

MISSOURI LIFE AND HEALTH INSURANCE GUARANTY  
ASSOCIATION

**PLAN OF OPERATION**

AS

AMENDED AND RESTATED, AUGUST 20, 2018

ARTICLE I. NAME AND PLAN OF OPERATION

- A. The Association shall be known as the Missouri Life and Health Insurance Guaranty Association (hereinafter the "Association"), an unincorporated, non-profit association created by House Committee Substitute for Senate Bill 430, as truly agreed to and finally passed in the Second Session of the 84th General Assembly of the State of Missouri. It was signed by the Governor of the State of Missouri on June 28, 1988, and became effective August 23, 1988. It is now known as the "Missouri Life and Health Insurance Guaranty Association Act," Sections 376.715 to 376.758, R.S. Mo. (hereinafter the "Act").
- B. This Amended and Restated Plan of Operation (hereinafter the "Plan") shall become effective upon written approval of the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter the "Director"), as provided in Subsection 1, of Section 376.740 of the Act. Unless otherwise defined herein, terms used in this Plan shall have the same meaning as those defined in the Act. In the event of any conflict between this Plan and the Act, the Act will prevail.
- C. Amendments to this Plan, as necessary or suitable to assure the fair, reasonable and equitable administration of the Association, shall be adopted by the Board of Directors of the Association (hereinafter the "Board"). Any such amendment submitted shall be effective upon (i) written approval of the Director or (ii) 30 days after submission of the amendments to the Director if action has not been taken sooner to disapprove them.
- D. A copy of this plan shall be available for inspection by any member insurer at the offices of the Association or the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter the "Department") during normal business hours, and a copy shall be provided to any member insurer, upon request.

- E. Unless otherwise specified in this Plan, actions and communications including notices, approvals, consents and signatures will be deemed to be written and acceptable if they are written and provided by United States Postal Service mail, courier service, or by e-mail, facsimile, or other electronic means. Contemporaneous documentation of such actions and communications should be maintained in the Association's records in a hard copy or an electronic file for future reference.

## ARTICLE II. ANNUAL MEETINGS OF THE MEMBER INSURERS

- A. An annual meeting of the member insurers of the Association shall be held for the election of the Board at the offices of the Association immediately preceding the annual meeting of the Board, unless the Chair of the Board, upon proper notice, shall designate some other time, day or place.
  - 1. Member insurers shall be notified of the time, day and place of the annual meeting of the member insurers at least 60 days prior to such annual meeting.
  - 2. A Nominating Committee shall select a nominee to succeed each Board member whose term expires at the annual meeting of the member insurers. Such nominees shall be made known to the member insurers at least 60 days prior to such annual meeting.
  - 3. Other nominees may be submitted to the Board, but not less than 45 days prior to such annual meeting, upon the petition of ten (10) member insurers.
  - 4. In the event there is more than one nominee for each position to be filled, the Board shall make the names of said nominees known to member insurers at least 30 days prior to the annual meeting of the member insurers.
- B. At annual meetings of the member insurers, if there are more nominees than vacancies, members of the Board shall be elected by member insurers by votes cast. Each member insurer shall have at least one vote in person or by proxy for each member of the Board to be elected.
- C. At the annual meetings of the member insurers:
  - 1. Proxy voting shall be permitted, except that the presence in person of not fewer than five representatives of five different and unaffiliated member insurers shall be required to constitute a quorum.

2. The member insurers receiving the greatest number of votes, on a non-cumulative basis, shall be elected to the Board.
3. In the event that there is not more than one nominee for each position to be filled, the Secretary shall cast one vote for each nominee and declare each such nominee elected to the Board member position, subject to approval of the Director.

### ARTICLE III. BOARD OF DIRECTORS

A. There shall be a Board of Directors, in accordance with the provisions of Section 376.722 of the Act.

1. The Board shall consist of not less than seven nor more than eleven member insurers as determined by the Board, to be elected for staggered terms of 3 years each so that the terms of all Board members shall not expire in the same year.
  - a. The Board shall be elected by the member insurers as provided in Article II hereof, and shall fairly represent member insurers. No two members of the Board shall be from the same or affiliated insurers.
  - b. Each member of the Board shall designate its representative and an alternate representative from the same member insurer.
  - c. Subject to paragraph d. below, the previously elected Board members shall serve until their successors have been duly elected and qualified to serve.
  - d. In the event of a change in a Board member's corporate or licensing status, the Executive Committee or the Board will review whether such change is consistent with the conditions and requirements for Board membership. Based on its review, the Executive Committee will recommend action to the full Board, or the Board may take action. Such action may include requesting the company to resign from the Board if it is determined that the company's new status is no longer consistent with the basis for inviting it to be a nominee or to fill a vacancy. The Board member shall be replaced in accordance with the provisions of paragraph Article III.A.4.

