

**CALIFORNIA LIFE AND HEALTH  
INSURANCE GUARANTEE ASSOCIATION**

**PLAN OF OPERATION**

**AS AMENDED  
December 21, 2018**

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## ARTICLE 1 PLAN OF OPERATION

- A. This Plan of Operation (“the Plan”) shall constitute the code of rules adopted for the regulation and management of the affairs of the organization created in Section 1067.05 of Chapter 1 of Part 2 of Division 1 of the California Insurance Code (“the California Life and Health Insurance Guarantee Association Act” hereinafter called the “Act”), which shall be known as the California Life and Health Insurance Guarantee Association (“Association”). The Association will comply with all obligations imposed upon it by the Act. The Plan shall become effective upon written approval of the Insurance Commissioner (the “Commissioner”) as provided in Section 1067.09 of the Act, or 30 days after submission if the Commissioner has not disapproved it.
- B. Amendments to this Plan of Operation will be adopted by the Board as necessary or suitable to assure the fair, reasonable and equitable administration of the Association and submitted to the Commissioner for approval.
- C. A copy of this Plan of Operation shall be posted on the Association’s website and shall be available upon request.

## ARTICLE 2 ANNUAL MEETING OF THE MEMBER INSURERS

### A. Time and Place

An annual meeting of the member insurers of the Association shall be held for the election of directors and such other business as may be properly before the members at the location, time and date set by the Chair of the Board of Directors in consultation with the Executive Director, upon ninety (90) days prior written notice to the members and the Commissioner.

### B. Notice

Notice shall be deemed delivered to member insurers and the Commissioner (a) if mailed, when deposited in the United States mail, postage prepaid, directed to the member insurer; or (b) if by facsimile or electronic mail, on the same business day. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, day and place thereof are announced at the meeting at which the adjournment is taken.

### C. Record Date

For the purpose of determining the member insurers entitled to notice of or to vote at any meeting of member insurers or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which shall not be less than ninety (90) days before the date of such meeting or action. If no record date is fixed, the record date for determining member insurers entitled to notice of or to vote at a meeting of member insurers shall be the date on which notice of the meeting is delivered, or if notice is waived the date on which the meeting is held. The record date for determining member insurers for any other purpose

shall be the date on which the Board of Directors adopts the resolution relating thereto. A determination of the member insurers of record entitled to notice of or to vote at a meeting of member insurers shall apply to any adjournment of such meeting.

D. Meeting of Members

At any meeting of the member insurers, five (5) percent of the member insurers, represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the member insurers represented at a meeting at which a quorum is present shall be the act of the member insurers, unless the vote of a greater number is required by the Act. If a quorum is not present, a majority of the member insurers present may adjourn the meeting. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting. Directors shall be elected by member insurers by votes cast either in person or by proxy. Each member insurer shall have one vote for each member of the Board of Directors to be elected. Directors shall be elected by a majority vote of the member insurers represented at a meeting at which a quorum is present, subject to the approval of the Commissioner.

E. Election of Board Members

1. Nomination of Directors

- (a) Not later than ninety (90) days prior to each annual meeting of the member insurers, the Nominating Committee of the Association shall select a nominee to succeed each Director whose term will expire at such annual meeting. The Association shall identify each nominee for Director selected by the Nominating Committee when it provides notice of the annual meeting.
- (b) When nominating member insurers for Board of Director positions, the Nominating Committee will consider and analyze whether the proposed members nominees are fairly representative of the member insurers.
- (c) One or more member insurers may be nominated to oppose any of the nominees selected by the Nominating Committee. Each opposing nomination shall be received by the Secretary in writing not less than sixty (60) days before the annual meeting and shall be executed by at least ten (10) member insurers.
- (d) In the event there is more than one nominee for any position to be filled, the Board of Directors shall provide notice of said nominees known to member insurers at least twenty five (25) days prior to the annual meeting of the member insurers. Such notice shall designate whether each nominee was selected by the Nominating Committee, and, if not, the identity of the nominating member insurers.

