

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 1060

By: McEntire

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2011, Sections 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2030, 2032, 2036, 2038 and 2043, which relate to the Oklahoma Life and Health Guaranty Association Act; providing for broader applicability; defining terms; providing coverages and liabilities; modifying board of director membership; providing procedural rules and amendments; modifying for impaired or insolvent insurers; providing for assessments of member insurers; modifying powers and duties of the Insurance Commissioner; modifying applicability of procedures for detection and prevention of insolvencies; modifying assets of impaired or insolvent insurers; modifying ownership rights; providing for the recovery of distributions; modifying prohibitions on advertising; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 2022, is amended to read as follows:

Section 2022. A. The purpose of ~~this act~~ the Oklahoma Life and Health Insurance Guaranty Association Act is to protect, subject to certain limitations, the persons specified in subsection A of Section 2025 of ~~the Insurance Code~~ this title, against failure in

1 the performance of contractual obligations, under life ~~and~~, health
2 ~~insurance policies~~, and annuity policies, plans or contracts
3 specified in subsection B of Section 2025 of the Insurance Code,
4 because of the impairment or insolvency of the member insurer that
5 issued the policies, plans or contracts.

6 B. To provide this protection, an association of member
7 insurers has been created and exists to pay benefits and to continue
8 coverages as limited in this act, and members of the Association are
9 subject to assessment to provide funds to carry out the purposes of
10 this act.

11 SECTION 2. AMENDATORY 36 O.S. 2011, Section 2023, is
12 amended to read as follows:

13 Section 2023. A. There is created a nonprofit legal entity to
14 be known as the Oklahoma Life and Health Insurance Guaranty
15 Association. All member insurers shall be and remain members of the
16 Association as a condition of their authority to transact insurance
17 or a health maintenance organization business in this state.

18 B. The Association shall perform its functions under a plan of
19 operation established and approved in accordance with this act and
20 shall exercise its powers through the Board of Directors established
21 in this act. For purposes of administration and assessment, the
22 Association shall maintain three ~~(3)~~ accounts:

- 23 1. The health ~~insurance~~ account;
- 24 2. The life insurance account; and

1 3. The annuity account.

2 C. The Association shall come under the immediate supervision
3 of the Insurance Commissioner and shall be subject to the applicable
4 provisions of the insurance laws of this state.

5 SECTION 3. AMENDATORY 36 O.S. 2011, Section 2024, is
6 amended to read as follows:

7 Section 2024. As used in ~~Sections 2021 through 2043 of this~~
8 ~~title~~ the Oklahoma Life and Health Insurance Guaranty Association
9 Act:

10 1. "Account" means ~~either one~~ one of the ~~two~~ three accounts created
11 under Section 2023 of this title;

12 2. "Association" means the Oklahoma Life and Health Insurance
13 Guaranty Association created in Section 2023 of this title;

14 3. "Commissioner" means the Oklahoma Insurance Commissioner;

15 4. "Contractual obligation" means an obligation under a policy
16 or contract or certificate under a group policy or contract, or
17 portion thereof for which coverage is provided under Section 2025 of
18 this title;

19 5. "Covered contract" or "covered policy" means a policy or
20 contract or portion of a policy or contract for which coverage is
21 provided under Section 2025 of this title;

22 6. "Extra-contractual claims" includes, but is not limited to,
23 claims relating to bad faith in the payment of claims, punitive or
24 exemplary damages or attorneys fees and costs;

1 7. "Health benefit plan" means any hospital or medical expense
2 policy or certificate or health maintenance organization subscriber
3 contract or any other similar health contract. "Health benefit
4 plan" does not include:

- 5 a. accident only insurance,
- 6 b. credit insurance,
- 7 c. dental only insurance,
- 8 d. vision only insurance,
- 9 e. Medicare supplement insurance,
- 10 f. benefits for long-term care, home health care,
11 community-based care, or any combination thereof,
- 12 g. disability income insurance,
- 13 h. coverage for on-site medical clinics, or
- 14 i. specified disease, hospital confinement indemnity or
15 limited health insurance if the types of coverage do
16 not provide coordination of benefits and are provided
17 under separate policies or certificates;

18 8. "Impaired insurer" means a member insurer which, after the
19 effective date of this act, is not an insolvent insurer and is
20 placed under an order of rehabilitation or conservation by a court
21 of competent jurisdiction;

22 ~~8.~~ 9. "Insolvent insurer" means a member insurer which, after
23 the effective date of this act, is placed under an order of
24

1 liquidation by a court of competent jurisdiction with a finding of
2 insolvency;

3 ~~9.~~ 10. "Member insurer" means any nonprofit hospital service
4 and medical indemnity corporation and any insurer or health
5 maintenance organization licensed or that holds a certificate of
6 authority to transact in this state any kind of insurance or health
7 maintenance organization business for which coverage is provided
8 under Section 2025 of this title, and includes any insurer or health
9 maintenance organization whose license or certificate of authority
10 in this state may have been suspended, revoked, not renewed or
11 voluntarily withdrawn, but does not include:

12 ~~a.~~ ~~a health maintenance organization,~~

13 ~~b.~~ a. a fraternal benefit society,

14 ~~c.~~ b. a mandatory state-pooling plan,

15 ~~d.~~ c. a mutual assessment company or other person that
16 operates on an assessment basis,

17 ~~e.~~ d. an insurance exchange,

18 ~~f.~~ e. an organization that has a certificate or license
19 limited to the issuance of charitable gift annuities
20 under Sections 4071 through 4082 of this title, or

21 ~~g.~~ f. any entity similar to any of the above;

22 ~~10.~~ 11. "Moody's Corporate Bond Yield Average" means the
23 Monthly Average Corporates as published by Moody's Investors
24 Service, Inc., or any successor thereto;

1 ~~11.~~ 12. "Owner", "policy holder", "policy owner" or "contract
2 owner" means the person who is identified as the legal owner of a
3 policy or contract under the terms of the policy or contract or who
4 is otherwise vested with legal title to the policy or contract
5 through a valid assignment completed in accordance with the terms of
6 the policy or contract and properly recorded as the owner on the
7 books of the member insurer. Owner, policy holder, policy owner or
8 contract owner does not include persons with a mere beneficial
9 interest in a policy or contract;

10 ~~12.~~ 13. "Person" means an individual, corporation, limited
11 liability company, partnership, association, governmental body or
12 entity, or voluntary organization;

13 ~~13.~~ 14. "Premiums" means amounts or considerations by whatever
14 name called, received on covered policies or contracts less returned
15 premiums, considerations and deposits and less dividends and
16 experience credits. "Premiums" does not include amounts or
17 considerations received for policies or contracts or for the
18 portions of any policies or contracts for which coverage is not
19 provided under subsection B of Section 2025 of this title except
20 that assessable premium shall not be reduced on account of
21 subparagraph (c) of paragraph 2 of subsection B of Section 2025 of
22 this title relating to interest limitations and paragraph 2 of
23 subsection C of Section 2025 of this title relating to limitations
24

1 with respect to one individual, one participant and one policy or
2 contract owner. Premiums does not include:

- 3 a. premiums on an unallocated annuity contract, or
- 4 b. premiums in excess of Five Million Dollars
5 (\$5,000,000.00) on multiple non-group policies of life
6 insurance owned by one owner, whether the policy or
7 contract owner is an individual, firm, corporation, or
8 other person, and whether the persons insured are
9 officers, managers, employees or other persons,
10 regardless of the number of policies or contracts held
11 by the owner;

12 ~~14.~~ 15. "Principal place of business" of a person other than a
13 natural person means the single state in which the natural persons
14 who establish policy for the direction, control and coordination of
15 the operations of the entity as a whole primarily exercise that
16 function, determined by the Association in its reasonable judgment
17 by considering the following factors:

