

1 SENATE BILL 444

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Martin Hickey

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10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "59A-42-3. DEFINITIONS.--As used in the Life and Health
21 Insurance Guaranty Association Act:

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

24 B. "association" means the life and health
25 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 [~~0~~] 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 member insurer or the health maintenance organization
15 was not licensed in that state at the time specified in that
16 state's 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
22 insurance, which for the purposes of the Life and Health
23 Insurance Guaranty Association Act includes health maintenance
24 organization subscriber contracts and certificates, or ~~[annuity~~
25 ~~policies or contracts]~~ annuities and supplemental contracts to

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

12 E. Coverage shall not be provided for:

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

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

19 (3) a portion of a policy or contract, except
20 for any portion of a policy or contract, including a rider,
21 that provides long-term care or any other health insurance
22 benefit, to the extent that the rate of interest on which it is
23 based, or the interest rate, crediting rate or similar factor
24 determined by use of an index or other external reference
25 stated in the policy or contract employed in calculating

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1 returns or changes in value:

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

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

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

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- 1 (a) a multiple employer welfare
2 arrangement;
- 3 (b) a minimum premium group insurance
4 plan;
- 5 (c) a stop-loss group insurance plan; or
6 (d) an administrative services only
7 contract;
- 8 (5) a portion of a policy or contract to the
9 extent that it provides for:
- 10 (a) dividends or experience rating
11 credits;
- 12 (b) voting rights; or
13 (c) payment of fees or allowances to a
14 person, including the policy or contract owner, in connection
15 with the service to or administration of the policy or
16 contract;
- 17 (6) a policy or contract issued in this state
18 by a member insurer at a time when it was not licensed or did
19 not have a certificate of authority to issue the policy or
20 contract in this state;
- 21 (7) an unallocated annuity contract issued to
22 or in connection with a benefit plan protected under the
23 federal pension benefit guaranty corporation, regardless of
24 whether that corporation has yet become liable to make payments
25 with respect to the benefit plan;

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1 (8) a portion of an unallocated annuity
2 contract that is not issued to or in connection with a specific
3 employee, union or association of natural persons benefit plan
4 or a government lottery;

5 (9) a portion of a policy or contract to the
6 extent that the assessments required by Section 59-42-8 NMSA
7 1978 with respect to the policy or contract are preempted by
8 federal or state law;

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

13 (a) claims based on marketing materials;

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

18 (c) misrepresentations of or regarding
19 policy or contract benefits;

20 (d) extra-contractual claims; or

21 (e) a claim for penalties or
22 consequential or incidental damages;

23 (11) a contractual agreement that establishes
24 the member insurer's obligations to provide a book value
25 accounting guaranty for defined contribution benefit plan

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1 participants by reference to a portfolio of assets that is
2 owned by the benefit plan or its trustee, which in each case is
3 not an affiliate of the member insurer;

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

22 (13) a policy or contract providing hospital,
23 medical, prescription drug or other health care benefits
24 pursuant to Part C or Part D of Subchapter 18 of Chapter 7 of
25 Title 42 of the United States Code, commonly known as medicare

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1 Parts C and D, or Subchapter 19 of Chapter 7 of Title 42 of the
2 United States Code, commonly known as medicaid, or any
3 regulations promulgated pursuant to [Part C or Part D] those
4 acts; or

5 (14) structured settlement annuity benefits to
6 which a payee or beneficiary has transferred the payee's or
7 beneficiary's rights in a structured settlement factoring
8 transaction.

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

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

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

16 (a) for life insurance death benefits,
17 three hundred thousand dollars (\$300,000) but not more than one
18 hundred thousand dollars (\$100,000) in net cash surrender and
19 net cash withdrawal values;

20 (b) for health insurance benefits: 1)
21 one hundred thousand dollars (\$100,000) for coverages not
22 constituting disability income insurance, ~~[or basic hospital,~~
23 ~~medical and surgical insurance or major medical insurance]~~
24 health benefit plans or long-term care insurance, including net
25 cash surrender and net cash withdrawal values; 2) three hundred

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1 thousand dollars (\$300,000) for disability income insurance; 3)
2 three hundred thousand dollars (\$300,000) for long-term care
3 insurance as defined in Section 59A-23A-4 NMSA 1978; and 4)
4 five hundred thousand dollars (\$500,000) for [~~basic hospital,~~
5 ~~medical and surgical insurance or major medical insurance~~]
6 health benefit plans; or

7 (c) for annuity benefits, two hundred
8 fifty thousand dollars (\$250,000) in present value, including
9 net cash surrender and net cash withdrawal values;

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

18 (4) with respect to each payee of a structured
19 settlement annuity, or beneficiary or beneficiaries of the
20 payee if the payee is deceased, two hundred fifty thousand
21 dollars (\$250,000) in present value annuity benefits, in the
22 aggregate, including net cash surrender and net cash withdrawal
23 values, if any.

24 G. In no event shall the association be obligated
25 to cover:

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1 (1) more than an aggregate of three hundred
2 thousand dollars (\$300,000) in benefits with respect to one
3 person's life pursuant to Paragraphs (2), (3) and (4) of
4 Subsection F of this section, except with respect to benefits
5 for ~~[basic hospital, medical and surgical insurance and major~~
6 ~~medical insurance]~~ health benefit plans pursuant to
7 Subparagraph (b) of Paragraph (2) of Subsection F of this
8 section, in which case the aggregate liability of the
9 association shall not exceed five hundred thousand dollars
10 (\$500,000) with respect to one person's life; or

11 (2) with respect to one owner of multiple
12 non-group policies of life insurance, whether the policy holder
13 or contract owner is an individual, firm, corporation or other
14 person, and whether the persons insured are officers, managers,
15 employees or other persons, more than five million dollars
16 (\$5,000,000) in benefits, regardless of the number of policies
17 and contracts held by the owner.