2. No two members of the Board shall be affiliates.

## ARTICLE 3 BOARD OF DIRECTORS

### A. Composition

#### 1. Election by Members and Terms of Office

- (a) (i) The Board of Directors shall consist of not less than nine nor more than thirteen member insurers. In order to provide for staggered terms of directors, the following procedure shall be followed. Commencing with the first annual meeting of members, the Directors shall be divided into three classes, with (a.) one such class (composed of at least three Directors) to be elected at such meeting to serve for a term of one year, (b.) a second such class (composed of at least three Directors) to be elected at such meeting to serve for a term of two years and (c.) a third such class (composed of at least three Directors) to be elected at such meeting to serve for a term of three years. At each annual meeting held after the first annual meeting, the class of directors (and each director in such class) to be elected at such meeting to succeed those whose terms expire shall be elected for a term of office for three years.
- (ii) If the Board of Directors changes the number of Directors, the Board shall assign each Director to one of the above classes such that each class shall be comprised, as nearly as possible, of one-third of the total number of Directors as so changed. However, no Director serving at the time of such change shall have its three-year term of office reduced or eliminated by such change.
- (b) Each member of the Board shall designate an individual as its Representative to serve on the Board of Directors (“Director Representative”) and is encouraged to designate an alternate from the same member insurer. For purposes of serving on a committee of the Board of Directors, both shall be considered a Director Representative.
- (c) Each previously elected Director shall serve until its successor has been duly elected and approved or deemed to be approved by the Commissioner or until such Director’s earlier resignation or removal. Any Director may resign at any time upon written notice to the Board of Directors, the Chair of the Board, or the Secretary.

#### 2. Approval of Commissioner

Upon the election of members of the Board of Directors, whether at the annual meeting of the members or by the Board of Directors in filling vacancies between such meetings, the Association shall notify the Commissioner and request written approval of the members of the Board of Directors, as elected. In approving members of the Board of Directors, the Commissioner shall consider, among other

things, whether all member insurers are fairly represented. The approval of the Commissioner shall be deemed given if written approval or disapproval is not given within thirty (30) days after request. In the event the Commissioner shall disapprove the election of any Director elected at an annual meeting, the existing Board of Directors shall call another election. The Board of Directors shall have the option of seeking approval of the nominees by the Commissioner in writing prior to holding the election or annual meeting.

3. Election of Officers and Nominations

The Board of Directors shall, at each annual meeting of the Board of Directors, elect a Chair of the Board, Vice Chair of the Board, Secretary and Treasurer from among the Director Representatives, and such other officers as it deems necessary. The offices of Secretary and Treasurer may be held by the same Director Representative. Each officer shall serve a term of one year or until a successor is elected or until his/her earlier resignation or removal.

4. Vacancies

(a) Vacancies occurring on the Board of Directors between annual meetings of the member insurers shall be filled by a majority vote of the remaining members of the Board of Directors with the approval of the Commissioner. Vacancies occurring in elective offices between the annual meetings shall be filled by majority vote of the Board of Directors. Such appointees shall serve for the unexpired terms or until their earlier resignation or removal. No such vacancy or vacancies shall deprive the Board of Directors of authority to act.

(b) In the event of a merger in which a member insurer that is on the Board of Directors is not the surviving entity, the merger creates a vacancy on the Board of Directors.

(c) In the event of an administrative order by a department of insurance or court order by a court of competent jurisdiction (an "Order") finding that a member insurer that is on the Board of Directors is insolvent or subject to supervision, rehabilitation, conservation or liquidation, the entry of such an Order shall create a vacancy on the Board of Directors with respect to such member insurer.