- 18 a. the state in which the primary executive and
19 administrative headquarters of the entity are located,
- 20 b. the state in which the principal office of the chief
21 executive officer of the entity is located,
- 22 c. the state in which the board of directors or similar
23 governing person or persons of the entity conducts the
24 majority of its meetings,

- d. the state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings,
- e. the state from which the management of the overall operations of the entity is directed, and
- f. in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors listed in subparagraphs a through e of this paragraph;

~~15.~~ 16. "Receivership court" means the court in the insolvent or impaired state of the insurer having jurisdiction over the conservation, rehabilitation or liquidation of the member insurer;

~~16.~~ 17. "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of the United States possessions, territories or protectorates that

1 do not have an association similar to the Association created by the
2 Oklahoma Life and Health Insurance Guaranty Association Act, shall
3 be deemed residents of the state of domicile of the insurer that
4 issued the policy or contract;

5 ~~17.~~ 18. "State" means a state of the United States, the
6 District of Columbia, Puerto Rico, or a United States possession,
7 territory or protectorate;

8 ~~18.~~ 19. "Structured settlement annuity" means an annuity
9 purchased in order to fund periodic payments for a plaintiff or
10 other claimant in payment for or with respect to personal injury
11 suffered by a plaintiff or other claimant;

12 ~~19.~~ 20. "Supplemental contract" means a written agreement
13 entered into for the distribution of proceeds under a life, health
14 or annuity policy or contract; and

15 ~~20.~~ 21. "Unallocated annuity contract" means an annuity
16 contract or group annuity certificate which is not issued to and
17 owned by an individual, except to the extent of any annuity benefits
18 guaranteed to an individual by an insurer under the contract or
19 certificate.

20 SECTION 4. AMENDATORY 36 O.S. 2011, Section 2025, is
21 amended to read as follows:

22 Section 2025. A. For the policies and contracts specified in
23 subsection B of this section, the Oklahoma Life and Health Insurance
24 Guaranty Association Act shall provide coverage:

1. a. To persons, who regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under subparagraph b of this paragraph,
- b. To persons who are owners of or certificate holders or enrollees under the policies or contracts, other than structured settlement annuities, and in each case who:
- (1) are residents, or
 - (2) are not residents, but only under all of the following conditions:
 - (a) the member insurer that issued the policies or contracts are domiciled in this state,
 - (b) the states in which the persons reside have associations similar to the Oklahoma Life and Health Insurance Guaranty Association created by this act, and the persons are not eligible for coverage by an association in any other state due to the fact that the insurer or health maintenance organization was not licensed in the state at the time

1 specified in the guaranty association law of
2 the state;

3 2. Subparagraphs a and b of paragraph 1 of this subsection
4 shall not apply to structured settlement annuities specified in
5 subsection B of this section and in the Oklahoma Life and Health
6 Insurance Guaranty Association Act shall, except as provided in
7 paragraphs 3 and 4 of this subsection, provide coverage to a person
8 who is a payee under a structured settlement annuity or a
9 beneficiary of a payee if the payee is deceased, if the payee:

10 a. is a resident, regardless of where the contract owner
11 resides, or

12 b. is not a resident, but only under both of the
13 following conditions:

14 (1) (a) the contract owner of the structured
15 settlement annuity is a resident, or

16 (b) the contract owner of the structured
17 settlement annuity is not a resident but:

18 i. the insurer that issued the structured
19 settlement annuity is domiciled in this
20 state, and

21 ii. the state in which the contract owner
22 resides has an association similar to
23 the association created by the Oklahoma
24

Life and Health Insurance Guaranty
Association Act, and

(2) neither the payee nor beneficiary nor the
contract owner is eligible for coverage by the
association of the state in which the payee or
contract owner resides;

3. The Oklahoma Life and Health Insurance Guaranty Association
Act shall not provide coverage to a person who is a payee or
beneficiary of a contract owner resident of this state, if the payee
or beneficiary is afforded coverage by the association of another
state; and

4. The Oklahoma Life and Health Insurance Guaranty Association
Act is intended to provide coverage to a person who is a resident of
this state and in special circumstances, to a nonresident. In order
to avoid duplicate coverage, if a person who would otherwise receive
coverage under the Oklahoma Life and Health Insurance Guaranty
Association Act is provided coverage under the laws of any other
state, the person shall not be provided coverage under the Oklahoma
Life and Health Insurance Guaranty Association Act. In determining
the application of the provisions of this paragraph to situations
where a person could be covered by the association of more than one
state, whether as an owner, payee, enrollee beneficiary or assignee,
the Oklahoma Life and Health Insurance Association Act shall be

1 construed in conjunction with the laws of other states to result in
2 coverage by only one association.

3 B. 1. The Oklahoma Life and Health Insurance Guaranty
4 Association Act shall provide coverage to the persons specified in
5 subsection A of this section for policies or contracts of direct,
6 non-group life insurance, health insurance, which for the purposes
7 of this act includes health maintenance organization subscriber
8 contracts and certificates, or, annuity annuities and supplemental
9 policies or contracts to any of these, and for certificates under
10 direct group policies and contracts, except as limited by the
11 Oklahoma Life and Health Insurance Guaranty Association Act.
12 Annuity contracts and certificates under group annuity contracts
13 include allocated funding agreements, structured settlement
14 annuities and any immediate or deferred annuity contracts.

15 2. ~~This act~~ Except as provided in paragraph 3 of this
16 subsection, the Oklahoma Life and Health Insurance Guaranty
17 Association Act shall not provide coverage for:

- 18 a. a portion of a policy or contract not guaranteed by
19 the insurer, or under which the risk is borne by the
20 policy or contract owner,
- 21 b. a policy or contract of reinsurance, unless assumption
22 certificates have been issued pursuant to the
23 reinsurance policy or contract,

1 c. a portion of a policy or contract to the extent that
2 the rate of interest on which it is based, or the
3 interest rate, crediting rate or similar factor
4 determined by use of an index or other external
5 reference stated in the policy or contract employed in
6 calculating returns or changes in value:

7 (1) averaged over the period of four (4) years prior
8 to the date on which the Association becomes
9 obligated with respect to the policy or contract,
10 exceeds a rate of interest determined by
11 subtracting two (2) percentage points from
12 Moody's Corporate Bond Yield Average averaged for
13 that same four-year period or for such lesser
14 period if the policy or contract was issued less
15 than four (4) years before the Association became
16 obligated, and

17 (2) on and after the date on which the Association
18 becomes obligated with respect to the policy or
19 contract, exceeds the rate of interest determined
20 by subtracting three (3) percentage points from
21 Moody's Corporate Bond Yield Average as most
22 recently available,

23 d. a portion of a policy or contract issued to a plan or
24 program of an employer, association or other person to

1 provide life, health or annuity benefits to its
2 employees, members or others, to the extent that the
3 plan or program is self-funded or uninsured, including
4 but not limited to benefits payable by an employer,
5 association or other person under:

- 6 (1) a Multiple Employer Welfare Arrangement as
- 7 defined in 29 U.S.C. Section 1144,
- 8 (2) a minimum premium group insurance plan,
- 9 (3) a stop-loss group insurance plan, or
- 10 (4) an administrative services only contract~~+~~L

11 e. a portion of a policy or contract to the extent that
12 it provides for:

- 13 (1) dividends or experience rating credits,
- 14 (2) voting rights, or
- 15 (3) payment of any fees or allowances to any person,
- 16 including the policy or contract owner, in
- 17 connection with the service to or administration
- 18 of the policy or contract,

19 f. a policy or contract issued in this state by a member
20 insurer at a time when it was not licensed or did not
21 have a certificate of authority to issue the policy or
22 contract in this state,