18 H. With respect to either one contract owner
19 provided coverage pursuant to Subparagraph (b) of Paragraph (3)
20 of Subsection A of this section or one plan sponsor whose plans
21 own directly or in trust one or more unallocated annuity
22 contracts not included in Paragraph (3) of Subsection F of this
23 section, the benefits the association may become obligated to
24 cover shall not exceed five million dollars (\$5,000,000)
25 irrespective of the number of contracts with respect to the

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1 contract owner or plan sponsor. However, in the case where one
2 or more unallocated annuity contracts are covered contracts
3 pursuant to the Life and Health Insurance Guaranty Association
4 Act and are owned by a trust or other entity for the benefit of
5 two or more plan sponsors, coverage shall be afforded by the
6 association if the largest interest in the trust or entity
7 owning the contract or contracts is held by a plan sponsor
8 whose principal place of business is in this state. In no
9 event shall the association be obligated to cover more than
10 five million dollars (\$5,000,000) in benefits with respect to
11 all of these unallocated contracts.

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

22 J. For purposes of the Life and Health Insurance
23 Guaranty Association Act, benefits provided by a long-term care
24 rider to a life insurance policy or annuity contract shall be
25 considered the same type of benefit as the base life insurance

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1 policy or annuity contract to which it relates.

2 [~~J~~] K. In performing its obligations to provide
3 coverage pursuant to Sections 59A-42-4 and 59A-42-7 NMSA 1978,
4 the association shall not be required to guarantee, assume,
5 reinsure, reissue or perform, or cause to be guaranteed,
6 assumed, reinsured, reissued or performed, the contractual
7 obligations of the insolvent or impaired insurer under a
8 covered policy or contract that do not materially affect the
9 economic values or economic benefits of the covered policy or
10 contract."

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

13 "59A-42-5. ORGANIZATION OF ASSOCIATION--PARTICIPATION.--

14 A. All insurers shall organize and remain members
15 of the association as a condition of their authority to
16 transact insurance or a health maintenance organization
17 business covered by Section 59A-42-4 NMSA 1978. The
18 association may take any appropriate form of legal entity
19 available under the laws of this state and approved by the
20 superintendent. The association shall perform its functions
21 under the plan of operation established and approved pursuant
22 to Section 59A-42-9 NMSA 1978 and shall exercise its powers
23 through the board. For purposes of assessment and
24 administration, the association shall maintain two accounts:

25 (1) the life insurance and annuity account,

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1 which includes the following subaccounts:

2 (a) a life insurance account;

3 (b) an annuity account, which includes
4 annuity contracts owned by a governmental retirement benefit
5 plan, or its trustee, established pursuant to Section 401,
6 403(b) or 457 of the federal Internal Revenue Code of 1986, but
7 otherwise excludes unallocated annuities; and

8 (c) an unallocated annuity account,
9 which excludes contracts owned by a governmental retirement
10 benefit plan, or its trustee, established pursuant to Section
11 401, 403(b) or 457 of the federal Internal Revenue Code of
12 1986; and

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

14 B. The association shall be supervised by the
15 superintendent and shall be subject to the applicable
16 provisions of the insurance laws of New Mexico. Meetings or
17 records of the association may be opened to the public upon
18 majority vote of the board of the association."

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

21 "59A-42-6. BOARD OF DIRECTORS.--

22 A. The board of directors of the association shall
23 consist of not less than [~~five~~] seven nor more than [~~nine~~]
24 eleven member insurers serving terms as established in the plan
25 of operation. The insurer members of the board shall be

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1 selected by member insurers subject to the approval of the
2 superintendent. In addition, two persons who are public
3 representatives shall be appointed by the superintendent to the
4 board. A public representative shall not be an officer,
5 director or employee of an insurance company or a health
6 maintenance organization or a person engaged in the business of
7 insurance. Vacancies on the board shall be filled for the
8 remaining period of the term by a majority vote of the
9 remaining board members for member insurers, subject to
10 approval of the superintendent, and by the superintendent for
11 public representatives.

12 B. In approving insurer member selections, the
13 superintendent shall consider among other things whether all
14 member insurers are fairly represented.

15 C. Members of the board may be reimbursed from the
16 assets of the association for reasonable and necessary expenses
17 incurred by them as members of the board, but the amount of
18 that reimbursement shall not exceed the guidelines provided by
19 the approved plan of operation."

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

22 "59A-42-7. POWERS AND DUTIES OF THE ASSOCIATION.--

23 A. If a member insurer is an impaired insurer, the
24 association may, in its discretion, and subject to conditions
25 imposed by the association that do not impair the contractual

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1 obligations of the impaired insurer and that are approved by
2 the superintendent:

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

6 (2) provide such money, pledges, loans, notes,
7 guarantees or other means as are proper to effectuate Paragraph
8 (1) of this subsection and assure payment of the contractual
9 obligations of the impaired insurer pending action pursuant to
10 Paragraph (1) of this subsection.

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

13 (1) guarantee, assume, reissue or reinsure, or
14 cause to be guaranteed, assumed, reissued or reinsured, the
15 policies or contracts of the insolvent insurer, or assure
16 payment of the contractual obligations of the insolvent
17 insurer, and provide money, pledges, loans, notes, guarantees
18 or other means reasonably necessary to discharge the
19 association's duties; or

20 (2) provide benefits and coverages in
21 accordance with the following provisions:

22 (a) with respect to [~~life and health~~
23 ~~insurance policies and annuities~~] policies and contracts,
24 assure payment of benefits [~~for premiums identical to the~~
25 ~~premiums and benefits, except for terms of conversion and~~

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1 ~~renewability]~~ that would have been payable under the policies
2 or contracts of the insolvent insurer, for claims incurred: 1)
3 with respect to group policies and contracts, not later than
4 the earlier of the next renewal date under those policies or
5 contracts or forty-five days, but in no event less than thirty
6 days, from the date on which the association becomes obligated
7 with respect to the policies and contracts; and 2) with respect
8 to non-group policies, contracts and annuities, not later than
9 the earlier of the next renewal date, if any, under the
10 policies or contracts or one year, but in no event less than
11 thirty days, from the date on which the association becomes
12 obligated with respect to the policies or contracts;

13 (b) make diligent efforts to provide all
14 known insureds, enrollees or annuitants, for non-group policies
15 and contracts, or group policy holders or contract owners with
16 respect to group policies and contracts, thirty days' notice of
17 the termination, pursuant to Subparagraph (a) of this
18 paragraph, of the benefits provided;