(d) In the event that two or more Directors become affiliates through acquisition or otherwise, a vacancy is created on the Board of Directors. The affiliates may decide which one of the affiliated member insurers may remain on the Board of Directors, and in the event that the affiliates fail to select one affiliate to serve on the Board of Directors within a reasonable amount of time, the Board of Directors, by majority vote, shall determine which affiliate will remain on the Board of Directors.

B. Voting

1. At any meeting of the Board of Directors, each member of the Board of Directors shall have one vote.
2. A majority of the Board of Directors then in office 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 of Directors, except as provided in paragraph 3 below. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee thereof.
3. An affirmative vote of a majority of the Directors then in office and that are not interested Directors is required to:
  - (a) Approve a contract with a servicing facility for overall administration of the Association;
  - (b) Authorize, call, abate or defer an assessment or provide for a refund;
  - (c) Borrow or lend money or establish or change a line of credit;
  - (d) Approve reinsurance contracts, assumption agreements or guaranty plans;
  - (e) Make any delegation of authority to a corporation, association or other organization pursuant to Section 1067.09(d) of the Act;
  - (f) Commence or settle any material legal action or proceeding;
  - (g) Change the number of Directors;
  - (h) Adopt amendments to the Plan of Operation;
  - (i) Adopt policies including but not limited to a Conflict of Interest policy. No policy or policy revision, as applicable, may be considered by the Board unless notice and a written version of the policy has been provided to all Director Representatives at least fourteen (14) days prior to the Board meeting at which the policy will be considered; or
  - (j) Do any of the acts described in Section 1067.11 of the Act as requiring a majority vote.
4. The vote of an interested Director may not be counted when the Board of Directors or a committee of the Board takes action on a transaction where such interested Director is directly or indirectly a party to the transaction.



5. For purposes of this Plan of Operation, an “interested Director” shall be:
  - (a) in the case of action by the Board of Directors with respect to any member insurer, a Director that is such organization or an affiliate of such organization, or
  - (b) in the case of action by the Board of Directors with respect to a person or entity other than a member insurer, a Director that is an affiliate of such person or entity, or
  - (c) a Director that otherwise has (or its affiliates have) a material financial interest in the matter or transaction which is the subject of action by the Board of Directors.

For purposes of this subparagraph (c), the term “affiliate” shall have the meaning ascribed to such term in Section 1215(a) of the California Insurance Code. Notwithstanding the foregoing provisions, no Director shall be deemed to be an interested Director by virtue of the fact that such Director may be subject to assessments by the Association on account of actions by the Board.

6. A Director that is present at a meeting of the Board of Directors or at a committee meeting at which action on any Association matter is taken shall be conclusively presumed to have assented to the action taken unless such Director’s dissent or abstention shall be entered in the minutes of the meeting or unless such Director shall file its written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director that voted in favor of such action.

#### C. Annual Meeting

An annual and regular meeting of the Board of Directors shall be held at the same place as and immediately following the annual meeting of the member insurers, unless the Chair of the Board, upon at least 20 days prior written notice, to the Board and the Commissioner shall designate some other time, day or place. At each annual meeting the Board of Directors may:

1. Review the Plan of Operation and submit proposed amendments, if any, to the Commissioner for approval.
2. Review material outstanding contracts or agreements, 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 of Directors 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. Regular and Special Meetings

1. By resolution, in addition to the annual meeting and as needed, the Board of Directors shall establish a schedule containing places and times in advance for regular meetings, including telephone calls. No notice of any regular meeting other than such resolution shall be required.
2. Special meetings of the Board of Directors may be called by the Chair of the Board and shall be called by the Secretary upon the request of any two (2) Board members. The Chair of the Board or Secretary may fix the time, date and place for holding such special meeting called by them. At such meeting, the Board of Directors may consider and decide any matter deemed necessary for the proper administration of the Association and which pertains to the purposes for which the meeting is called. Notice of any special meeting shall be given not less than forty eight (48) hours previous by telephone or by written notice delivered personally or mailed to each Director at its business address and to the Commissioner. If mailed, such written notice shall be deemed to be delivered; (a) when deposited in the United States Mail, postage prepaid, for express, next-day delivery, or when deposited with an express courier, fee prepaid, for express, next-day delivery; (b) if by facsimile or electronic mail, as of the date and time reflected on the record of delivery provided by the facsimile device or email system. Such notice shall include a description of the date, time, place and purpose of such meeting, including, but not limited to either an agenda or a description of specific issues to be addressed at the special meeting.
3. Action Without a Meeting.

Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all the members of the Board of Directors or committee, as the case may be, entitled to vote with respect to the subject matter thereof, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Any reasonable written communication, including but not limited to electronic mail, constitutes a writing for purposes of this provision.

E. Participation by Telephone; Waivers

1. Members of the Board of Directors or of any committee of the Board of Directors may participate in and act at any duly constituted meeting of such Board of Directors or committee through the use of a conference telephone or other

communications device by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

2. Attendance of any Director at a meeting shall constitute a valid waiver of notice of that meeting, unless such attendance is solely for the purpose of objecting at the beginning to the transaction of business at the meeting, and any Director who is not present at any meeting may in writing waive notice of such meeting either before or after such meeting.

F. When Impairment or Insolvency Considered

In connection with the impairment or insolvency of a member insurer, the Board of Directors 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 the Association's legally imposed duties.
4. Consider and decide to what extent and in what manner the Board of Directors shall exercise the powers authorized by Section 1067.07 of 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 the appropriate item or items of Section 1067.08 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 of Directors shall promptly inform the Commissioner of the failure of any member to pay an assessment made pursuant to this paragraph 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.
7. Issue to each member insurer a certificate of contribution for each Class B assessment paid for, which certificates are to be provided under Section 1067.08(h)

of the Act. 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 and the value, if any, of such certificate as determined by the Commissioner.

8. In addition to the foregoing powers, the Board of Directors shall have and exercise such other powers as may be reasonably necessary to implement the provisions of the Act.

G. Committees of the Board of Directors

1. The Association shall have the following Committees:

- (a) Executive Committee. The Executive Committee shall consist of the elected officers of the Association. The Executive Committee shall have and may exercise all of the authority of the Board of Directors in the management of the Association, provided, however, that (i) only the Board of Directors shall have the authority to approve those actions which require an affirmative vote of a majority of the Directors; and (ii) the Executive Committee shall report its activities at each Board Meeting.

- (b) Nominating Committee. The Nominating Committee shall consist of three (3) Director Representatives. The Nominating Committee shall nominate member insurers for the office of Director and cause member insurers to be notified of such nominations pursuant to the procedures specified in this Plan of Operation and shall nominate persons for the offices of the Association provided for in Article 5 hereunder.

- (c) Audit Committee. The Audit Committee shall consist of at least three (3) Director Representatives or employees of the Directors, appointed by the Board of Directors. The Audit Committee shall assist the Board of Directors in monitoring (i) the integrity of the financial statements of the Association, (ii) the independent auditor's qualifications and independence, and (iii) the Association's internal controls. The Audit Committee shall prepare an Audit Committee Charter. A copy of the Charter and any subsequent amendments thereto shall be provided for approval to the Commissioner. The Audit Committee shall:

- (i) Meet as often as it determines to fulfill its duties, but not less frequently than annually. The Audit Committee shall meet periodically with the Association's management and the independent auditor jointly or in separate executive sessions as the Audit Committee sees fit. The Audit Committee may request any officer or employee of the Association or the Association's outside counsel or independent auditor to attend a meeting of the Audit

Committee or to meet with any member of, or consultant to, the Audit Committee.

Have direct oversight over the approval, hiring and review of the work of the independent auditor (including resolution of disagreements between the Association's management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work. The independent auditor shall report directly to the Audit Committee. The Audit Committee shall preapprove all auditing services and permitted non-audit services (including the fees and terms thereof) to be performed for the Association by its independent auditor.