2. Upon the election of members of the Board, the Association shall notify the Director and request written approval of the members of the Board as elected. In the event the Director shall disapprove the election of any Board member elected at an annual meeting, the existing Board members shall call another election. The Board shall have the option of seeking approval of the nominees by the Director in writing prior to holding the election or annual meeting.
3. The Board shall:
  - a. Elect a Chair, Vice Chair, Secretary and Treasurer from among its members, along with such other officers, as it deems necessary. The posts of Secretary and Treasurer may be held by the same member. Each officer shall be elected to serve a term of one (1) year.
  - b. Appoint an Executive Committee from among its members. Such Committee shall be composed of the Chair, the Vice-Chair, Secretary and Treasurer of the Association. Such Committee shall perform such functions and administrative duties as may occur between meetings of the Board, except those acts for which a majority of the entire Board of Directors is required under Section B.3. hereof; provided, all actions of the Executive Committee shall be ratified and approved by the Board.
  - c. Appoint an audit committee or assign the duties of such committee to a standing committee of the Board, provided such additional duties do not interfere with the standing committee's existing responsibilities. The audit committee responsibilities shall include the recommendation of the outside auditor and assist with the annual audit of the Association. Further, it shall also review and provide recommendations regarding any financial or operational review of the Association by the independent outside auditors or the Department.
  - d. Appoint, from among its members, a Nominating Committee to fulfill the duties set forth in Article III. A. 2.

4. Vacancies occurring on the Board between annual meetings of the member insurers shall be filled by a majority vote of the remaining members of the Board, with the approval of the Director. Vacancies occurring in elective offices between annual meetings shall be filled by a majority vote of the Board, to serve for the unexpired term of any such officers.
- B. All Board members shall receive notice of all meetings of the Board and committees appointed by the Board, and be afforded the opportunity to participate. Meetings of the Board and committees appointed by the Board may be held in person, by telephone, or by other electronic means.
1. At any meeting of the Board, each member of the Board shall have one (1) vote.
  2. A majority of the Board shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board, except as provided in paragraph 3 below.
  3. An affirmative vote of a majority of the full Board is required to:
    - a. approve arrangements for the overall administration of the Association, except that administrations of specific functions with regard to specific insolvencies shall not require a vote of the Board;
    - b. levy an assessment or provide for a refund;
    - c. borrow money, establish a line of credit or change the amount thereof;
    - d. approve or ratify the direct reinsurance, assumption or the guaranty of the business of an insolvent member;
    - e. adopt amendments to the Plan;
    - f. do any of the acts that are described in Section 376.743, of the Act, as requiring a majority vote.

- C. An annual meeting of the Board shall be held, within the State of Missouri, at a place to be designated in a notice of such meeting, in the month of May, immediately following the annual meeting of the member insurers, unless the Chair of the Board, upon proper notice, shall designate some other time, day or place. At each annual meeting the Board shall:
1. Review the Plan and suggest proposed amendments, if any, which will be submitted to the Director for approval.
  2. Review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements or additions.
  3. Review operating expenses and outstanding contractual obligations and determine whether an assessment, or a refund of a prior assessment, is necessary for the proper administration of the Association and if so, the amount of either. In order to avoid disproportionate clerical expense, the Board may establish an amount below which assessments or refunds shall not be made.
  4. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association.
- D. The Board may hold other regular or special meetings at such times and with such frequency as it deems appropriate to conduct the business of the Association. Such meetings may be held telephonically. Any Board member not present may consent in writing to any specific action taken by the Board, but this shall not permit Board members to act through other Board members by Proxy. Any action approved by the required number of Board members at such meeting, including those consenting in writing, shall be as valid a Board action as though authorized at an annual or regular meeting of the Board or at a meeting held in person.
- E. In lieu of holding a Board meeting, the Board may take any action which is in accordance with this Plan by acting by written consent. Such actions by written consent require the approval of all Board members.
- F. Special meetings of the Board may be called by the Chairman and shall be called upon the request of any two (2) Board members. At such special meeting, the Board may consider and decide any matter deemed necessary for the proper administration of the Association. Not less than five (5) days notice shall be given to each Board member of the time, place and purpose of any such special meeting. Participation in any meeting shall constitute a waiver of any notice requirement.