19 (c) with respect to non-group [~~life and~~
20 ~~health insurance policies and annuities]~~ policies or contracts
21 covered by the association, and with respect to an individual
22 formerly insured, enrolled or formerly an annuitant under a
23 group policy or contract who is not eligible for replacement
24 group coverage, make available to each known insured, enrollee
25 or annuitant, or owner if other than the insured, enrollee or

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1 annuitant, substitute coverage on an individual basis in
2 accordance with the provisions of Subparagraph (d) of this
3 paragraph if the insureds, enrollees or annuitants had a right
4 under law or the terminated policy, contract or annuity to
5 convert coverage to individual coverage or to continue an
6 individual policy, contract or annuity in force until a
7 specified age or for a specified time, during which the insurer
8 or health maintenance organization had no right unilaterally to
9 make changes in any provision of the policy, contract or
10 annuity or had a right only to make changes in premium by
11 class;

12 (d) in providing the substitute coverage
13 required pursuant to Subparagraph (c) of this paragraph, the
14 association may offer either to reissue the terminated coverage
15 or to issue an alternative policy or contract at actuarially
16 justified rates. Alternative or reissued policies or contracts
17 shall be offered without requiring evidence of insurability and
18 shall not provide for a waiting period or exclusion that would
19 not have applied under the terminated policy or contract. The
20 association may reinsure an alternative or reissued policy or
21 contract;

22 (e) alternative policies or contracts
23 adopted by the association shall be subject to the approval of
24 the [~~domiciliary insurance~~] superintendent [~~and the~~
25 ~~receivership court~~]. The association may adopt alternative

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1 policies or contracts of various types for future issuance
2 without regard to a particular impairment or insolvency.
3 Alternative policies or contracts shall contain at least the
4 minimum statutory provisions required in this state and provide
5 benefits that shall not be unreasonable in relation to the
6 premium charged. The association shall set the premium in
7 accordance with a table of rates that it shall adopt. The
8 premium shall reflect the amount of insurance to be provided
9 and the age and class of risk of each insured but shall not
10 reflect changes in the health of the insured after the original
11 policy or contract was last underwritten. An alternative
12 policy or contract issued by the association shall provide
13 coverage of a type similar to that of the policy or contract
14 issued by the impaired or insolvent insurer, as determined by
15 the association;

16 (f) if the association elects to reissue
17 terminated coverage at a premium rate different from that
18 charged under the terminated policy or contract, the premium
19 shall be actuarially justified and set by the association in
20 accordance with the amount of insurance provided and the age
21 and class of risk, subject to the approval of the [~~domiciliary~~
22 ~~insurance~~] superintendent [~~and the receivership court~~];

23 (g) the association's obligations with
24 respect to coverage under a policy or contract of the impaired
25 or insolvent insurer or under a reissued or alternative policy

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1 or contract shall cease on the date the coverage or policy is
2 replaced by another similar policy by the policy owner,
3 contract owner, enrollee, the insured or the association; and

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

9 C. Nonpayment of premiums within thirty-one days
10 after the date required under the terms of a guaranteed,
11 assumed, alternative or reissued policy or contract or
12 substitute coverage shall terminate the association's
13 obligations under the policy, contract or coverage pursuant to
14 the Life and Health Insurance Guaranty Association Act with
15 respect to the policy, contract or coverage, except with
16 respect to claims incurred or net cash surrender value that may
17 be due in accordance with the provisions of that act.

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

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1 E. The protection provided by the Life and Health
2 Insurance Guaranty Association Act shall not apply where
3 guaranty protection is provided to residents of this state by
4 the laws of the domiciliary state or jurisdiction of the
5 impaired or insolvent insurer other than this state.

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

8 (1) subject to approval by a court in this
9 state, impose permanent policy or contract liens in connection
10 with a guaranty, assumption or reinsurance agreement if the
11 association finds that the amounts that can be assessed are
12 less than the amounts needed to assure full and prompt
13 performance of the association's duties, or if it finds that
14 the economic or financial conditions as they affect member
15 insurers are sufficiently adverse to render the imposition of
16 such permanent policy or contract liens to be in the public
17 interest; or

18 (2) subject to approval by a court in this
19 state, impose temporary moratoriums or liens on payments of
20 cash values and policy loans, or another right to withdraw
21 funds held in conjunction with policies or contracts, in
22 addition to contractual provisions for deferral of cash or
23 policy loan value. In addition, in the event of a temporary
24 moratorium or moratorium charge imposed by the receivership
25 court on payment of cash values or policy loans, or on another

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1 right to withdraw funds held in conjunction with policies or
2 contracts, out of the assets of the impaired or insolvent
3 insurer, the association may defer the payment of cash values,
4 policy loans or other rights by the association for the period
5 of the moratorium or moratorium charge imposed by the
6 receivership court, except for claims covered by the
7 association to be paid in accordance with a hardship procedure
8 established by the liquidator or rehabilitator and approved by
9 the receivership court.

10 G. A deposit in this state, held pursuant to law or
11 required by the superintendent for the benefit of creditors,
12 including policy or contract owners, not turned over to the
13 domiciliary liquidator upon the entry of a final order of
14 liquidation or order approving a rehabilitation plan of ~~[an]~~ a
15 member insurer domiciled in this state or in a reciprocal
16 state, pursuant to Chapter 59A, Article 10 NMSA 1978, shall be
17 promptly paid to the association. The association is entitled
18 to retain a portion of an amount paid to it equal to the
19 percentage determined by dividing the aggregate amount of
20 policy or contract owners' claims related to that insolvency
21 for which the association has provided statutory benefits by
22 the aggregate amount of all policy or contract owners' claims
23 in this state related to that insolvency and shall remit to the
24 domiciliary receiver the amount so paid to the association less
25 the amount retained pursuant to this subsection. An amount

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1 paid to the association and retained by it shall be treated as
2 a distribution of estate assets pursuant to the Insurers
3 Conservation, Rehabilitation and Liquidation Law or similar
4 provision of the state of domicile of the impaired or insolvent
5 insurer.