- (ii) Meet with the independent auditor at least annually to review the Association's: (1) audited financial statements; (2) accounting policies and practices; (3) internal controls; and (4) unadjusted differences between the independent auditor and the Association.
- (iii) Review at least annually the independent auditors: (1) most recent peer review report; (2) quality control procedures; and (3) audit plan and engagement staffing.
- (iv) Engage independent legal, accounting or other advisors it deems necessary or advisable. The Association shall provide for appropriate funding, as determined by the Audit Committee, for payment of compensation to the independent auditor for the purpose of rendering or issuing an audit report and to advisors employed by the Audit Committee.
- (v) Report at least annually to the Board of Directors. Such reports may be made in executive sessions of meetings of the Board of Directors.
- (vi) Consider from time to time amendments to the Association's Audit Committee Charter.

Limitation of Audit Committee's Role. While the Audit Committee has the responsibilities and powers set forth in the Plan of Operation, it is not the duty of the Audit Committee to plan or conduct audits or to determine that the Association's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibilities of Association management and the independent auditor.

- (d) Investment Committee. The Investment Committee shall consist of at least three (3) Director Representatives or employees of the Directors. The Investment Committee shall meet not less frequently than annually with the custodian or custodians of the Association's invested assets to review

compliance with the investment policies and guidelines established by the Board of Directors. The Investment Committee shall receive and review periodic investment reports from such custodian or custodians. The Investment Committee may also make recommendations to the Board of Directors with respect to investment policies, guidelines and objectives.

2. Other Committees. The Board of Directors may designate one or more other committees. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise such powers designated by the Board of Directors in such resolution. Further, the Executive Committee may designate one or more other committees. The Board will be provided prompt written notice of any such committee and the powers, if any, designated to the committee.
3. The composition of the committees will be established by the Chair in consultation with the Nominating Committee. The composition of each committee, except the Executive Committee, must be approved by the Board at each annual board meeting. The Board of Directors may at any time by resolution place limitations on, or completely terminate, the authority and power of any committee, without prejudice to the validity of any action previously and validly taken by such committee. Each such committee shall no later than the next annual meeting, report to the Board of Directors in the manner requested by the Board of Directors, and when requested by the Board of Directors, shall observe such other procedures with respect to meetings as the Board of Directors may prescribe.
4. Board Responsibility. The designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it by law or by the Plan of Operation.
5. Call; Notice; Quorum. Meetings of any committee may be called by or at the request of the Chair of such committee or by any two (2) members of such committee. Notice of any meeting of committee shall be given at least forty-eight (48) hours previously thereto by telephone or by reasonable written notice to each member. Such notice shall include a description of the date, time, place and purpose of the meeting. A majority of any committee shall constitute a quorum and a majority of a quorum is necessary for committee action. Attendance of any member at a meeting shall constitute a valid waiver of notice of that meeting, unless such attendance is solely for the purpose of objecting at the beginning to the transaction of business at the meeting, and any member who is not present at any meeting may in writing waive notice of such meeting either before or after such meeting.

## H. Reimbursement of Expenses

Members of the Board of Directors, Director Representatives and committee members may be reimbursed from the assets of the Association for expenses incurred by them as members or Representatives of the Board of Directors or committee members upon submission of appropriate vouchers and receipts to the Executive Director or, in the absence of the Executive Director, the Chair of the Board, but members and Representatives of the Board of Directors and committees shall not be compensated by the Association for their services on the Board of Directors or committee.

