered, in whole or in part, by the association, the reinsurer
19 shall not be entitled to terminate the reinsurance contracts
20 for failure to pay premiums insofar as the reinsurance
21 contracts relate to policies, contracts or annuities covered,
22 in whole or in part, by the association, and the reinsurer
23 shall not be entitled to set off unpaid amounts due under other
24 contracts, or unpaid amounts due from parties other than the
25 association, against amounts due the association;

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1 (4) during the period from the date of the
2 order of liquidation, until the election date or, if the
3 election does not occur, until one hundred eighty days after
4 the date of the order of liquidation, neither the association
5 nor the reinsurer shall have rights or obligations pursuant to
6 reinsurance contracts that the association has the right to
7 assume pursuant to Paragraphs (1), (2) and (3) of this
8 subsection, whether for periods prior to or after the date of
9 the order of liquidation, and the reinsurer, the receiver and
10 the association shall, to the extent practicable, provide each
11 other data and records reasonably requested; provided that once
12 the association has elected to assume a reinsurance contract,
13 the parties' rights and obligations shall be governed by
14 Paragraphs (1), (2) and (3) of this subsection;

15 (5) if the association does not elect to
16 assume a reinsurance contract by the election date pursuant to
17 Paragraphs (1), (2) and (3) of this subsection, the association
18 shall have no rights or obligations, in each case for periods
19 both before and after the date of the order of liquidation,
20 with respect to the reinsurance contract;

21 (6) when policies, contracts or annuities, or
22 covered obligations with respect to those policies, contracts
23 or annuities, are transferred to an assuming insurer,
24 reinsurance on the policies or annuities may also be
25 transferred by the association, in the case of contracts

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1 assumed pursuant to Paragraphs (1), (2) and (3) of this
2 subsection, subject to the following:

3 (a) unless the reinsurer and the
4 assuming insurer agree otherwise, the reinsurance contract
5 transferred shall not cover new policies of insurance,
6 contracts or annuities in addition to those transferred;

7 (b) the obligations described in
8 Paragraphs (1), (2) and (3) of this subsection shall no longer
9 apply with respect to matters arising after the effective date
10 of the transfer; and

11 (c) notice shall be given in writing,
12 return receipt requested, by the transferring party to the
13 affected reinsurer not less than thirty days prior to the
14 effective date of the transfer;

15 (7) the provisions of this subsection shall
16 supersede the provisions of a law or of an affected reinsurance
17 contract that provides for or requires a payment of reinsurance
18 proceeds, on account of losses or events that occur in periods
19 after the date of the order of liquidation, to the receiver of
20 the insolvent insurer or another person. The receiver shall
21 remain entitled to amounts payable by the reinsurer under the
22 reinsurance contracts with respect to losses or events that
23 occur in periods prior to the date of the order of liquidation,
24 subject to applicable setoff provisions; and

25 (8) except as otherwise provided in this

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1 subsection, the provisions of this subsection shall not:

2 (a) alter or modify the terms and
3 conditions of a reinsurance contract;

4 (b) abrogate or limit the rights of a
5 reinsurer to claim that it is entitled to rescind a reinsurance
6 contract;

7 (c) give a policyholder, contract owner,
8 enrollee, certificate holder or beneficiary an independent
9 cause of action against a reinsurer that is not otherwise set
10 forth in the reinsurance contract;

11 (d) limit or affect the association's
12 rights as a creditor of the estate against the assets of the
13 estate; or

14 (e) apply to reinsurance contracts
15 covering property or casualty risks.

16 O. The board may exercise reasonable business
17 judgment to determine the means by which the association is to
18 provide the benefits of the Life and Health Insurance Guaranty
19 Association Act in an economical and efficient manner.

20 P. Where the association has arranged or offered to
21 provide benefits to a covered person under a plan or
22 arrangement that fulfills the association's obligations, the
23 person shall not be entitled to benefits from the association
24 in addition to or other than those provided under the plan or
25 arrangement.

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1 Q. Venue in a suit against the association arising
2 pursuant to the Life and Health Insurance Guaranty Association
3 Act shall be in Santa Fe county. The association shall not be
4 required to give an appeal bond in an appeal that relates to a
5 cause of action arising pursuant to the Life and Health
6 Insurance Guaranty Association Act.