6 H. If the association fails to act within a
7 reasonable period of time with respect to an insolvent insurer,
8 as provided in Subsection B of this section, the superintendent
9 shall have the powers and duties of the association with
10 respect to the insolvent insurer.

11 I. The association may render assistance and advice
12 to the superintendent, upon the superintendent's request,
13 concerning rehabilitation, payment of claims, continuance of
14 coverage or the performance of other contractual obligations of
15 an impaired or insolvent insurer.

16 J. The association shall have standing to appear or
17 intervene before a court or agency in this state with
18 jurisdiction over an impaired or insolvent insurer concerning
19 which the association is or may become obligated pursuant to
20 the Life and Health Insurance Guaranty Association Act or with
21 jurisdiction over a person or property against which the
22 association may have rights through subrogation or otherwise.
23 Standing shall extend to all matters germane to the powers and
24 duties of the association, including proposals for reinsuring,
25 reissuing, modifying or guaranteeing the policies or contracts

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1 of the impaired or insolvent insurer and the determination of
2 the policies or contracts and contractual obligations. The
3 association shall also have the right to appear or intervene
4 before a court or agency in another state with jurisdiction
5 over an impaired or insolvent insurer for which the association
6 is or may become obligated or with jurisdiction over a person
7 or property against whom the association may have rights
8 through subrogation or otherwise.

9 K. The association shall have subrogation rights
10 under the Life and Health Insurance Guaranty Association Act as
11 follows:

12 (1) a person receiving benefits pursuant to
13 the Life and Health Insurance Guaranty Association Act shall be
14 deemed to have assigned the rights under, and any causes of
15 action against any person for losses arising pursuant to,
16 resulting from or otherwise relating to, the covered policy or
17 contract to the association to the extent of the benefits
18 received, whether the benefits are payments of or on account of
19 contractual obligations, continuation of coverage or provision
20 of substitute or alternative policies, contracts or coverages.
21 The association may require an assignment to it of those rights
22 and causes of action by [æ] an enrollee, payee, policy or
23 contract owner, beneficiary, insured or annuitant as a
24 condition precedent to the receipt of a right or benefit
25 conferred upon the person;

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

5 (3) in addition to Paragraphs (1) and (2) of
6 this subsection, the association shall have all common law
7 rights of subrogation and any other equitable or legal remedy
8 that would have been available to the impaired or insolvent
9 insurer or owner, beneficiary, enrollee or payee of a policy or
10 contract with respect to the policy or contracts;

11 (4) if Paragraph (1), (2) or (3) of this
12 subsection is invalid or ineffective with respect to a person
13 or claim for any reason, the amount payable by the association
14 with respect to the related covered obligations shall be
15 reduced by the amount realized by another person with respect
16 to the person or claim that is attributable to the policies or
17 contracts, or to the portion of the policies or contracts,
18 covered by the association; and

19 (5) if the association has provided benefits
20 with respect to a covered obligation and a person recovers
21 amounts as to which the association has rights as described in
22 this subsection, the person shall pay to the association the
23 portion of the recovery attributable to the policies or
24 contracts, or to the portion of the policies or contracts,
25 covered by the association.

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1 L. In addition to its other rights and powers, the
2 association may:

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

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

10 (3) borrow money to effect the purposes of the
11 Life and Health Insurance Guaranty Association Act. Notes or
12 other evidence of indebtedness of the association not in
13 default shall be legal investments for domestic member insurers
14 and may be carried as admitted assets;

15 (4) employ or retain those persons necessary
16 or appropriate to handle the financial transactions of the
17 association and to perform other functions as become necessary
18 or proper;

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

21 (6) exercise, to the extent approved by the
22 superintendent, the powers of a domestic life ~~[or]~~ insurer,
23 health maintenance organization or health insurer, but in no
24 case may the association issue ~~[insurance]~~ policies or
25 ~~[annuity]~~ contracts other than those issued to perform its

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1 obligations pursuant to the Life and Health Insurance Guaranty
2 Association Act;

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

5 (8) request information from a person seeking
6 coverage from the association in order to aid the association
7 in determining its obligations with respect to that person, and
8 that person shall promptly comply with the request; ~~and~~

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

14 ~~(9)~~ (10) take other necessary or appropriate
15 action to discharge its duties and obligations or to exercise
16 its powers.

17 M. The association may join an organization of one
18 or more other state associations with similar purposes to
19 further the purposes and administer the powers and duties of
20 the association.

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

23 (1) at any time within one hundred eighty days
24 of the date of the order of liquidation, the association may
25 elect to succeed to the rights and obligations of the ceding

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1 member insurer that relate to policies, contracts or annuities
2 covered, in whole or in part, by the association, in each case
3 under one or more reinsurance contracts entered into by the
4 insolvent insurer and its reinsurers and selected by the
5 association. The assumption shall be effective as of the date
6 of the order of liquidation. The election shall be effected by
7 the association or the national organization of life and health
8 insurance guaranty associations on its behalf sending written
9 notice, return receipt requested, to the affected reinsurers;

10 (2) to facilitate the earliest practicable
11 decision about whether to assume any of the contracts of
12 reinsurance, and in order to protect the financial position of
13 the estate, the receiver and each reinsurer of the ceding
14 member insurer shall make available, upon request, to the
15 association or to the national organization of life and health
16 insurance guaranty associations on its behalf, as soon as
17 possible after commencement of formal delinquency proceedings:

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

21 (b) notices of defaults under the
22 reinsurance contracts or a known event or condition that with
23 the passage of time could become a default under the
24 reinsurance contracts;

25 (3) the following shall apply to reinsurance

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1 contracts assumed by the association:

2 (a) the association shall be responsible
3 for all unpaid premiums due under the reinsurance contracts for
4 periods both before and after the date of the order of
5 liquidation and shall be responsible for the performance of all
6 other obligations to be performed after the date of the order
7 of liquidation, in each case that relate to policies, contracts
8 or annuities covered, in whole or in part, by the association.
9 The association may charge policies, contracts or annuities
10 covered in part by the association, through reasonable
11 allocation methods, the costs for reinsurance in excess of the
12 obligations of the association and shall provide notice and an
13 accounting of these charges to the liquidator;