23 g. a portion of a policy or contract to the extent that
24 the assessments required by Section 2030 of this title

1 with respect to the policy or contract are preempted
2 by federal or state law,

3 h. an obligation that does not arise under the express
4 written terms of the policy or contract issued by the
5 member insurer to the enrollee, certificate holder,
6 contract or policy owner, including without
7 limitation:

8 (1) claims based on marketing materials,

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

13 (3) misrepresentations of or regarding policy or
14 contract benefits,

15 (4) extra-contractual claims, or

16 (5) a claim for penalties or consequential or
17 incidental damages,

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

- 1 j. an unallocated annuity contract,
- 2 k. a portion of a policy or contract to the extent it
- 3 provides for interest or other changes in value to be
- 4 determined by the use of an index or other external
- 5 reference stated in the policy or contract, but which
- 6 have not been credited to the policy or contract, or
- 7 as to which the policy or contract owner's rights are
- 8 subject to forfeiture, as of the date the member
- 9 insurer becomes an impaired or insolvent insurer under
- 10 the Oklahoma Life and Health Insurance Guaranty
- 11 Association Act, whichever is earlier. If a policy's
- 12 or contract's interest or changes in value are
- 13 credited less frequently than annually, then for
- 14 purposes of determining the values that have been
- 15 credited and are not subject to forfeiture under this
- 16 subparagraph, the interest or change in value
- 17 determined by using the procedures defined in the
- 18 policy or contract will be credited as if the
- 19 contractual date of crediting interest or changing
- 20 values was the date of impairment or insolvency,
- 21 whichever is earlier, and will not be subject to
- 22 forfeiture, or
- 23 l. a policy or contract providing any hospital, medical,
- 24 prescription drug or other health care benefits

1 pursuant to Part C or Part D of Subchapter XVIII,
2 Chapter 7 of Title 42 of the United States Code,
3 commonly known as Medicare Part C or Part D, or
4 Subchapter XIX, Chapter 7 of Title 42 of the United
5 States Code or any regulations issued pursuant
6 thereto.

7 3. The exclusion from coverage in this section shall not apply
8 to any portion of a policy or contract, including a rider that
9 provides long-term care or any other health insurance benefits.

10 C. The benefits that the Association may become obligated to
11 cover shall in no event exceed the lesser of:

12 1. The contractual obligations for which the member insurer is
13 liable or would have been liable if it were not an impaired or
14 insolvent insurer; or

15 2. a. with respect to any one life, regardless of the number
16 of policies or contracts:

17 (1) Three Hundred Thousand Dollars (\$300,000.00) in
18 life insurance death benefits, but not more than
19 One Hundred Thousand Dollars (\$100,000.00) in net
20 cash surrender and net cash withdrawal values for
21 life insurance,

22 (2) in for health insurance benefits:

23 (a) One Hundred Thousand Dollars (\$100,000.00)
24 for coverages not defined as disability

1 ~~income~~ insurance or ~~basic hospital, medical~~
2 ~~and surgical insurance or major medical~~
3 ~~insurance~~ health benefit plans or long-term
4 care insurance as defined in Section 4424 of
5 this title, including any net cash surrender
6 and net cash withdrawal values,

7 (b) Three Hundred Thousand Dollars (\$300,000.00)
8 for insurance providing income payments to
9 an insured wage earner when income is
10 interrupted or terminated because of
11 illness, sickness or accident, commonly
12 known as disability income insurance and
13 Three Hundred Thousand Dollars (\$300,000.00)
14 for long-term care insurance as defined in
15 Section 4424 of this title, and

16 (c) Five Hundred Thousand Dollars (\$500,000.00)
17 for ~~basic hospital, medical and surgical~~
18 ~~insurance or insurance providing coverage in~~
19 ~~excess of that provided by a basic hospital,~~
20 ~~medical and surgical insurance, commonly~~
21 ~~known as major medical insurance~~ health
22 benefit plans, or

23 (3) Three Hundred Thousand Dollars (\$300,000.00) in
24 the present value of annuity benefits, including

1 net cash surrender and net cash withdrawal
2 values, or

3 b. with respect to each payee of a structured settlement
4 annuity or beneficiary or beneficiaries of the payee
5 if the payee is deceased, Three Hundred Thousand
6 Dollars (\$300,000.00) in present value annuity
7 benefits, in the aggregate, including net cash
8 surrender and net cash withdrawal values,

9 c. however, in no event shall the Association be
10 obligated to cover more than:

11 (1) an aggregate of Three Hundred Thousand Dollars
12 (\$300,000.00) in benefits with respect to any one
13 life under this subparagraph and subparagraphs a
14 and b of this paragraph except with respect to
15 ~~benefits for basic hospital, medical and surgical~~
16 ~~insurance and major medical insurance~~ health
17 benefit plans under division (2) of subparagraph
18 a of this paragraph, in which case the aggregate
19 liability of the Association shall not exceed
20 Five Hundred Thousand Dollars (\$500,000.00) with
21 respect to any one individual, or

22 (2) with respect to one owner of multiple non-group
23 policies of life insurance, whether the policy
24 or contract owner is an individual, firm,

1 corporation or other person, and whether the
2 persons insured are officers, managers,
3 employees or other persons, more than Five
4 Million Dollars (\$5,000,000.00) in benefits,
5 regardless of the number of policies and
6 contracts held by the owner,

7 d. the limitations set forth in this subsection are
8 limitations on benefits for which the Association is
9 obligated before taking into account either its
10 subrogation and assignment rights or the extent to
11 which those benefits could be provided out of the
12 assets of the impaired or insolvent insurer
13 attributable to covered policies. The costs of the
14 obligations of the Association under the Oklahoma Life
15 and Health Insurance Guaranty Association Act may be
16 met by the use of assets attributable to covered
17 policies or reimbursed to the Association pursuant to
18 its subrogation and assignment rights.

19 e. For purposes of the Oklahoma Life and Health Insurance
20 Guaranty Association Act, benefits provided by a long-
21 term care rider to a life insurance policy or annuity
22 contract shall be considered the same type of benefits
23 as the base life insurance policy or annuity contract
24 to which it relates.

1 D. In performing its obligations to provide coverage under
2 Section 2028 of this title, the Association shall not be required to
3 guarantee, assume, reinsure, reissue or perform, or cause to be
4 guaranteed, assumed, reinsured, reissued or performed, the
5 contractual obligations of the insolvent or impaired insurer under a
6 covered policy or contract that do not materially affect the
7 economic values or economic benefits of the covered policy or
8 contract.

9 SECTION 5. AMENDATORY 36 O.S. 2011, Section 2026, is
10 amended to read as follows:

11 Section 2026. A. The Board of Directors of the Oklahoma Life
12 and Health Insurance Guaranty Association shall consist of not less
13 than ~~five (5)~~ seven nor more than ~~nine (9)~~ eleven member insurers
14 serving terms as established in the procedural rules of the
15 Association. A majority of the Board shall be selected from the
16 fifty (50) member insurers which write the largest volume of life
17 and accident and health premiums and annuity considerations for the
18 previous year. The members of the Board shall be selected by member
19 insurers subject to the approval of the Insurance Commissioner.
20 Vacancies on the Board shall be filled for the remaining period of
21 the term by a majority vote of the remaining Board members, subject
22 to the approval of the Commissioner.

23 B. In calculating total premium for Board qualification
24 purposes, premiums collected by different members of the same multi-

insurer group may be attributable to each member of the group; provided, no two members of the same group shall serve on the Board at the same time.

C. In approving selections, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

D. Members of the Board may be reimbursed according to the provisions of the State Travel Reimbursement Act for expenses incurred by them as members of the Board, but members of the Board shall not otherwise be compensated by the Association for their services.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 2027, is amended to read as follows:

Section 2027. A. 1. The Oklahoma Life and Health Insurance Guaranty Association shall submit to the Insurance Commissioner procedural rules and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The procedural rules and any amendments thereto shall become effective upon approval in writing by the Commissioner.