G. At meetings at which the impairment or insolvency of a member insurer is considered, the Board shall:

1. Consider and determine the legal obligations of the Association with regard to any reported impairment or insolvency.
2. Consider and decide what methods or facilities, as permitted under the Act, shall be adopted or utilized to assure fulfillment of the covered obligations of the impaired or insolvent member insurer for each of the categories of covered policies.
3. Assure that timely action is taken to gain access to and effect proper retention of records of the impaired or insolvent member insurer which are deemed necessary to the prompt and economical handling of its legally imposed duties.
4. Consider and decide to what extent and in what manner the Board shall exercise the power authorized by the Act to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims.
5. Consider and decide what assessment, if any, should be levied, and consider and decide whether any assessment shall be deferred or abated. If such assessment, deferral or abatement shall be determined to be appropriate, such action or actions shall be in accordance with the requirements specified in Sections 376.735 and 376.737 of the Act. Notices of assessments to member insurers shall be in sufficient detail as to form a basis for the payment of such assessment by the member insurer. The Board shall promptly inform the Director of failure of any member to pay any assessment, when due.
6. Take all steps permitted by law, and deemed necessary, to protect the Association's rights as pertaining to the impaired or insolvent member insurer and its policyholders. In addition to the foregoing powers, the Board shall have and exercise such powers as may be reasonably necessary to implement its powers and responsibilities under this Act.
7. Issue to each member insurer a Certificate of Contribution (the "Certificate") for each assessment paid for which Certificates are to be provided under Section 376.738. The Certificate shall show the amount paid by each such insurer, the date of the assessment, name of the particular insolvent or impaired insurer for which the assessment was made, the value of such Certificate, and such other information as the Board shall find relevant.

8. In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement the provisions of the Act.
- H. Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board. The payment of such expenses shall be ratified and approved by the Board. Members of the Board or their designated representatives shall not be compensated by the Association for their services as members of the Board.
- I. A Board member may be removed for cause, including but not limited to, any case where a Board member becomes an impaired or insolvent insurer or becomes subject to an administrative proceeding whereby its Certificate of Authority is revoked or suspended. Any such action shall require a majority vote by the remaining members of the Board with approval of the Director, whereupon the procedures set forth in Article III for the replacement of a Board member shall be followed.
- J. The Board shall establish and maintain a policy and procedure for addressing conflicts of interest.

#### ARTICLE IV. OPERATIONS

- A. The official address of the Association shall be the address of the office of its Executive Director, unless otherwise designated by the Board.
- B. The Board may employ or retain such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed upon the Association. Such persons may include an Executive Director with such authority as may be delegated by the Board to implement and carry out broad directives of the Board made pursuant to its statutory authority and duties. Such person shall be knowledgeable about insurance matters, conversant with the law as it relates to covered policies of insurance and administratively capable of implementing the Board's directives. The Board may agree to compensate such persons so as to best serve the interests of the Association and the public. Such persons, firms or corporations shall keep and maintain such records of their activities as may be required by the Board and the Act.

- C. The Board may authorize the maintaining of such bank accounts as it deems necessary for the proper administration of Association business. Reasonable delegation of authority as to such accounts for Association business will be made consistent with prudent fiscal policy. Check signature limits and wire authority limits and procedures shall be determined by the Treasurer and approved by the Board. Investment policy shall be recommended by the Treasurer, the investment committee, or other Board-appointed committee and approved by the Board, and shall be reviewed at the annual meeting of the Board, and may be amended by the Board from time to time as financial and other conditions warrant.
  
- D. Pursuant to the Association's authority under Section 376.724.2(2)(e) of the Act, the Board may adopt for future issuance without regard to any particular impairment or insolvency, and submit to the Director for approval, policy forms of various types, containing at least the minimum statutory provisions required in this state, and associated tables of premium rates. Policy forms and rates so adopted and approved may be used to provide substitute benefits or alternative continued coverages with respect to the covered policies or contracts of an impaired or insolvent member insurer.
  