14 (b) the association shall be entitled to
15 amounts payable by the reinsurer under the reinsurance
16 contracts with respect to losses or events that occur in
17 periods after the date of the order of liquidation and that
18 relate to policies, contracts or annuities covered, in whole or
19 in part, by the association, provided that, upon receipt of
20 those amounts, the association shall be obliged to pay to the
21 beneficiary under the policy, contract or annuity on account of
22 which the amounts were paid a portion of the amount equal to
23 the lesser of: 1) the amount received by the association; and
24 2) the excess of the amount received by the association over
25 the amount equal to the benefits paid by the association on

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1 account of the policy, contract or annuity less the retention
2 of the insurer applicable to the loss or event;

3 (c) within thirty days following the
4 association's election, the association and each reinsurer
5 under contracts assumed by the association shall calculate the
6 net balance due to or from the association under each
7 reinsurance contract as of the date of election with respect to
8 policies, contracts or annuities covered, in whole or in part,
9 by the association, which calculation shall give full credit to
10 all items paid by either the member insurer or its receiver or
11 the reinsurer prior to the election date. The reinsurer shall
12 pay the receiver amounts due for losses or events prior to the
13 date of the order of liquidation, subject to a setoff for
14 premiums unpaid for periods prior to that date, and the
15 association or reinsurer shall pay any remaining balance due
16 the other, in each case within five days of the completion of
17 the calculation described in this subparagraph. A dispute over
18 the amounts due to either the association or the reinsurer
19 shall be resolved by arbitration pursuant to the terms of the
20 affected reinsurance contracts or, if the contract contains no
21 arbitration clause, as otherwise provided by law. If the
22 receiver has received amounts due the association pursuant to
23 Subparagraph (b) of this paragraph, the receiver shall remit
24 those amounts to the association as promptly as practicable;
25 and

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1 (d) if the association or receiver, on
2 the association's behalf, within sixty days of the election
3 described in Subparagraph (c) of this paragraph, pays the
4 unpaid premiums due for periods both before and after the date
5 of election that relate to policies, contracts or annuities
6 covered, in whole or in part, by the association, the reinsurer
7 shall not be entitled to terminate the reinsurance contracts
8 for failure to pay premiums insofar as the reinsurance
9 contracts relate to policies, contracts or annuities covered,
10 in whole or in part, by the association, and the reinsurer
11 shall not be entitled to set off unpaid amounts due under other
12 contracts, or unpaid amounts due from parties other than the
13 association, against amounts due the association;

14 (4) during the period from the date of the
15 order of liquidation, until the election date or, if the
16 election does not occur, until one hundred eighty days after
17 the date of the order of liquidation, neither the association
18 nor the reinsurer shall have rights or obligations pursuant to
19 reinsurance contracts that the association has the right to
20 assume pursuant to Paragraphs (1), (2) and (3) of this
21 subsection, whether for periods prior to or after the date of
22 the order of liquidation, and the reinsurer, the receiver and
23 the association shall, to the extent practicable, provide each
24 other data and records reasonably requested; provided that once
25 the association has elected to assume a reinsurance contract,

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1 the parties' rights and obligations shall be governed by
2 Paragraphs (1), (2) and (3) of this subsection;

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

9 (6) when policies, contracts or annuities, or
10 covered obligations with respect to those policies, contracts
11 or annuities, are transferred to an assuming insurer,
12 reinsurance on the policies or annuities may also be
13 transferred by the association, in the case of contracts
14 assumed pursuant to Paragraphs (1), (2) and (3) of this
15 subsection, subject to the following:

16 (a) unless the reinsurer and the
17 assuming insurer agree otherwise, the reinsurance contract
18 transferred shall not cover new policies of insurance,
19 contracts or annuities in addition to those transferred;

20 (b) the obligations described in
21 Paragraphs (1), (2) and (3) of this subsection shall no longer
22 apply with respect to matters arising after the effective date
23 of the transfer; and

24 (c) notice shall be given in writing,
25 return receipt requested, by the transferring party to the

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1 affected reinsurer not less than thirty days prior to the
2 effective date of the transfer;

3 (7) the provisions of this subsection shall
4 supersede the provisions of a state law or of an affected
5 reinsurance contract that provides for or requires a payment of
6 reinsurance proceeds, on account of losses or events that occur
7 in periods after the date of the order of liquidation, to the
8 receiver of the insolvent insurer or another person. The
9 receiver shall remain entitled to amounts payable by the
10 reinsurer under the reinsurance contracts with respect to
11 losses or events that occur in periods prior to the date of the
12 order of liquidation, subject to applicable setoff provisions;
13 and

14 (8) except as otherwise provided in this
15 subsection, the provisions of this subsection shall not:

16 (a) alter or modify the terms and
17 conditions of a reinsurance contract;

18 (b) abrogate or limit the rights of a
19 reinsurer to claim that it is entitled to rescind a reinsurance
20 contract;

21 (c) give a policyholder, contract owner,
22 enrollee, certificate holder or beneficiary an independent
23 cause of action against a reinsurer that is not otherwise set
24 forth in the reinsurance contract;

25 (d) limit or affect the association's

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1 rights as a creditor of the estate against the assets of the
2 estate; or

3 (e) apply to reinsurance contracts
4 covering property or casualty risks.

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

9 P. Where the association has arranged or offered to
10 provide benefits to a covered person under a plan or
11 arrangement that fulfills the association's obligations, the
12 person shall not be entitled to benefits from the association
13 in addition to or other than those provided under the plan or
14 arrangement.

15 Q. Venue in a suit against the association arising
16 pursuant to the Life and Health Insurance Guaranty Association
17 Act shall be in Santa Fe county. The association shall not be
18 required to give an appeal bond in an appeal that relates to a
19 cause of action arising pursuant to the Life and Health
20 Insurance Guaranty Association Act.