2. If the Association fails to submit suitable procedural rules within one hundred eighty (180) days following the effective date of this act or if at any time thereafter the Association fails to submit suitable amendments to the rules, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules

1 as are necessary to effectuate the provisions of the Oklahoma Life
2 and Health Insurance Guaranty Association Act. Such rules shall
3 continue in force until modified by the Commissioner or superseded
4 by rules submitted by the Association and approved by the
5 Commissioner. All member insurers shall comply with the procedural
6 rules.

7 B. The procedural rules shall, in addition to requirements
8 enumerated elsewhere in the Oklahoma Life and Health Insurance
9 Guaranty Association Act:

10 1. Establish procedures for handling the assets of the
11 Association;

12 2. Establish regular places and times for meeting of the Board
13 of Directors;

14 3. Establish procedures for records to be kept of all financial
15 transactions of the Association, its agents, and the Board of
16 Directors;

17 4. Establish the procedures whereby selections for the Board of
18 Directors will be made and submitted to the Commissioner;

19 5. Establish any additional procedures for assessments under
20 ~~Section 10 of this act~~ 2030 of this title; and

21 6. Contain additional provisions necessary or proper for the
22 execution of the powers and duties of the Association.

23 C. The procedural rules may provide that any or all powers and
24 duties of the Association, except those under ~~paragraph 3 of Section~~

1 ~~9 and those under~~ Section ~~10 of this act~~ 2030 of this title, are
2 delegated to a corporation, association or other organization which
3 performs or will perform functions similar to those of this
4 Association, or its equivalent, in two or more states if there is a
5 reciprocal agreement with such states to provide similar services.
6 Such a corporation, association or organization shall be reimbursed
7 for any payments made on behalf of the Association and shall be paid
8 for the performance of any function of the Association. A
9 delegation of powers or duties under this subsection shall take
10 effect only with the approval of both the Board and the
11 Commissioner, and may be made only to a corporation, association or
12 organization which extends protection not substantially less
13 favorable and effective than that provided by this act.

14 SECTION 7. AMENDATORY 36 O.S. 2011, Section 2028, is
15 amended to read as follows:

16 Section 2028. A. If a member insurer is an impaired insurer,
17 the Oklahoma Life and Health Insurance Guaranty Association may, in
18 its discretion, and subject to any conditions imposed by the
19 Association that do not impair the contractual obligations of the
20 impaired insurer and that are approved by the Insurance
21 Commissioner:

22 1. Guarantee, assume, reissue or reinsure, or cause to be
23 guaranteed, assumed, reissued or reinsured, any or all of the
24 policies or contracts of the impaired insurer; or

1 2. Provide monies, pledges, notes, guarantees or other means as
2 are proper to effectuate paragraph 1 of this subsection, and assure
3 payment of the contractual obligations of the impaired insurer
4 pending action under paragraph 1 of this subsection

5 B. If a member insurer is an insolvent insurer, the Association
6 shall, in its discretion, either:

7 1. a. (1) guarantee, assume, reissue or reinsure, or cause
8 to be guaranteed, assumed, reissued or reinsured,
9 the policies or contracts of the insolvent
10 insurer, or

11 (2) assure payment of the contractual obligations of
12 the insolvent insurer, and

13 b. provide monies, pledges, loans, notes, guarantees or
14 other means as are reasonably necessary to discharge
15 the duties of the Association; or

16 2. Provide benefits and coverages in accordance with the
17 following provisions:

18 a. with respect to ~~life and health insurance policies and~~
19 ~~annuities~~ policies and contracts, assure payment of
20 benefits ~~for premiums identical to the premiums and~~
21 ~~benefits, except for terms of conversion and~~
22 ~~renewability~~, that would have been payable under the
23 policies or contracts of the insolvent insurer for
24 claims incurred:

1 (1) with respect to group policies and contracts, not
2 later than the earlier of the next renewal date
3 under those policies or contracts or forty-five
4 (45) days, but in no event less than thirty (30)
5 days, after the date on which the Association
6 becomes obligated with respect to the policies
7 and contracts, or

8 (2) with respect to non-group policies, contracts,
9 and annuities not later than the earlier of the
10 next renewal date, if any, under the policies or
11 contracts for one (1) year, but in no event less
12 than thirty (30) days, from the date on which the
13 Association becomes obligated with respect to the
14 policies or contracts,

15 b. make diligent efforts to provide all known insureds,
16 enrollees or annuitants for non-group policies and
17 contracts, or group policy or contract owners with
18 respect to group policies and contracts, thirty (30)
19 days' notice of the termination of the benefits
20 provided pursuant to subparagraph a of this paragraph,

21 c. with respect to non-group ~~life and health insurance~~
22 ~~policies and annuities~~ policies and contracts covered
23 by the Association, make available to each known
24 insured, enrollee or annuitant, or owner if other than

1 the insured or annuitant, and with respect to an
2 individual formerly an insured, enrollee or ~~formerly~~
3 ~~an~~ annuitant under a group policy or contract who is
4 not eligible for replacement group coverage, make
5 available substitute coverage on an individual basis
6 in accordance with the provisions of subparagraph d of
7 this paragraph, if the insureds, enrollees or
8 annuitants had a right under law or the terminated
9 policy, contract or annuity to convert coverage to
10 individual coverage or to continue an individual
11 policy, contract or annuity in force until a specified
12 age or for a specified time, during which the insurer
13 or health maintenance organization had no right
14 unilaterally to make changes in any provision of the
15 policy, contract or annuity or had a right only to
16 make changes in premium by class,

- 17 d. (1) in providing the substitute coverage required
18 under subparagraph c of this paragraph, the
19 Association may offer either to reissue the
20 terminated coverage or to issue an alternative
21 policy or contract at actuarially justified
22 rates, subject to the prior approval of the
23 Insurance Commissioner,

1 (2) alternative or reissued policies or contracts
2 shall be offered without requiring evidence of
3 insurability, and shall not provide for any
4 waiting period or exclusion that would not have
5 applied under the terminated policy or contract,
6 and

7 (3) the Association may reinsure any alternative or
8 reissued policy or contract,

9 e. (1) alternative policies or contracts adopted by the
10 Association shall be subject to the approval of
11 the ~~domiciliary insurance commissioner and the~~
12 ~~receivership court~~ Insurance Commissioner. The
13 Association may adopt alternative policies or
14 contracts of various types for future issuance
15 without regard to any particular impairment or
16 insolvency,

17 (2) alternative policies or contracts shall contain
18 at least the minimum statutory provisions
19 required in this state and provide benefits that
20 shall not be unreasonable in relation to the
21 premium charged. The Association shall set the
22 premium in accordance with a table of rates that
23 it shall adopt. The premium shall reflect the
24 amount of insurance to be provided and the age

1 and class of risk of each insured, but shall not
2 reflect any changes in the health of the insured
3 after the original policy or contract was last
4 underwritten,

5 (3) any alternative policy or contract issued by the
6 Association shall provide coverage of a type
7 similar to that of the policy or contract issued
8 by the impaired or insolvent insurer, as
9 determined by the Association,

10 f. if the Association elects to reissue terminated
11 coverage at a premium rate different from that charged
12 under the terminated policy or contract, the premium
13 shall be actuarially justified and set by the
14 Association in accordance with the amount of insurance
15 or coverage provided and the age and class of risk,
16 subject to prior approval of the ~~domiciliary insurance~~
17 ~~commissioner and the receivership court~~ Insurance
18 Commissioner,

19 g. the obligations of the Association with respect to
20 coverage under any policy or contract of the impaired
21 or insolvent insurer or under any reissued or
22 alternative policy or contract shall cease on the date
23 the coverage or policy or contract is replaced by
24 another similar policy or contract by the policy or

1 contract owner, the insured, enrollee or the
2 Association,

3 h. when proceeding under paragraph 2 of subsection B of
4 this section with respect to a policy or contract
5 carrying guaranteed minimum interest rates, the
6 Association shall assure the payment or crediting of a
7 rate of interest consistent with subparagraph c of
8 paragraph 2 of subsection B of Section 2025 of this
9 title.