## Article 4 ASSESSMENTS

### A. Refunds

1. The Board of Directors may refund by payment or by credit against Class B assessments 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 or years the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. In its sole discretion, the Board of Directors shall determine the amount of funds to maintain on reserve for continuing expenses and future losses in accordance with the Act and may take into account the following: historic costs and expenses of the Association obligations; historic assessments of the Association; historic borrowing of the Association; existing and reasonably probable current and future obligations of the Association; and reserves for future losses and expenses maintained by similar insurance guaranty associations. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future liabilities.
2. In the event that a member insurer which was assessed and paid assessments and would otherwise be entitled to a refund but has now been the subject of a merger, acquisition, cessation of business or other change in organization, the Association shall make reasonable efforts to identify the successor-in-interest of such member insurer, and if deemed appropriate in the discretion of the Board of Directors, make such refund to the successor-in-interest.

### B. Procedure for Granting Abatement or Deferral

1. Pursuant to and in compliance with all statutory requirements, the Board shall consider and decide whether any assessment shall be deferred or abated. The Board will grant an abatement or deferral if, in its opinion, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The Board shall inform the Commissioner of any deferral or abatement granted pursuant to this section.

2. Each member insurer that has been placed under an Order of Rehabilitation or an Order of Liquidation with a finding of insolvency shall receive an automatic deferral. This automatic deferral shall not apply if a resolution of the Board specifies otherwise with respect to a specific member insurer.
3. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers. In order to avoid shortfalls caused by the abatement and deferral process, the Board may authorize the transfer of funds between accounts and classes.

C. Method for Allocating Funds Among Claims

In the event that in the judgment of the Board of Directors the maximum assessment under Section 1067.08(e) of the Act, in combination with the Association's borrowing authority, will be insufficient in any given year 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 of Directors may, subject to securing court approval, provide that the Association shall impose liens and moratoriums under Section 1067.07(f) of the Act and make partial and periodic payments on such claims in accordance with a schedule adopted by the Board of Directors and approved by the Commissioner. 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 of Directors and approved by the Commissioner. 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 are incurred or made or in the order in which member insurers first became impaired or insolvent, or to require retroactive adjustments.

D. Recoupment of Health Account Assessments by Member Insurers

1. Surcharge

- (a) Each member insurer may, at that member's option, make provision for the recoupment by product type of the Health Account assessments paid to the Association during a calendar year. If a member insurer elects not to surcharge a product type, it shall deduct the proportional amount of its aggregate assessment for the Health Account from its recoupment amount and it shall forego assessments on that product type.
- (b)
  - i. The recoupment shall be made as a surcharge on premiums for covered health insurance policies of the Health Account by product type and shall commence by December 31 of the calendar year following notice of the surcharge rate, if any, as provided in this Plan of Operation, and shall continue over a reasonable length of time until the member insurer has recouped the proportionate amounts



originally assessed or the member insurer elects to cease application of the surcharge.

- ii. An election to forgo or cease a recoupment for any particular insolvency assessment is irrevocable by the member insurer.
- (c) The surcharge rate shall be determined by the Association and approved by the Commissioner.
- i. In the event that more than one health assessment takes place during a calendar year, the surcharge rate for each assessment shall be determined separately.
  - ii. The determination by the Association of the surcharge rate shall be consistent with the method used by the Association to calculate the health assessment to which such surcharge rate applies.
  - iii. If the Commissioner does not disapprove the surcharge rate determined by the Association within forty-five (45) days after the rate has been submitted to him in writing, the surcharge rate shall be deemed approved.
  - iv. If in any calendar year, the assessments paid into the health insurance account are immaterial, or the assessments paid into the health insurance account do not in the aggregate exceed the aggregate amount of assessment refunds from the account during that year, the Association may determine the surcharge rate for that year to be zero.
  - v. All premiums charged for a policy term commencing during a year are subject to the surcharge at the rate in effect for that year.
  - vi. All return premiums shall include a return surcharge equal in amount to the surcharge collected with respect to the portion of the premium being returned.
- (d) Any member insurer that chooses to recoup its assessment pursuant to this section shall use the surcharge rate determined by the Association and approved by the Commissioner.
- i. In no event shall a member insurer's annual surcharge rate be less than 20% of the surcharge rate per calendar year determined by the Association and approved by the Commissioner.