21 R. In carrying out its duties in connection with
22 guaranteeing, assuming, reissuing or reinsuring policies or
23 contracts pursuant to Subsection A or B of this section, the
24 association may [~~subject to approval of the receivership court~~]
25 issue substitute coverage for a policy or contract that

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1 provides an interest rate, crediting rate or similar factor
2 determined by use of an index or other external reference
3 stated in the policy or contract employed in calculating
4 returns or changes in value by issuing an alternative policy or
5 contract in accordance with the following provisions:

6 (1) in lieu of the index or other external
7 reference provided for in the original policy or contract, the
8 alternative policy or contract provides for a fixed interest
9 rate, payment of dividends with minimum guarantees or a
10 different method for calculating interest or changes in value;

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

14 (3) the alternative policy or contract is
15 substantially similar to the replaced policy or contract in all
16 other material terms."

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

19 "59A-42-8. ASSESSMENTS.--

20 A. For the purpose of providing the funds necessary
21 to carry out the powers and duties of the association, the
22 board shall assess the member insurers, separately for each
23 account, at a time and for amounts as the board finds
24 necessary. Assessments shall be due not less than thirty days
25 after prior written notice to the member insurers and shall

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1 accrue interest at six percent a year on and after the due
2 date.

3 B. There shall be two classes of assessments as
4 follows:

5 (1) class A assessments shall be authorized
6 and called for the purpose of meeting administrative and legal
7 costs and other expenses. Class A assessments may be
8 authorized and called whether or not related to a particular
9 impaired or insolvent insurer; and

10 (2) class B assessments shall be authorized
11 and called to the extent necessary to carry out the powers and
12 duties of the association with regard to an impaired or an
13 insolvent insurer.

14 C. The amount of a class A assessment shall be
15 determined by the board and may be authorized and called on a
16 pro rata or non-pro rata basis. If the class A assessment is
17 authorized and called on a pro rata basis, the board may
18 provide that it be credited against future class B assessments.

19 ~~[The total of all non-pro rata assessments shall not exceed~~
20 ~~three hundred dollars (\$300) per member insurer in one calendar~~
21 ~~year.]~~ The amount of a class B assessment, except for
22 assessments related to long-term care insurance, shall be
23 allocated for assessment purposes ~~[among the accounts]~~ between
24 the accounts and among the subaccounts of the life insurance
25 and annuity account pursuant to an allocation formula that may

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1 be based on the premiums or reserves of the impaired or
2 insolvent insurer or another standard deemed by the board in
3 its sole discretion as being fair and reasonable under the
4 circumstances.

5 D. The amount of the class B assessment for long-
6 term care insurance written by the impaired or insolvent
7 insurer shall be allocated according to a methodology included
8 in the plan of operation and approved by the superintendent.
9 The methodology shall provide for fifty percent of the
10 assessment to be allocated to accident and health member
11 insurers and fifty percent to be allocated to life and annuity
12 member insurers.

13 ~~[D.]~~ E. Class B assessments against member insurers
14 for each account and subaccount shall be in the proportion that
15 the premiums received on business in this state by each
16 assessed member insurer on policies or contracts covered by
17 each account for the three most recent calendar years for which
18 information is available preceding the year in which the member
19 insurer became insolvent or, in the case of an assessment with
20 respect to an impaired insurer, the three most recent calendar
21 years for which information is available preceding the year in
22 which the member insurer became impaired, bears to premiums
23 received on business in this state for those calendar years by
24 all assessed member insurers.

25 ~~[E.]~~ F. Assessments for funds to meet the

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1 requirements of the association with respect to an impaired or
2 insolvent insurer shall not be authorized or called until
3 necessary to implement the purposes of the Life and Health
4 Insurance Guaranty Association Act. Classification of
5 assessments pursuant to Subsection B of this section and
6 computation of assessments pursuant to Subsections C and ~~[D]~~ E
7 of this section shall be made with a reasonable degree of
8 accuracy, recognizing that exact determinations may not always
9 be possible. The association shall notify each member insurer
10 of its anticipated pro rata share of an authorized assessment
11 not yet called within one hundred eighty days after the
12 assessment is authorized.

13 ~~[F-]~~ G. The association may abate or defer, in
14 whole or in part, the assessment of a member insurer if, in the
15 opinion of the board, payment of the assessment would endanger
16 the ability of the member insurer to fulfill its contractual
17 obligations. In the event an assessment against a member
18 insurer is abated, or deferred in whole or in part, the amount
19 by which the assessment is abated or deferred may be assessed
20 against the other member insurers in a manner consistent with
21 the basis for assessments set forth in this section. Once the
22 conditions that caused a deferral have been removed or
23 rectified, the member insurer shall pay all assessments that
24 were deferred pursuant to a repayment plan approved by the
25 association.

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1 ~~[G.]~~ H. Subject to the provisions of Subsection [~~H~~]
2 I of this section, the total of all assessments authorized by
3 the association with respect to a member insurer for each
4 subaccount of the life insurance and annuity account and for
5 the health insurance account shall not in one calendar year
6 exceed two percent of that member insurer's average annual
7 premiums received in this state on the policies and contracts
8 covered by the subaccount or account during the three calendar
9 years preceding the year in which the member insurer became an
10 impaired or insolvent insurer.

11 ~~[H.]~~ I. If two or more assessments are authorized
12 in one calendar year with respect to member insurers that
13 become impaired or insolvent in different calendar years, the
14 average annual premiums for purposes of the aggregate
15 assessment percentage limitation referenced in Subsection [~~G~~] H
16 of this section shall be equal and limited to the higher of the
17 three-year average annual premiums for the applicable
18 subaccount or account as calculated pursuant to this section.

19 ~~[I.]~~ J. If the maximum assessment, together with
20 the other assets of the association in an account, does not
21 provide in one year in either account an amount sufficient to
22 carry out the responsibilities of the association, the
23 necessary additional funds shall be assessed as soon thereafter
24 as permitted by the Life and Health Insurance Guaranty
25 Association Act.

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1 ~~[J.]~~ K. The board may provide in the plan of
2 operation a method of allocating funds among claims, whether
3 relating to one or more impaired or insolvent insurers, when
4 the maximum assessment will be insufficient to cover
5 anticipated claims.

6 ~~[K.]~~ L. If the maximum assessment for a subaccount
7 of the life and annuity account in one year does not provide an
8 amount sufficient to carry out the responsibilities of the
9 association, then pursuant to Subsection ~~[D]~~ E of this section,
10 the board shall access the other subaccounts of the life
11 insurance and annuity account for the necessary additional
12 amount, subject to the maximum stated in Subsections ~~[G, H and~~
13 ~~F]~~ H, I and J of this section.