10 C. Nonpayment of premiums within thirty-one (31) days after the
11 date required under the terms of any guaranteed, assumed,
12 alternative or reissued policy or contract or substitute coverage
13 shall terminate the Association's obligations under the policy,
14 contract or coverage under the Oklahoma Life and Health Insurance
15 Guaranty Association Act with respect to the policy, contract or
16 coverage, except with respect to any claims incurred or any net cash
17 surrender value which may be due in accordance with the provisions
18 of ~~this act~~ the Oklahoma Life and Health Insurance Guaranty
19 Association Act.

20 D. Premiums due for coverage after entry of an order of
21 liquidation of an insolvent insurer shall belong to and be payable
22 at the direction of the Association. If the liquidator of an
23 insolvent insurer requests, the Association shall provide a report
24 to the liquidator regarding the premium collected by the

1 Association. The Association shall be liable for unearned premiums
2 due to policy or contract owners arising after the entry of the
3 order.

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

9 F. In carrying out its duties under subsection B of this
10 section the Association may, subject to approval by a court in this
11 state:

12 1. Impose permanent policy or contract liens in connection with
13 a guarantee, assumption or reinsurance agreement, if the Association
14 finds that the amounts which can be assessed under this act are less
15 than the amounts needed to assure full and prompt performance of the
16 duties of the Association under the Oklahoma Life and Health
17 Guaranty Insurance Association Act, or that the economic or
18 financial conditions as they affect member insurers are sufficiently
19 adverse to render the imposition of permanent policy or contract
20 liens, to be in the public interest; and

21 2. Impose temporary moratoriums or liens on payments of cash
22 values and policy loans, or any other right to withdraw funds held
23 in conjunction with policies or contracts, in addition to any
24 contractual provisions for deferral of cash or policy loan value.

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

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

1 to this subsection. Any amount so paid to the Association and
2 retained by it shall be treated as a distribution of estate assets
3 pursuant to applicable state receivership laws dealing with early
4 access disbursements.

5 H. If the Association fails to act within a reasonable period
6 of time with respect to an insolvent insurer, as provided in
7 subsection B of this section, the Commissioner shall have the powers
8 and duties of the Association under the Oklahoma Life and Health
9 Insurance Guaranty Association Act with respect to the insolvent
10 insurer~~+~~.

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

16 J. The Association shall have standing to appear or intervene
17 before a court or agency in this state which has jurisdiction over
18 an impaired or insolvent insurer concerning which the Association is
19 or may become obligated under the Oklahoma Life and Health Guaranty
20 Insurance Association Act or with jurisdiction over any person or
21 property against which the Association may have rights through
22 subrogation or otherwise. Standing shall extend to all matters
23 germane to the powers and duties of the Association including, but
24 not limited to, proposals for reinsuring, reissuing, modifying or

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

9 K. 1. Any person receiving benefits under the Oklahoma Life
10 and Insurance Health Insurance Association Act shall be deemed to
11 have assigned the rights under, and any causes of action against any
12 person for losses arising under, resulting from or otherwise
13 relating to, the covered policy or contract to the Association to
14 the extent of the benefits received because of this act, whether the
15 benefits are payments of or on account of contractual obligations,
16 continuation of coverage or provision of substitute or alternative
17 policies, contracts or coverages. The Association may require an
18 assignment to it of the rights and cause of action by any enrollee,
19 payee, policy or contract owner, beneficiary, insured or annuitant
20 as a condition precedent to the receipt of any rights or benefits
21 conferred by this act upon the person.

22 2. The subrogation rights of the Association under this
23 subsection shall have the same priority against the assets of the
24 impaired or insolvent insurer as that possessed by the person

1 entitled to receive benefits under the Oklahoma Life and Health
2 Insurance Guaranty Association Act.

3 3. In addition to paragraphs 1 and 2 of this subsection, the
4 Association shall have all common law rights of subrogation and any
5 other equitable or legal remedy that would have been available to
6 the impaired or insolvent insurer or owner, beneficiary, enrollee,
7 or payee of a policy or contract with respect to the policy or
8 contracts, including without limitation, in the case of a structured
9 settlement annuity, any rights of the owner, beneficiary or payee of
10 the annuity, to the extent of benefits received pursuant to the
11 Oklahoma Life and Health Insurance Guaranty Association Act, against
12 a person originally or by succession responsible for the losses
13 arising from the personal injury relating to the annuity or payment
14 therefore, excepting any person responsible solely by reason of
15 serving as an assignee in respect of a qualified assignment under
16 Internal Revenue Code Section 130.

17 4. If paragraphs 1 through 3 of this subsection are invalid or
18 ineffective with respect to any person or claim for any reason, the
19 amount payable by the Association with respect to the related
20 covered obligations shall be reduced by the amount realized by any
21 other person with respect to the person or claim that is
22 attributable to the policies or contracts, or portion thereof,
23 covered by the Association.

1 5. If the Association has provided benefits with respect to a
2 covered obligation and a person recovers amounts as to which the
3 Association has rights as described in paragraphs 1 through 4 of
4 this subsection, the person shall pay to the Association the portion
5 of the recovery attributable to the policies or contracts, or
6 portion thereof, covered by the Association.

7 L. In addition to the rights and powers specified in the
8 Oklahoma Life and Health Insurance Guaranty Association Act, the
9 Association may:

10 1. Enter into contracts as are necessary or proper to carry out
11 the provisions and purposes of the Oklahoma Life and Health
12 Insurance Guaranty Association Act;

13 2. Sue or be sued, including, but not limited to, taking any
14 legal actions necessary or proper to recover any unpaid assessments
15 under Section 2030 of this title and to settle claims or potential
16 claims against it;

17 3. Borrow money to effect the purposes of the Oklahoma Life and
18 Health Insurance Guaranty Association Act. Any notes or other
19 evidence of indebtedness of the Association not in default shall be
20 legal investments for domestic member insurers and may be carried as
21 admitted assets;

22 4. Employ or retain persons as are necessary or appropriate to
23 handle the financial transactions of the Association, and to perform
24

1 other functions as become necessary or proper under the Oklahoma
2 Life and Health Insurance Guaranty Association Act;

3 5. Take any legal action as may be necessary or appropriate to
4 avoid or recover payment of improper claims;

5 6. Exercise, for the purposes of the Oklahoma Life and Health
6 Insurance Guaranty Association Act and to the extent approved by the
7 Commissioner, the powers of a domestic life insurer or health
8 insurer or health maintenance organization, but in no case may the
9 Association issue ~~insurance~~ policies or ~~annuity~~ contracts other than
10 those issued to perform its obligations under the Oklahoma Life and
11 Health Insurance Guaranty Association Act;

12 7. Organize itself as a corporation or in other legal form
13 permitted by the laws of the state;

14 8. Request information from a person seeking coverage from the
15 Association in order to aid the Association in determining its
16 obligations under the Oklahoma Life and Health Insurance Guaranty
17 Association Act with respect to the person, and the person shall
18 promptly comply with the request; ~~and~~

19 9. Unless prohibited by law, in accordance with the terms and
20 conditions of the policy or contract, file for actuarially justified
21 rate or premium increases for any policy or contract for which it
22 provides coverage under the Oklahoma Life and Health Insurance
23 Guaranty Association Act; and
24

1 10. Take other necessary or appropriate action to discharge its
2 duties and obligations under the Oklahoma Life and Health Insurance
3 Guaranty Association Act or to exercise its powers under the
4 Oklahoma Life and Health Insurance Guaranty Association Act.