- E. If, in the judgment of the Board, the maximum assessment under the Act, in combination with the Association's borrowing authority, will be insufficient over any two (2) years to cover the outstanding and anticipated covered claims against the Association relating to one or more impaired or insolvent member insurers under any account or accounts, the Board may provide that the Association shall make partial and periodic payments on such claims in accordance with a schedule to be adopted by the Board. Such schedule may give preference to health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals under emergency or hardship standards proposed by the Board and approved by the Director under Section 376.724 of the Act. Such schedule may be adjusted from time to time as changes in the volume and type of such covered claims may warrant, and may be structured so as not to give preference to claims in the order in which they were incurred or made or in the order of which member insurers first became impaired or insolvent, or to require retroactive adjustments.

- F. The purpose of this paragraph F. is to provide the framework for allocating Class B assessments attributable to the Association's obligations for any covered long-term care policies between the "Health Account" and the "Life and Annuity Account" defined below. The allocation method outlined below is intended to implement the requirements of Section 376.735.4(2). The instructions are intended to result in a net allocation of any Class B assessments for the Association's long-term care policy obligations in equal 50% shares to "Accident and Health Member Insurers" and "Life and Annuity Member Insurers" as those two categories of member insurers are defined below.

In accordance with Section 376.735.4(2), if a Class B assessment is authorized due to covered long-term care policies, a portion of the Association's Class B assessment authorized to meet its obligations for the covered long-term care policies (the "LTC Assessment") shall be allocated to the Life and Annuity Account, without dividing it between the subaccounts thereof, with the remaining portion of the LTC Assessment allocated to the Health Account.

The following definitions shall apply only for the purposes of allocating any such Class B assessment for covered long-term care policies to the Life and Annuity Account and the Health Account in accordance with the below formula:

"Accident and Health Member Insurer" means any member insurer that does not qualify as a Life and Annuity Member Insurer.

"Health Account" shall mean the health insurance account established under Section 376.720.1(1).

"LAMIHA" shall mean the quotient of (a) the Life and Annuity Member Insurers' aggregate assessable premium in the Health Account divided by (b) the total assessable premium in the Health Account;

"LAMILAA" shall mean the quotient of (a) the Life and Annuity Member Insurers' aggregate assessable premium in the Life and Annuity Account divided by (b) the total assessable premium in the Life and Annuity Account.

"Life and Annuity Account" shall mean the aggregate of the life insurance and annuity accounts established under Section 376.720.1(2) and (3), without dividing such account into subaccounts.

“Life and Annuity Member Insurers” shall mean each and every member insurer having (i) total assessable premium in the Life and Annuity Account greater than or equal to (ii) its total assessable premium in the Health Account, where assessable premium in the Health Account includes, but is not limited to, the member insurer’s assessable health maintenance organization premiums but shall exclude the member insurer’s assessable premiums for disability income and long-term care insurance.<sup>1</sup>

The amount of the LTC Assessment allocated to the Life and Annuity Account shall be determined in accordance with the following formula:

$$\begin{array}{rcccl} \text{Life and} & & & & \text{(.50 - LAMIHA)} \\ \text{Annuity} & & & & \hline \text{Account LTC} & = & \text{LTC} & * & \text{(LAMILAA -} \\ \text{Assessment} & & \text{Assessment} & & \text{LAMIHA)} \\ \text{Share} & & & & \end{array}$$

The amount of the LTC Assessment not allocated to the Life and Annuity Account as provided above shall be allocated to the Health Account.

The amount of any LTC Assessment allocated to the Life and Annuity Account or to the Health Account shall be allocated among member insurers in accordance with Section 376.735.5, except that the total assessable premium in the entire Life and Annuity Account shall be used in the aggregate without dividing it between the subaccounts.

- G. The Board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses. Following the Board’s determination of a reasonable amount to be retained, if any, the funds may be retained by account in a composite fund for contingent losses, or such funds may be reallocated within the same account directly to any other impairment of insolvency.

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<sup>1</sup> The exclusion of a member insurer’s assessable premiums for disability income and long-term care insurance shall be applied only for the purpose of the definition of “Life and Annuity Member Insurers,” and such exclusion shall not apply for any other purposes.

- H. The Board may establish a general policy whereby the Board or the Board's designee may accept amended assessable premium reports filed with the National Association of Insurance Commissioners which correct reports filed for prior years which contain inadvertent errors made by a member insurer. Under such a policy, correction of the error would be prospective only. The corrected assessable premium would be used for future assessments, but could not be used to re-calculate prior assessments.