7 R. In carrying out its duties in connection with
8 guaranteeing, assuming, reissuing or reinsuring policies or
9 contracts pursuant to Subsection A or B of this section, the
10 association may ~~[subject to approval of the receivership court]~~
11 issue substitute coverage for a policy or contract that
12 provides an interest rate, crediting rate or similar factor
13 determined by use of an index or other external reference
14 stated in the policy or contract employed in calculating
15 returns or changes in value by issuing an alternative policy or
16 contract in accordance with the following provisions:

17 (1) in lieu of the index or other external
18 reference provided for in the original policy or contract, the
19 alternative policy or contract provides for a fixed interest
20 rate, payment of dividends with minimum guarantees or a
21 different method for calculating interest or changes in value;

22 (2) there is no requirement for evidence of
23 insurability, waiting period or other exclusion that would not
24 have applied under the replaced policy or contract; and

25 (3) the alternative policy or contract is

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1 substantially similar to the replaced policy or contract in all
2 other material terms."

3 SECTION 6. Section 59A-42-8 NMSA 1978 (being Laws 2012,
4 Chapter 9, Section 11) is amended to read:

5 "59A-42-8. ASSESSMENTS.--

6 A. For the purpose of providing the funds necessary
7 to carry out the powers and duties of the association, the
8 board shall assess the member insurers, separately for each
9 account, at a time and for amounts as the board finds
10 necessary. Assessments shall be due not less than thirty days
11 after prior written notice to the member insurers and shall
12 accrue interest at six percent a year on and after the due
13 date.

14 B. There shall be two classes of assessments as
15 follows:

16 (1) class A assessments shall be authorized
17 and called for the purpose of meeting administrative and legal
18 costs and other expenses. Class A assessments may be
19 authorized and called whether or not related to a particular
20 impaired or insolvent insurer; and

21 (2) class B assessments shall be authorized
22 and called to the extent necessary to carry out the powers and
23 duties of the association with regard to an impaired or an
24 insolvent insurer.

25 C. The amount of a class A assessment shall be

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1 determined by the board and may be authorized and called on a
2 pro rata or non-pro rata basis. If the class A assessment is
3 authorized and called on a pro rata basis, the board may
4 provide that it be credited against future class B assessments.
5 ~~[The total of all non-pro rata assessments shall not exceed~~
6 ~~three hundred dollars (\$300) per member insurer in one calendar~~
7 ~~year.]~~ The amount of a class B assessment, except for
8 assessments related to long-term care insurance, shall be
9 allocated for assessment purposes ~~[among the accounts]~~ between
10 the accounts and among the subaccounts of the life insurance
11 and annuity account pursuant to an allocation formula that may
12 be based on the premiums or reserves of the impaired or
13 insolvent insurer or another standard deemed by the board in
14 its sole discretion as being fair and reasonable under the
15 circumstances.

16 D. The amount of the class B assessment for long-
17 term care insurance written by the impaired or insolvent
18 insurer shall be allocated according to a methodology included
19 in the plan of operation and approved by the superintendent.
20 The methodology shall provide for fifty percent of the
21 assessment to be allocated to accident and health member
22 insurers and fifty percent to be allocated to life and annuity
23 member insurers.

24 ~~[D.]~~ E. Class B assessments against member insurers
25 for each account and subaccount shall be in the proportion that

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1 the premiums received on business in this state by each
2 assessed member insurer on policies or contracts covered by
3 each account for the three most recent calendar years for which
4 information is available preceding the year in which the
5 insurer became insolvent or, in the case of an assessment with
6 respect to an impaired insurer, the three most recent calendar
7 years for which information is available preceding the year in
8 which the insurer became impaired, bears to premiums received
9 on business in this state for those calendar years by all
10 assessed member insurers.

11 ~~[E-]~~ F. Assessments for funds to meet the
12 requirements of the association with respect to an impaired or
13 insolvent insurer shall not be authorized or called until
14 necessary to implement the purposes of the Life and Health
15 Insurance Guaranty Association Act. Classification of
16 assessments pursuant to Subsection B of this section and
17 computation of assessments pursuant to Subsections C and ~~[D]~~ E
18 of this section shall be made with a reasonable degree of
19 accuracy, recognizing that exact determinations may not always
20 be possible. The association shall notify each member insurer
21 of its anticipated pro rata share of an authorized assessment
22 not yet called within one hundred eighty days after the
23 assessment is authorized.