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

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

23 b. To facilitate the earliest practicable decision about
24 whether to assume any of the contracts of reinsurance,

1 and in order to protect the financial position of the
2 estate, the receiver and each reinsurer of the ceding
3 member insurer shall make available upon request to
4 the Association or to NOLHGA on its behalf as soon as
5 possible after commencement of formal delinquency
6 proceedings, copies of in-force contracts of
7 reinsurance and all related files and records relevant
8 to the determination of whether the contracts should
9 be assumed, and notices of any defaults under the
10 reinsurance contracts or any known event or condition
11 which with the passage of time could become a default
12 under the reinsurance contracts.

13 c. The requirements provided in this subparagraph shall
14 apply to reinsurance contracts assumed by the
15 Association:

16 (1) the Association shall be responsible for all
17 unpaid premiums due under the reinsurance
18 contracts for periods both before and after the
19 date of the order of liquidation, and shall be
20 responsible for the performance of all other
21 obligations to be performed after the date of the
22 order of liquidation, in each case which relate
23 to policies, contracts or annuities covered, in
24 whole or in part, by the Association. The

1 Association may charge policies, contracts or
2 annuities covered in part by the Association,
3 through reasonable allocation methods, the costs
4 for reinsurance in excess of the obligations of
5 the Association and shall provide notice and an
6 accounting of these charges to the liquidator,

7 (2) the Association shall be entitled to any amounts
8 payable by the reinsurer under the reinsurance
9 contracts with respect to losses or events that
10 occur in periods after the date of the order of
11 liquidation and that relate to policies, contracts
12 contracts or annuities covered, in whole or in
13 part, by the Association, provided that, upon
14 receipt of any of these amounts, the Association
15 shall be obliged to pay to the beneficiary under
16 the policy, contract or annuity on account of
17 which the amounts were paid a portion of the
18 amount equal to the lesser of:

19 (a) the amount received by the Association, or

20 (b) the excess of the amount received by the
21 Association over the amount equal to the
22 benefits paid by the Association on account
23 of the policy, contract or annuity less the
24

1 retention of the insurer applicable to the
2 loss or event,

3 (3) within thirty (30) days following the election
4 date of the Association, the Association and each
5 reinsurer under contracts assumed by the
6 Association shall calculate the net balance due
7 to or from the Association under each reinsurance
8 contract as of the election date with respect to
9 policies, contracts or annuities covered, in
10 whole or in part, by the Association, which
11 calculation shall give full credit to all items
12 paid by either the member insurer or its receiver
13 or the reinsurer prior to the election date. The
14 reinsurer shall pay the receiver any amounts due
15 for losses or events prior to the date of the
16 order of liquidation, subject to any set-off for
17 premiums unpaid for periods prior to the date,
18 and the Association or reinsurer shall pay any
19 remaining balance due the other, in each case
20 within five (5) days of the completion of the
21 aforementioned calculation. Any disputes over
22 the amounts due to either the Association or the
23 reinsurer shall be resolved by arbitration
24 pursuant to the terms of the affected reinsurance

1 contracts or, if the contract contains no
2 arbitration clause, as otherwise provided by law.
3 If the receiver has received any amounts due the
4 Association pursuant to division (2) of this
5 subparagraph, the receiver shall remit the same
6 to the Association as promptly as practicable,
7 and

8 (4) if the Association or receiver, on the behalf of
9 the Association, within sixty (60) days of the
10 election date, pays the unpaid premiums due for
11 periods both before and after the election date
12 that relate to policies, contracts or annuities
13 covered, in whole or in part, by the Association,
14 the reinsurer shall not be entitled to terminate
15 the reinsurance contracts for failure to pay the
16 premium insofar as the reinsurance contracts
17 relate to policies, contracts or annuities
18 covered, in whole or in part, by the Association,
19 and shall not be entitled to set off any unpaid
20 amounts due under other contracts, or unpaid
21 amounts due from parties other than the
22 Association, against amounts due the Association.

23 2. During the period from the date of the order of liquidation
24 until the election date, or if the election date does not occur,

1 until one hundred eighty (180) days after the date of the order of
2 liquidation:

3 a. (1) neither the Association nor the reinsurer shall
4 have any rights or obligations under reinsurance
5 contracts that the Association has the right to
6 assume under paragraph 1 of this subsection,
7 whether for periods prior to or after the date of
8 the order of liquidation, and

9 (2) the reinsurer, the receiver and the Association
10 shall, to the extent practicable, provide each
11 other data and records reasonably requested.

12 b. Provided that once the Association has elected to
13 assume a reinsurance contract, the rights and
14 obligations of the parties shall be governed by
15 paragraph 1 of this subsection.

16 3. If the Association does not elect to assume a reinsurance
17 contract by the election date pursuant to paragraph 1 of this
18 subsection, the Association shall have no rights or obligations, in
19 each case for periods both before and after the date of the order of
20 liquidation, with respect to the reinsurance contract.

21 4. When policies, contracts or annuities, or covered
22 obligations with respect thereto, are transferred to an assuming
23 insurer, reinsurance on the policies, contracts or annuities may
24 also be transferred by the Association, in the case of contracts

1 assumed under paragraph 1 of this subsection, subject to the
2 following:

- 3 a. unless the reinsurer and the assuming insurer agree
4 otherwise, the reinsurance contract transferred shall
5 not cover any new policies, contracts of insurance or
6 annuities in addition to those transferred,
- 7 b. the obligations described in paragraph 1 of this
8 subsection shall no longer apply with respect to
9 matters arising after the effective date of the
10 transfer, and
- 11 c. notice shall be given in writing, return receipt
12 requested, by the transferring party to the affected
13 reinsurer not less than thirty (30) days prior to the
14 effective date of the transfer.

15 5. The provisions of this subsection shall govern any affected
16 reinsurance contract that provides for or requires any payment of
17 reinsurance proceeds, on account of losses or events that occur in
18 periods after the date of the order of liquidation, to the receiver
19 of the insolvent insurer or any other person. The receiver shall
20 remain entitled to any amounts payable by the reinsurer under the
21 reinsurance contracts with respect to losses or events that occur in
22 periods prior to the date of the order of liquidation, subject to
23 applicable setoff provisions.

1 6. Except as otherwise provided in this section, nothing in
2 this subsection shall alter or modify the terms and conditions of
3 any reinsurance contract. Nothing in this section shall abrogate or
4 limit any rights of any reinsurer to claim that it is entitled to
5 rescind a reinsurance contract. Nothing in this section shall give
6 a policyholder, contract owner, enrollee, certificate holder or
7 beneficiary an independent cause of action against a reinsurer that
8 is not otherwise set forth in the reinsurance contract. Nothing in
9 this section shall limit or affect the rights of the Association as
10 a creditor of the estate against the assets of the state. Nothing
11 in this section shall apply to reinsurance agreements covering
12 property or casualty risks.

13 O. The Board of Directors of the Association shall have
14 discretion and may exercise reasonable business judgment to
15 determine the means by which the Association is to provide the
16 benefits of the Oklahoma Life and Health Insurance Guaranty
17 Association Act in an economical and efficient manner.

18 P. Where the Association has arranged or offered to provide the
19 benefits of the Oklahoma Life and Health Insurance Guaranty
20 Association Act to a covered person under a plan or arrangement that
21 fulfills the obligations of the Association under the Oklahoma Life
22 and Health Insurance Guaranty Association Act, the person shall not
23 be entitled to benefits from the Association in addition to or other
24 than those provided under the plan or arrangement.