14 ~~[L.]~~ M. The board may, by an equitable method as
15 established in the plan of operation, refund to member
16 insurers, in proportion to the contribution of each member
17 insurer to that account, the amount by which the assets of the
18 account exceed the amount the board finds is necessary to carry
19 out during the coming year the obligations of the association
20 with regard to that account, including assets accruing from
21 assignment, subrogation, net realized gains and income from
22 investments. A reasonable amount may be retained in an account
23 to provide funds for the continuing expenses of the association
24 and for a future losses claim.

25 ~~[M.]~~ N. It shall be proper for a member insurer, in

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1 determining its premium rates and policyowner dividends as to
2 any kind of insurance or health maintenance organization
3 business within the scope of the Life and Health Insurance
4 Guaranty Association Act, to consider the amount reasonably
5 necessary to meet its assessment obligations under that act.

6 [N.] O. The association shall issue to each member
7 insurer paying an assessment, other than a class A assessment,
8 a certificate of contribution, in a form prescribed by the
9 superintendent, for the amount of the assessment paid. All
10 outstanding certificates shall be of equal dignity and priority
11 without reference to amounts or dates of issue. A certificate
12 of contribution may be shown by the member insurer in its
13 financial statement as an asset in that form and for that
14 amount, if any, and period of time as the superintendent may
15 approve.

16 [O.] P. A protest to an assessment shall occur as
17 follows:

18 (1) a member insurer that wishes to protest
19 all or part of an assessment shall pay when due the full amount
20 of the assessment as set forth in the notice provided by the
21 association. The payment shall be available to meet
22 association obligations during the pendency of the protest or a
23 subsequent appeal. Payment shall be accompanied by a statement
24 in writing that the payment is made under protest and setting
25 forth a brief statement of the grounds for the protest;

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1 (2) within sixty days following the payment of
2 an assessment under protest by a member insurer, the
3 association shall notify the member insurer in writing of its
4 determination with respect to the protest unless the
5 association notifies the member insurer that additional time is
6 required to resolve the issues raised by the protest;

7 (3) within thirty days after a final decision
8 has been made, the association shall notify the protesting
9 member insurer in writing of that final decision. Within sixty
10 days of receipt of notice of the final decision, the protesting
11 member insurer may appeal that final action to the
12 superintendent;

13 (4) in the alternative to rendering a final
14 decision with respect to a protest based on a question
15 regarding the assessment base, the association may refer
16 protests to the superintendent for a final decision, with or
17 without a recommendation from the association; and

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

23 [P.] Q. The association may request information of
24 member insurers in order to aid in the exercise of its power
25 pursuant to this section, and member insurers shall promptly

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1 comply with a request."

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

4 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

5 A. The superintendent shall:

6 (1) notify the association of the existence of
7 an insolvent insurer not later than three days after the
8 superintendent receives notice of the determination of the
9 insolvency;

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

13 (3) when an impairment is declared and the
14 amount of the impairment is determined, serve a demand upon the
15 impaired insurer to make good the impairment within a
16 reasonable time. Notice to the impaired insurer shall
17 constitute notice to its shareholders, if any. The failure of
18 the impaired insurer to promptly comply with the demand shall
19 not excuse the association from the performance of its powers
20 and duties pursuant to the Life and Health Insurance Guaranty
21 Association Act.

22 B. The superintendent may:

23 (1) suspend or revoke, after notice and
24 hearing, the certificate of authority to transact [~~insurance~~]
25 business in this state of a member insurer that fails to pay an

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1 assessment when due or that fails to comply with the plan of
2 operation. As an alternative, the superintendent may levy a
3 fine on a member insurer that fails to pay an assessment when
4 due. The fine shall not exceed five percent of the unpaid
5 assessment a month, except that no fine shall be less than one
6 hundred dollars (\$100) a month; and

7 (2) revoke the designation of a servicing
8 facility if the superintendent finds that claims are being
9 handled unsatisfactorily."

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

12 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the
13 detection and prevention of insurance insolvencies:

14 A. the superintendent shall:

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

19 (a) revokes a license;

20 (b) suspends a license; or

21 (c) makes a formal order that the

22 [~~company~~] member insurer restrict its premium writing, obtain
23 additional contributions to surplus, withdraw from the state,
24 reinsure all or a part of its business or increase capital,
25 surplus or another account for the security of policy owners,

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1 contract owners, certificate holders or creditors;

2 (2) report to the board when the
3 superintendent has taken an action set forth in Paragraph (1)
4 of this subsection or has received a report from another
5 superintendent indicating that an action has been taken in
6 another state. The report to the board shall contain all
7 significant details of the action taken or of the report
8 received from another superintendent;

9 (3) report to the board when the
10 superintendent has reasonable cause to believe from an
11 examination, whether completed or in process, of a member
12 insurer that the member insurer may be an impaired or insolvent
13 insurer; and

14 (4) furnish to the board the national
15 association of insurance commissioners' insurance regulatory
16 information system ratios and listings of companies not
17 included in the ratios developed by the national association of
18 insurance commissioners. The board may use that information in
19 carrying out its duties and responsibilities pursuant to this
20 section. The report shall be kept confidential by the board
21 until it is made public by the superintendent or other lawful
22 authority;

23 B. the superintendent may seek the advice and
24 recommendations of the board concerning a matter affecting the
25 duties and responsibilities of the superintendent regarding the

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1 financial condition of member insurers [~~and companies~~] or
2 health maintenance organizations seeking admission to transact
3 [~~insurance~~] business in this state; and

4 C. the board may, upon majority vote:

5 (1) notify the superintendent of information
6 indicating that a member insurer may be an impaired or
7 insolvent insurer;

8 (2) make reports and recommendations to the
9 superintendent upon any matter germane to the solvency,
10 liquidation, rehabilitation or conservation of a member insurer
11 or germane to the solvency of [~~a company~~] an insurer or health
12 maintenance organization seeking to do [~~insurance~~] business in
13 this state. The reports and recommendations are not public
14 documents; and

15 (3) make recommendations to the superintendent
16 for the detection and prevention of member insurers'
17 insolvencies."