24 ~~[F-]~~ G. The association may abate or defer, in
25 whole or in part, the assessment of a member insurer if, in the

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1 opinion of the board, payment of the assessment would endanger
2 the ability of the member insurer to fulfill its contractual
3 obligations. In the event an assessment against a member
4 insurer is abated, or deferred in whole or in part, the amount
5 by which the assessment is abated or deferred may be assessed
6 against the other member insurers in a manner consistent with
7 the basis for assessments set forth in this section. Once the
8 conditions that caused a deferral have been removed or
9 rectified, the member insurer shall pay all assessments that
10 were deferred pursuant to a repayment plan approved by the
11 association.

12 ~~[G.]~~ H. Subject to the provisions of Subsection ~~[H]~~
13 I of this section, the total of all assessments authorized by
14 the association with respect to a member insurer for each
15 subaccount of the life insurance and annuity account and for
16 the health insurance account shall not in one calendar year
17 exceed two percent of that member insurer's average annual
18 premiums received in this state on the policies and contracts
19 covered by the subaccount or account during the three calendar
20 years preceding the year in which the member insurer became an
21 impaired or insolvent insurer.

22 ~~[H.]~~ I. If two or more assessments are authorized
23 in one calendar year with respect to member insurers that
24 become impaired or insolvent in different calendar years, the
25 average annual premiums for purposes of the aggregate

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1 assessment percentage limitation referenced in Subsection [G] H
2 of this section shall be equal and limited to the higher of the
3 three-year average annual premiums for the applicable
4 subaccount or account as calculated pursuant to this section.

5 [~~F.~~] J. If the maximum assessment, together with
6 the other assets of the association in an account, does not
7 provide in one year in either account an amount sufficient to
8 carry out the responsibilities of the association, the
9 necessary additional funds shall be assessed as soon thereafter
10 as permitted by the Life and Health Insurance Guaranty
11 Association Act.

12 [~~J.~~] K. The board may provide in the plan of
13 operation a method of allocating funds among claims, whether
14 relating to one or more impaired or insolvent insurers, when
15 the maximum assessment will be insufficient to cover
16 anticipated claims.

17 [~~K.~~] L. If the maximum assessment for a subaccount
18 of the life and annuity account in one year does not provide an
19 amount sufficient to carry out the responsibilities of the
20 association, then pursuant to Subsection [D] E of this section,
21 the board shall access the other subaccounts of the life
22 insurance and annuity account for the necessary additional
23 amount, subject to the maximum stated in Subsections [G, ~~H~~ and
24 ~~F~~] H, I and J of this section.

25 [~~L.~~] M. The board may, by an equitable method as

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1 established in the plan of operation, refund to member
2 insurers, in proportion to the contribution of each member
3 insurer to that account, the amount by which the assets of the
4 account exceed the amount the board finds is necessary to carry
5 out during the coming year the obligations of the association
6 with regard to that account, including assets accruing from
7 assignment, subrogation, net realized gains and income from
8 investments. A reasonable amount may be retained in an account
9 to provide funds for the continuing expenses of the association
10 and for a future losses claim.

11 [M.] N. It shall be proper for a member insurer, in
12 determining its premium rates and policyowner dividends as to
13 any kind of insurance or health maintenance organization
14 business within the scope of the Life and Health Insurance
15 Guaranty Association Act, to consider the amount reasonably
16 necessary to meet its assessment obligations under that act.

17 [N.] O. The association shall issue to each member
18 insurer paying an assessment, other than a class A assessment,
19 a certificate of contribution, in a form prescribed by the
20 superintendent, for the amount of the assessment paid. All
21 outstanding certificates shall be of equal dignity and priority
22 without reference to amounts or dates of issue. A certificate
23 of contribution may be shown by the member insurer in its
24 financial statement as an asset in that form and for that
25 amount, if any, and period of time as the superintendent may

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1 approve.