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

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

16 1. In lieu of the index or other external reference provided
17 for in the original policy or contract, the alternative policy or
18 contract provides for:

- 19 a. a fixed interest rate,
- 20 b. payment of dividends with minimum guarantees, or
- 21 c. a different method for calculating interest or changes
22 in value;

1 2. There is no requirement for evidence of insurability,
2 waiting period or other exclusion that would not have applied under
3 the replaced policy or contract; and

4 3. The alternative policy or contract is substantially similar
5 to the replaced policy or contract in all other material terms.

6 SECTION 8. AMENDATORY 36 O.S. 2011, Section 2030, is
7 amended to read as follows:

8 Section 2030. A. For the purpose of providing the funds
9 necessary to carry out the powers and duties of the Oklahoma Life
10 and Health Insurance Guaranty Association, the Board of Directors of
11 the Oklahoma Life and Health Insurance Guaranty Association shall
12 assess the member insurers, separately for each account, at such
13 time and for such amounts as the Board finds necessary. Assessments
14 shall be due not less than thirty (30) days after prior written
15 notice to the member insurers and shall accrue interest at six
16 percent (6%) per annum on and after the due date.

17 B. There shall be two classes of assessments, as follows:

18 1. Class A assessments shall be made for the purpose of meeting
19 administrative and legal costs and other expenses and examinations
20 conducted under the authority of subsection D of Section 2033 of the
21 Insurance Code. Class A assessments may be made whether or not
22 related to a particular impaired or insolvent insurer;

23 2. Class B assessments shall be made to the extent necessary to
24 carry out the powers and duties of the Association under Section

1 2028 of the Insurance Code with regard to an impaired or an
2 insolvent foreign or domestic insurer.

3 C. 1. The amount of any Class A assessment shall be determined
4 by the Board and may be made on a pro rata or non-pro rata basis.
5 If pro rata, the Board may provide that it be credited against
6 future Class B assessments. A non-pro rata assessment shall be
7 credited against future insolvency ~~assessments and shall not exceed~~
8 ~~One Hundred Fifty Dollars (\$150.00) per member insurer in any one~~
9 ~~calendar year.~~

10 The amount of any Class B assessment, except for assessments
11 related to long-term care insurance, shall be allocated for
12 assessment purposes among the accounts and among the subaccounts of
13 the life insurance and annuity account, pursuant to an allocation
14 formula which may be based on the premiums or reserves of the
15 impaired or insolvent insurer or any other standard deemed by the
16 Board in its sole discretion as being fair and reasonable under the
17 circumstances.

18 The amount of the Class B assessment for long-term care
19 insurance written by the impaired or insolvent insurer shall be
20 allocated according to a methodology included in the Plan of
21 Operation and approved by the Commissioner. The methodology shall
22 provide for fifty percent (50%) of the assessment to be allocated to
23 accident and health member insurers and fifty percent (50%) to be
24 allocated to life and annuity member insurers.

1 2. Class B assessments against member insurers for each account
2 shall be in the proportion that the premiums received on business in
3 this state by each assessed member insurer on policies or contracts
4 covered by each account for the three most recent calendar years for
5 which information is available preceding the year in which the
6 member insurer became impaired or insolvent, as the case may be,
7 bears to such premiums received on business in this state for such
8 calendar years by all assessed member insurers.

9 3. Assessments for funds to meet the requirements of the
10 Association with respect to an impaired or insolvent insurer shall
11 not be made until necessary to implement the purposes of this act.
12 Classification of assessments under subsection B of this section and
13 computation of assessments under this subsection shall be made with
14 a reasonable degree of accuracy, recognizing that exact
15 determinations may not always be possible.

16 D. The Association may abate, or defer in whole or in part, the
17 assessment of a member insurer if, in the opinion of the Board,
18 payment of the assessment would endanger the ability of the member
19 insurer to fulfill its contractual obligations. In the event an
20 assessment against a member insurer is abated, or deferred in whole
21 or in part, the amount by which such assessment is abated or
22 deferred may be assessed against the other member insurers in a
23 manner consistent with the basis for assessments set forth in this
24 section.

1 E. The total of all assessments upon a member insurer for each
2 account in any one calendar year shall not exceed two percent (2%)
3 of such average premiums of the insurer received in this state
4 during the three (3) calendar years preceding the assessment on the
5 policies and contracts covered by the account and in which the
6 member insurer became an impaired or insolvent insurer. If the
7 maximum assessment together with the other assets of the Association
8 in any account does not provide in any one year in either account an
9 amount sufficient to carry out the responsibilities of the
10 Association, the necessary additional funds shall be assessed as
11 soon thereafter as permitted by ~~this act~~ the Oklahoma Life and
12 Health Insurance Guaranty Association Act. The Board may provide in
13 the plan of operation, a method of allocating funds among claims,
14 whether relating to one or more impaired or insolvent insurers, when
15 the maximum assessment will be insufficient to cover anticipated
16 claims.

17 F. The Board may, by an equitable method as established in the
18 plan of operation, refund to member insurers, in proportion to the
19 contributions of each insurer to that account, the amount by which
20 the assets of the account exceed the amount the Board finds is
21 necessary to carry out the obligations of the Association during the
22 coming year with regard to that account, including assets accruing
23 from assignment, subrogation, net realized gains and income from
24 investments. A reasonable amount may be retained in any account to

1 provide funds for the continuing expenses of the Association and for
2 future losses.

3 G. It shall be proper for any member insurer to consider the
4 amount reasonably necessary to meet its obligations under this act
5 in determining its premium rates and policyowner dividends as to any
6 kind of insurance or health maintenance organization business within
7 the scope of ~~this act~~ the Oklahoma Life and Health Insurance
8 Guaranty Association Act.

9 H. The Association shall issue to each member insurer paying an
10 assessment under ~~this act~~ the Oklahoma Life and Health Insurance
11 Guaranty Association Act, other than a Class A assessment, a
12 certificate of contribution, in a form prescribed by the
13 Commissioner, for the amount of the assessment so paid. All
14 outstanding certificates shall be of equal priority without
15 reference to amounts or dates of issue. A certificate of
16 contribution may be shown by the member insurer in its financial
17 statement as an asset in such form and for such amount, if any, and
18 period of time as the Commissioner may approve.

19 I. A member insurer may offset against its premium, franchise
20 or income tax liability to this state, an assessment described in
21 subsection H of this section to the extent of twenty percent (20%)
22 of the amount of such assessment for each of the five (5) calendar
23 years following the year in which such assessment was paid. In the
24 event a member insurer should cease doing business, all uncredited

1 assessments may be credited against its premium, franchise or income
2 tax liability for the year it ceases doing business.

3 J. Any sums acquired by refund, pursuant to subsection F of
4 this section, from the Association which have theretofore been
5 written off by contributing insurers and offset against premium,
6 franchise or income taxes as provided in subsection I of this
7 section, and are not then needed for purposes of ~~this act~~ the
8 Oklahoma Life and Health Insurance Guaranty Association Act, shall
9 be paid by the Association to the Insurance Commissioner who shall
10 dispense such funds in accordance with the statutes regarding
11 disbursement of such taxes.