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

20 "59A-42-13. MISCELLANEOUS PROVISIONS.--

21 A. The Life and Health Insurance Guaranty
22 Association Act shall not be construed to reduce the liability
23 for unpaid assessments of the insureds of an impaired or
24 insolvent insurer operating under a plan with assessment
25 liability.

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1 B. Records shall be kept of all meetings of the
2 board to discuss the activities of the association in carrying
3 out its powers and duties. Records of the meetings with
4 respect to an impaired or insolvent insurer shall be made
5 public only upon the termination of a liquidation,
6 rehabilitation or conservation proceeding involving the
7 impaired or insolvent insurer, upon the termination of the
8 insolvency of the member insurer or upon the order of a court
9 of competent jurisdiction. Nothing in this subsection limits
10 the duty of the association to render the reports required by
11 Section 59A-42-14 NMSA 1978.

12 C. For the purpose of carrying out its obligations,
13 the association shall be deemed to be a creditor of the
14 impaired or insolvent insurer to the extent of assets
15 attributable to covered policies or contracts reduced by
16 amounts to which the association is entitled as a subrogee
17 pursuant to Subsection K of Section 59A-42-7 NMSA 1978. Assets
18 of the impaired or insolvent insurer attributable to covered
19 policies or contracts shall be used to continue all covered
20 policies or contracts and pay all contractual obligations of
21 the impaired or insolvent insurer. Assets attributable to
22 covered policies or contracts, as used in this subsection, are
23 that proportion of the assets that the reserves that should
24 have been established for those policies or contracts bear to
25 the reserves that should have been established for all policies

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1 of insurance or health benefit plans written by the impaired or
2 insolvent insurer.

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

19 E. Prior to the termination of a liquidation,
20 rehabilitation or conservation proceeding, the court may take
21 into consideration the contributions of the respective parties,
22 including the association, the shareholders, contract owners,
23 certificate holders, enrollees and policy owners of the
24 insolvent insurer and any other party with a bona fide
25 interest, in making an equitable distribution of the ownership

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1 rights of the insolvent insurer. In such a determination,
2 consideration shall be given to the welfare of the policy
3 owners, contract owners, certificate holders and enrollees of
4 the continuing or successor member insurer.

5 F. No distribution to stockholders, if any, of an
6 impaired or insolvent insurer shall be made until and unless
7 the total amount of valid claims of the association with
8 interest thereon for funds expended in carrying out its powers
9 and duties with respect to the member insurer has been fully
10 recovered by the association."

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

13 "59A-42-17. PROHIBITED ADVERTISEMENT--NOTICE TO POLICY
14 OWNERS.--

15 A. No person, including [~~an~~] a member insurer,
16 agent or affiliate of [~~an~~] a member insurer, shall make,
17 publish, disseminate, circulate or place before the public, or
18 cause directly or indirectly to be made, published,
19 disseminated, circulated or placed before the public, in a
20 newspaper, magazine or other publication, or in the form of a
21 notice, circular, pamphlet, letter or poster, or over a radio
22 station or television station, or in any other way, an
23 advertisement, announcement or statement, written or oral, that
24 uses the existence of the association for the purpose of sales,
25 solicitation or inducement to purchase insurance or other

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1 coverage covered by the Life and Health Insurance Guaranty
2 Association Act. However, this subsection shall not apply to
3 the association or any other entity that does not sell or
4 solicit insurance or coverage by a health maintenance
5 organization.

6 B. Within one hundred eighty days of the effective
7 date of this [2012] act, the association shall prepare a
8 summary document describing the general purposes and current
9 limitations of that act and complying with Subsection C of this
10 section. The document shall be submitted to the superintendent
11 for approval. At the expiration of the sixtieth day after the
12 date on which the superintendent approves the document, [~~an~~] a
13 member insurer shall not deliver a policy or contract to a
14 policy [~~or~~] owner, contract owner, certificate holder or
15 enrollee unless the summary document is delivered to the policy
16 [~~or~~] owner, contract owner, certificate holder or enrollee at
17 the time of delivery of the policy or contract. The document
18 shall also be available upon request by a policy owner,
19 contract owner, certificate holder or enrollee. The
20 distribution, delivery or contents or interpretation of this
21 document does not guarantee that either the policy or the
22 contract or the [~~owner of the~~] policy [~~or~~] owner, contract
23 owner, certificate holder or enrollee is covered in the event
24 of the impairment or insolvency of a member insurer. The
25 description document shall be revised by the association as

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1 amendments to the Life and Health Insurance Guaranty
2 Association Act may require. Failure to receive this document
3 does not give the policy owner, contract owner, certificate
4 holder or insured greater rights than those stated in the Life
5 and Health Insurance Guaranty Association Act.

6 C. The document prepared pursuant to Subsection B
7 of this section shall contain a clear and conspicuous
8 disclaimer on its face. The superintendent shall establish the
9 form and content of the disclaimer. The disclaimer shall:

10 (1) state the name and address of the
11 association and insurance department;

12 (2) prominently warn the policy [~~or~~] owner,
13 contract owner, certificate holder or enrollee that the
14 association may not cover the policy or contract, if coverage
15 is available, that it will be subject to substantial
16 limitations and exclusions and conditioned on continued
17 residence in this state;

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

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

25 (5) state that the policy [~~or~~] owner, contract

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1 owner, certificate holder or enrollee should not rely on
2 coverage pursuant to the Life and Health Insurance Guaranty
3 Association Act when selecting an insurer or health maintenance
4 organization;

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

8 (7) provide other information as directed by
9 the superintendent, including sources for information about the
10 financial condition of insurers, provided that the information
11 is not proprietary and is subject to disclosure pursuant to the
12 Inspection of Public Records Act.

13 D. A member insurer shall retain evidence of
14 compliance with Subsection B of this section for as long as the
15 policy or contract for which the notice is given remains in
16 effect."

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

19 SECTION 12. APPLICABILITY.--This act shall not apply to
20 any member insurer that was insolvent or unable to fulfill the
21 member insurer's contractual obligations prior to January 1,
22 2024.

23 SECTION 13. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is January 1, 2024.