2 [Θ→] P. A protest to an assessment shall occur as
3 follows:

4 (1) a member insurer that wishes to protest
5 all or part of an assessment shall pay when due the full amount
6 of the assessment as set forth in the notice provided by the
7 association. The payment shall be available to meet
8 association obligations during the pendency of the protest or a
9 subsequent appeal. Payment shall be accompanied by a statement
10 in writing that the payment is made under protest and setting
11 forth a brief statement of the grounds for the protest;

12 (2) within sixty days following the payment of
13 an assessment under protest by a member insurer, the
14 association shall notify the member insurer in writing of its
15 determination with respect to the protest unless the
16 association notifies the member insurer that additional time is
17 required to resolve the issues raised by the protest;

18 (3) within thirty days after a final decision
19 has been made, the association shall notify the protesting
20 member insurer in writing of that final decision. Within sixty
21 days of receipt of notice of the final decision, the protesting
22 member insurer may appeal that final action to the
23 superintendent;

24 (4) in the alternative to rendering a final
25 decision with respect to a protest based on a question

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1 regarding the assessment base, the association may refer
2 protests to the superintendent for a final decision, with or
3 without a recommendation from the association; and

4 (5) if the protest or appeal on the assessment
5 is upheld, the amount paid in error or excess shall be returned
6 to the member [~~company~~] insurer. Interest on a refund due a
7 protesting member insurer shall be paid at the rate actually
8 earned by the association.

9 [P-] Q. The association may request information of
10 member insurers in order to aid in the exercise of its power
11 pursuant to this section, and member insurers shall promptly
12 comply with a request."

13 SECTION 7. Section 59A-42-10 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 759, as amended) is amended to read:

15 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

16 A. The superintendent shall:

17 (1) notify the association of the existence of
18 an insolvent insurer not later than three days after the
19 superintendent receives notice of the determination of the
20 insolvency;

21 (2) upon request of the board, provide the
22 association with a statement of the premiums in this or another
23 state of each member insurer; and

24 (3) when an impairment is declared and the
25 amount of the impairment is determined, serve a demand upon the

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1 impaired insurer to make good the impairment within a
2 reasonable time. Notice to the impaired insurer shall
3 constitute notice to its shareholders, if any. The failure of
4 the impaired insurer to promptly comply with the demand shall
5 not excuse the association from the performance of its powers
6 and duties pursuant to the Life and Health Insurance Guaranty
7 Association Act.

8 B. The superintendent may:

9 (1) suspend or revoke, after notice and
10 hearing, the certificate of authority to transact [~~insurance~~]
11 business in this state of a member insurer that fails to pay an
12 assessment when due or that fails to comply with the plan of
13 operation. As an alternative, the superintendent may levy a
14 fine on a member insurer that fails to pay an assessment when
15 due. The fine shall not exceed five percent of the unpaid
16 assessment a month, except that no fine shall be less than one
17 hundred dollars (\$100) a month; and

18 (2) revoke the designation of a servicing
19 facility if the superintendent finds that claims are being
20 handled unsatisfactorily."

21 SECTION 8. Section 59A-42-11 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 760, as amended) is amended to read:

23 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the
24 detection and prevention of insurance insolvencies:

25 A. the superintendent shall:

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1 (1) notify the superintendents in other
2 states, within thirty days following the action taken or the
3 date the action occurs, when the superintendent takes any of
4 the following actions against a member insurer:

5 (a) revokes a license;

6 (b) suspends a license; or

7 (c) makes a formal order that the
8 [~~company~~] member insurer restrict its premium writing, obtain
9 additional contributions to surplus, withdraw from the state,
10 reinsure all or a part of its business or increase capital,
11 surplus or another account for the security of policy owners,
12 contract owners, certificate holders or creditors;

13 (2) report to the board when the
14 superintendent has taken an action set forth in Paragraph (1)
15 of this subsection or has received a report from another
16 superintendent indicating that an action has been taken in
17 another state. The report to the board shall contain all
18 significant details of the action taken or of the report
19 received from another superintendent;

20 (3) report to the board when the
21 superintendent has reasonable cause to believe from an
22 examination, whether completed or in process, of a member
23 insurer that the member insurer may be an impaired or insolvent
24 insurer; and

25 (4) furnish to the board the national

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1 association of insurance commissioners' insurance regulatory
2 information system ratios and listings of companies not
3 included in the ratios developed by the national association of
4 insurance commissioners. The board may use that information in
5 carrying out its duties and responsibilities pursuant to this
6 section. The report shall be kept confidential by the board
7 until it is made public by the superintendent or other lawful
8 authority;