12 SECTION 9. AMENDATORY 36 O.S. 2011, Section 2032, is
13 amended to read as follows:

14 Section 2032. A. To aid in the detection and prevention of
15 member insurer insolvencies, it shall be the duty of the Insurance
16 Commissioner:

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

- 22 a. revocation of license,
 - 23 b. suspension of license, or
- 24

1 c. makes a formal order that the ~~company~~ member insurer
2 restrict its premium writing, obtain additional
3 contributions to surplus, withdraw from the state,
4 reinsure all or any part of its business, or increase
5 capital, surplus or any other account for the security
6 of policy owners, contract owners, certificate owners
7 or creditors;

8 2. To report to the board of directors when the Commissioner
9 has taken any of the actions set forth in paragraph 1 of this
10 subsection or has received a report from any other commissioner of
11 other states indicating that any action has been taken in another
12 state. The report to the board of directors shall contain all
13 significant details of the action taken or the report received from
14 a commissioner from another state;

15 3. To report to the board when the Commissioner has reasonable
16 cause to believe from an examination, whether completed or in
17 process, of any member insurer that the insurer may be an impaired
18 or insolvent insurer;

19 4. To furnish to the board of directors the National
20 Association of Insurance Commissioners (NAIC) Insurance Regulatory
21 Information System (IRIS) ratios and listings of companies not
22 included in the ratios developed by the NAIC, and the board may use
23 the information contained therein in carrying out its duties and
24 responsibilities under this section. The report and the information

1 contained therein shall be kept confidential by the board of
2 directors until a time as made public by the Commissioner or other
3 lawful authority.

4 B. The Commissioner may seek the advice and recommendations of
5 the board of directors of the Oklahoma Life and Health Insurance
6 Guaranty Association concerning any matter affecting the duties and
7 responsibilities of the Commissioner regarding the financial
8 condition of member insurers and ~~companies~~ health maintenance
9 organizations seeking admission to transact ~~insurance~~ business in
10 this state.

11 C. The board of directors may, upon majority vote, make reports
12 and recommendations to the Commissioner upon any matter germane to
13 the solvency, liquidation, rehabilitation or conservation of any
14 member insurer or germane to the solvency of any ~~company~~ member
15 insurer or health maintenance organization seeking to do ~~an~~
16 ~~insurance~~ business in this state. The reports and recommendations
17 shall not be considered public documents.

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

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

SECTION 10. AMENDATORY 36 O.S. 2011, Section 2036, is amended to read as follows:

Section 2036. A. For the purpose of carrying out its obligations under the Oklahoma Life and Health Insurance Guaranty Association Act, the Oklahoma Life and Health Insurance Guaranty Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to subsection K of Section 2028 of this title. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by the Oklahoma Life and Health Insurance Guaranty Association Act. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets that the reserves which should have been established for such policies, or contracts bear to the reserves which should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

B. As a creditor of the impaired or insolvent insurer as established in subsection A of this section and consistent with Section 1927.1 of this title, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become

1 available to reimburse it, as a credit against contractual
2 obligations under this act. If the liquidator has not, within one
3 hundred twenty (120) days of a final determination of insolvency of
4 ~~an~~ a member insurer by the receivership court, made an application
5 to the court for the approval of a proposal to disburse assets out
6 of marshaled assets to guaranty associations having obligations
7 because of the insolvency, then the Association shall be entitled to
8 make application to the receivership court for approval of its own
9 proposal to disburse these assets.

10 SECTION 11. AMENDATORY 36 O.S. 2011, Section 2038, is
11 amended to read as follows:

12 Section 2038. A. If an order for liquidation or rehabilitation
13 of ~~an~~ a member insurer domiciled in this state has been entered, the
14 receiver appointed under such order shall have a right to recover on
15 behalf of the member insurer, from any affiliate that controlled it,
16 the amount of distributions, other than stock dividends paid by the
17 member insurer on its capital stock, made at any time during the
18 five (5) years preceding the petition for liquidation or
19 rehabilitation subject to the limitations of subsections B through D
20 of this section.

21 B. No such dividend shall be recoverable if the member insurer
22 shows that when paid the distribution was lawful and reasonable, and
23 that the member insurer did not know and could not reasonably have
24

1 known that the distribution might adversely affect the ability of
2 the member insurer to fulfill its contractual obligations.

3 C. Any person who was an affiliate that controlled the member
4 insurer at the time the distributions were paid shall be liable up
5 to the amount of distributions he received. Any person who was an
6 affiliate that controlled the member insurer at the time the
7 distributions were declared, shall be liable up to the amount of
8 distributions he would have received if they have been paid
9 immediately. If two ~~(2)~~ persons are liable with respect to the same
10 distributions, they shall be jointly and severally liable.

11 D. The maximum amount recoverable under this subsection shall
12 be the amount needed in excess of all other available assets of the
13 insolvent insurer to pay the contractual obligations of the
14 insolvent insurer.

15 E. If any person liable under subsection C of this section is
16 insolvent, all its affiliates that controlled it at the time the
17 dividend was paid shall be jointly and severally liable for any
18 resulting deficiency in the amount recovered from the insolvent
19 affiliate.

20 SECTION 12. AMENDATORY 36 O.S. 2011, Section 2043, is
21 amended to read as follows:

22 Section 2043. A. No person, including ~~an~~ a member insurer,
23 agent or affiliate of ~~an~~ a member insurer, shall make, publish,
24 disseminate, circulate or place before the public, or cause directly

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

14 B. ~~Prior to May 1, 1988, the~~ The Association shall ~~prepare~~ have
15 a summary document describing the general purposes and current
16 limitations of the Association and complying with subsection C of
17 this section. This document shall ~~be~~ have been submitted to, and
18 approved by, the Insurance Commissioner ~~by May 1, 1988, for~~
19 ~~approval.~~ Sixty (60) days after receiving such approval, no member
20 insurer shall deliver a policy or contract described in paragraph 1
21 of subsection B of Section 2025 of this title to a policy ~~or~~ owner,
22 contract owner, certificate holder or enrollee unless the document
23 is delivered to the policy or contract holder prior to or at the
24 time of delivery of the policy or contract, except if subsection D

1 of this section applies. The document should also be available upon
2 request by a ~~policyholder~~ policy owner, contract owner, certificate
3 holder or enrollee. The distribution, delivery or contents or
4 interpretation of this document shall not mean that either the
5 policy or the contract or the holder thereof would be covered in the
6 event of impairment or insolvency of a member insurer. The
7 description document shall be revised by the Association as
8 amendments to the act may require. Failure to receive this document
9 does not give the policyholder, contract holder, certificate holder,
10 enrollee or insured any greater rights than those stated in this
11 act.

12 C. The document prepared under subsection B of this section
13 shall contain a clear and conspicuous disclaimer on its face. The
14 Commissioner shall promulgate a rule establishing the form and
15 content of the disclaimer. The disclaimer shall:

16 1. State the name and address of the life and health insurance
17 guaranty association and insurance department;

18 2. Prominently warn the policy ~~or~~ owner, contract owner,
19 certificate holder or enrollee that the Life and Health Insurance
20 Guaranty Association may not cover the policy or contract or, if
21 coverage is available, it will be subject to substantial
22 limitations, exclusions and conditioned on continued residence in
23 the state;

24

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

6 4. Emphasize that the policy or contract holder should not rely
7 on coverage under the Life and Health Insurance Guaranty Association
8 when selecting an insurer;

9 5. Provide other information as directed by the Commissioner.

10 D. No insurer or agent may deliver a policy or contract
11 described in paragraph 1 of subsection B of Section 2025 of this
12 title, but excluded under subparagraph a of paragraph 2 of
13 subsection B of Section 2025 of this title from coverage under ~~this~~
14 ~~act~~ the Oklahoma Life and Health Insurance Guaranty Association Act,
15 unless the insurer or agent, prior to or at the time of delivery,
16 gives the policy ~~or~~ owner, contract owner, certificate holder or
17 enrollee a separate written notice which clearly and conspicuously
18 discloses that the policy or contract is not covered by the Life and
19 Health Insurance Guaranty Association. The Commissioner shall by
20 rule specify the form and content of the notice.

21 SECTION 13. This act shall become effective November 1, 2019.

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