#### ARTICLE V. RECORDS AND REPORTS

- A. Minutes of the proceedings of each Board meeting shall be written. The original of these minutes shall be retained by the Secretary of the Board or by such other person as the Board may designate. Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved to discuss the activities of the Association in carrying out its powers and duties under the Act. Records of such negotiations or meetings shall be made public only upon the termination of the impairment or insolvency of the insurer, or upon the order of the court of competent jurisdiction. Nothing in this subsection shall limit the duty of the Association to render a report of its activities under Article 5, Section C. The Board may, upon majority vote, make reports and recommendations to the Director upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public document.
- B. Copies of minutes, reports, recommendations, records and documents shall be furnished to each Board member, and upon request, to the Director and to any member insurer; provided, however, that such minutes, reports, recommendations or other records and documents relating to the portions of such proceeding which were closed, because of the confidential nature of the matters addressed, shall also be confidential, and distribution of such minutes, reports, recommendations, records and documents shall be limited to the members of the Board and the Association's attorneys, employees or agents, considered by the Board to be necessary or pertinent to the discussion of the matters addressed or performance of the actions taken during such confidential proceedings.
- C. The Board shall make an annual report as required by Section 376.750.1 not later than May 1 of each year to the Director. Such report shall include a financial report for the preceding calendar year and shall be in a form approved by the Director. It shall also contain a review of the activities of the Association during the preceding calendar year.

- D. The Board shall, once each calendar year, engage an independent certified public accountant to review or audit the financial affairs of the Association.

#### ARTICLE VI. MEMBERSHIP

- A. Pursuant to Section 376.720, insurers which are, or shall become admitted to transact the kinds of insurance covered by the Act in the state of Missouri shall be member insurers of this Association.
- B. An insurer which ceases to be admitted shall automatically cease to be a member effective on the day following the termination or expiration of its license to transact the kinds of insurance covered by the Act. A member insurer which ceases to be admitted, for whatever reason, shall remain liable for any assessments based on impairments or insolvencies occurring prior to its ceasing to be admitted.
- C. A member insurer which becomes an impaired or insolvent insurer after its license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn shall remain a member insurer for purposes of the liability of the Association with respect to the covered policies or contracts of such member insurer.

#### ARTICLE VII. APPEALS

Any member insurer aggrieved by an act of the Board or Association shall appeal to the Board before appealing to the Director. Such appeal shall be taken within 60 days of the date on which such member insurer knew or should have known of such act. If such member insurer is aggrieved by the final action or decision of the Board on the appeal, or if the Board declines or fails to act on such appeal within 60 days, the member insurer may appeal to the Director within 60 days after the action or decision of the Board or the expiration of the 60-day period within which the Board failed to act on such appeal. Any member insurer which makes an appeal to the Director pursuant to this Article must provide the Association with notice of the appeal by mailing a copy of the appeal to the Association by certified mail on the same day on which the appeal is submitted to the Director. Failure to take an appeal within the time and in the manner set forth in this plan shall bar any claim that a member might otherwise have with respect to any act taken by the Association or its Board. If the appeal pertains to a protest of all or part of an assessment, the member shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

## ARTICLE VIII. INDEMNIFICATION

- A. All persons, except the Director and his representatives, described in Section 376.750.3 of the Act, including but not limited to the individual representatives of the member insurers serving on the Board, shall be indemnified by the Association for all reasonable expenses incurred on account of any action taken or not taken by them in the performance of their powers and duties under the Act, unless such persons shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities of their office or position. Such expenses shall include, but not limited to, attorney fees, judgments, decrees, fines, penalties and amounts paid in settlement actually and necessarily incurred in the defense of any action, suit or proceeding, whether civil, criminal, administrative or investigative, including all appeals, brought against such persons, their testators or intestates. In the event of settlement before final adjudication, with or without court approval, such indemnity shall be provided only if the Association is advised by independent legal counsel that such persons did not, in counsel's opinion, commit such a breach of duty.

Expenses incurred by any person who is subject to this Article VIII may be paid by the Association in advance as authorized by the Board in the specific case. The Board may require written assurance from the person or entity who or which is responsible for such expenses to repay such amount, if it shall later be determined as provided in this Article that such person or entity is not entitled to indemnification for such expenses by the Association. The amount of any indemnification made by the Association pursuant to this Article shall be assessed against member insurers.

- B. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 376.750.3 of the Act.

## ARTICLE IX. CONFORMITY TO STATUTE

The Missouri Life and Health Insurance Guaranty Association Act, as written, and as it may be hereafter amended, is incorporated as a part of this Plan; and, as such, is attached hereto by reference.