9 B. the superintendent may seek the advice and
10 recommendations of the board concerning a matter affecting the
11 duties and responsibilities of the superintendent regarding the
12 financial condition of member insurers [~~and companies~~] seeking
13 admission to transact [~~insurance~~] business in this state; and

14 C. the board may, upon majority vote:

15 (1) notify the superintendent of information
16 indicating that a member insurer may be an impaired or
17 insolvent insurer;

18 (2) make reports and recommendations to the
19 superintendent upon any matter germane to the solvency,
20 liquidation, rehabilitation or conservation of a member insurer
21 or germane to the solvency of [~~a company~~] an insurer or health
22 maintenance organization seeking to do [~~insurance~~] business in
23 this state. The reports and recommendations are not public
24 documents; and

25 (3) make recommendations to the superintendent

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1 for the detection and prevention of insurers' insolvencies."

2 SECTION 9. Section 59A-42-13 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 762, as amended) is amended to read:

4 "59A-42-13. MISCELLANEOUS PROVISIONS.--

5 A. The Life and Health Insurance Guaranty
6 Association Act shall not be construed to reduce the liability
7 for unpaid assessments of the insureds of an impaired or
8 insolvent insurer operating under a plan with assessment
9 liability.

10 B. Records shall be kept of all meetings of the
11 board to discuss the activities of the association in carrying
12 out its powers and duties. Records of the meetings with
13 respect to an impaired or insolvent insurer shall be made
14 public only upon the termination of a liquidation,
15 rehabilitation or conservation proceeding involving the
16 impaired or insolvent insurer, upon the termination of the
17 insolvency of the member insurer or upon the order of a court
18 of competent jurisdiction. Nothing in this subsection limits
19 the duty of the association to render the reports required by
20 Section 59A-42-14 NMSA 1978.

21 C. For the purpose of carrying out its obligations,
22 the association shall be deemed to be a creditor of the
23 impaired or insolvent insurer to the extent of assets
24 attributable to covered policies or contracts reduced by
25 amounts to which the association is entitled as a subrogee

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1 pursuant to Subsection K of Section 59A-42-7 NMSA 1978. Assets
2 of the impaired or insolvent insurer attributable to covered
3 policies or contracts shall be used to continue all covered
4 policies or contracts and pay all contractual obligations of
5 the impaired or insolvent insurer. Assets attributable to
6 covered policies or contracts, as used in this subsection, are
7 that proportion of the assets that the reserves that should
8 have been established for those policies or contracts bear to
9 the reserves that should have been established for all policies
10 of insurance or health benefit plans written by the impaired or
11 insolvent insurer.

12 D. As a creditor of the impaired or insolvent
13 insurer and consistent with the Insurers Conservation,
14 Rehabilitation and Liquidation Law, the association and other
15 similar associations shall be entitled to receive a
16 disbursement of assets out of the marshaled assets, from time
17 to time as the assets become available to reimburse it, as a
18 credit against contractual obligations pursuant to the Life and
19 Health Insurance Guaranty Association Act. If the liquidator
20 has not, within one hundred twenty days of a final
21 determination of insolvency of ~~[an]~~ a member insurer by the
22 receivership court, made an application to the court for the
23 approval of a proposal to disburse assets out of marshaled
24 assets to guaranty associations having obligations because of
25 the insolvency, the association shall be entitled to make

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1 application to the receivership court for approval of its own
2 proposal to disburse these assets.

3 E. Prior to the termination of a liquidation,
4 rehabilitation or conservation proceeding, the court may take
5 into consideration the contributions of the respective parties,
6 including the association, the shareholders, contract owners,
7 certificate holders, enrollees and policy owners of the
8 insolvent insurer and any other party with a bona fide
9 interest, in making an equitable distribution of the ownership
10 rights of the insolvent insurer. In such a determination,
11 consideration shall be given to the welfare of the policy
12 owners, contract owners, certificate holders and enrollees of
13 the continuing or successor member insurer.

14 F. No distribution to stockholders, if any, of an
15 impaired or insolvent insurer shall be made until and unless
16 the total amount of valid claims of the association with
17 interest thereon for funds expended in carrying out its powers
18 and duties with respect to the member insurer has been fully
19 recovered by the association."

20 SECTION 10. Section 59A-42-17 NMSA 1978 (being Laws 2012,
21 Chapter 9, Section 20) is amended to read:

22 "59A-42-17. PROHIBITED ADVERTISEMENT--NOTICE TO POLICY
23 OWNERS.--

24 A. No person, including [~~an~~] a member insurer,
25 agent or affiliate of [~~an~~] a member insurer, shall make,

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1 publish, disseminate, circulate or place before the public, or
2 cause directly or indirectly to be made, published,
3 disseminated, circulated or placed before the public, in a
4 newspaper, magazine or other publication, or in the form of a
5 notice, circular, pamphlet, letter or poster, or over a radio
6 station or television station, or in any other way, an
7 advertisement, announcement or statement, written or oral, that
8 uses the existence of the association for the purpose of sales,
9 solicitation or inducement to purchase insurance or other
10 coverage covered by the Life and Health Insurance Guaranty
11 Association Act. However, this subsection shall not apply to
12 the association or any other entity that does not sell or
13 solicit insurance or coverage by a health maintenance
14 organization.

15 B. Within one hundred eighty days of the effective
16 date of this [2012] act, the association shall prepare a
17 summary document describing the general purposes and current
18 limitations of that act and complying with Subsection C of this
19 section. The document shall be submitted to the superintendent
20 for approval. At the expiration of the sixtieth day after the
21 date on which the superintendent approves the document, [~~an~~] a
22 member insurer shall not deliver a policy or contract to a
23 policy [~~or~~] owner, contract owner, certificate holder or
24 enrollee unless the summary document is delivered to the policy
25 [~~or~~] owner, contract owner, certificate holder or enrollee at

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1 the time of delivery of the policy or contract. The document
2 shall also be available upon request by a policy owner,
3 contract owner, certificate holder or enrollee. The
4 distribution, delivery or contents or interpretation of this
5 document does not guarantee that either the policy or the
6 contract or the ~~[owner of the]~~ policy ~~[or]~~ owner, contract
7 owner, certificate holder or enrollee is covered in the event
8 of the impairment or insolvency of a member insurer. The
9 description document shall be revised by the association as
10 amendments to the Life and Health Insurance Guaranty
11 Association Act may require. Failure to receive this document
12 does not give the policy owner, contract owner, certificate
13 holder or insured greater rights than those stated in the Life
14 and Health Insurance Guaranty Association Act.

15 C. The document prepared pursuant to Subsection B
16 of this section shall contain a clear and conspicuous
17 disclaimer on its face. The superintendent shall establish the
18 form and content of the disclaimer. The disclaimer shall:

19 (1) state the name and address of the
20 association and insurance department;

21 (2) prominently warn the policy ~~[or]~~ owner,
22 contract owner, certificate holder or enrollee that the
23 association may not cover the policy or contract, if coverage
24 is available, that it will be subject to substantial
25 limitations and exclusions and conditioned on continued

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1 residence in this state;

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

4 (4) state that the member insurer and its
5 agents are prohibited by law from using the existence of the
6 association for the purpose of sales, solicitation or
7 inducement to purchase any form of insurance or health
8 maintenance organization coverage;

9 (5) state that the policy [~~or~~] owner, contract
10 owner, certificate holder or enrollee should not rely on
11 coverage pursuant to the Life and Health Insurance Guaranty
12 Association Act when selecting an insurer or health maintenance
13 organization;

14 (6) explain rights available and procedures
15 for filing a complaint to allege a violation of the provisions
16 of the Life and Health Insurance Guaranty Association Act; and

17 (7) provide other information as directed by
18 the superintendent, including sources for information about the
19 financial condition of insurers, provided that the information
20 is not proprietary and is subject to disclosure pursuant to the
21 Inspection of Public Records Act.

22 D. A member insurer shall retain evidence of
23 compliance with Subsection B of this section for as long as the
24 policy or contract for which the notice is given remains in
25 effect."

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SECTION 11. REPEAL.--Section 59A-46-15 NMSA 1978 (being
Laws 1993, Chapter 266, Section 15) is repealed.

SECTION 12. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2024.