- ii. Once a member insurer notices its surcharge rate for a particular insolvency, the member insurer shall not change the surcharge rate for that insolvency.
- (e)
  - i. A surcharge rate shall be separately stated as follows during the calendar year next succeeding the member insurer's notice of the surcharge rate:
    - a. On the premium notice sent to the insured. The notice required by Section 1067.08(j) of the Act shall also be provided with any premium notice containing a surcharge; or
    - b. On an insert included with the premium notice that states the premium due, the CA Surcharge amount due, and the total amount due. The notice required by Section 1067.08(j) of the Act shall also be provided on the surcharge insert; or
    - c. On the policy renewal notice provided that the renewal notice includes the premium amount due, "CA Surcharge" amount due and the total amount due. The notice required by Section 1067.08(j) of the Act shall also be provided with any policy renewal notice containing a surcharge; or
    - d. On an insert included in the policy renewal notice provided that the notice states the premium amount due, "CA Surcharge" amount due and the total amount due. The notice required by Section 1067.08(j) of the Act shall also be provided on the surcharge insert; or
    - e. On a surcharge notice sent to the insured that includes the current premium amount, "CA Surcharge" amount due and the total amount due. The notice required by Section 1067.08(j) of the Act shall also be provided with any surcharge notice.
  - ii. In the event a member insurer has more than one Health Account assessment for which surcharges have been authorized, the member insurer may aggregate the surcharges on the premium notice sent to an insured.
- (f)
  - i. Any member insurer that chooses to include a surcharge to recoup assessments shall report to the Association no later than June 1 of each year its recoupment amount for the preceding calendar year.

- ii. Reports shall be made for each insolvency surcharge, regardless whether the member insurer chooses to aggregate the surcharges in accordance with paragraph (e) ii.

(g) In addition to determining the surcharge rate, the Association shall:

- i. Notify each member insurer as early as possible, but no later than June 1, of a surcharge rate for any new assessments made during the prior calendar year, if any, that member insurers may recoup in accordance with this section beginning in the following calendar year.
- ii. Create a report of all recoupments reported to the Association by member insurers in accordance with paragraph (e) of this subsection.
  - a. The report shall segregate recoupment amounts recouped during a calendar year according to each insolvency assessment for which a distinct surcharge rate was being applied.
  - b. Member insurers may elect to report their recoupments on a billing basis rather than collection basis provided the accounting is applied consistently once a method is chosen, and the Association is notified of the election.

## 2. Excess Surcharges

Member insurers who collect a surcharge in excess of the amount of each individual health assessment to which it applied shall remit the excess to the Association within one hundred and twenty (120) days after the end of the year in which the excess collection is made.

## E. Appeals

Any member insurer wishing to protest all or any part of an assessment shall use the following procedure as set forth in subsection (1) through (6).

- 1. Any member insurer that wishes to protest all or any part of an assessment for any year shall first pay the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available and may be used to meet Association obligations during the pendency of the protest and any subsequent appeal. Such payments shall be accompanied by a statement in writing that the payment is made under protest, setting forth a brief statement of the ground for the protest.

2. Within 60 days following the payment of an assessment under protest by any protesting member insurer, the Association must notify the member insurer in writing of its final decision with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
3. If the Association notifies the member insurer that additional time is required, then within 30 days after a final decision has been made, the Association shall notify the protesting member insurer in writing of that final decision.
4. The final decision of the Association with respect to a protest may be appealed to the Commissioner if the appeal is taken within 60 days of the Board of Directors' notice of the final decision pursuant to Section 1067.10(c) of the Act.
5. In the alternative to rendering a decision with respect to any protest based on a question regarding the assessment base, the Association may refer such protests to the Commissioner for final decision, with or without a recommendation from the Association.
6. In the event the Association determines, or on appeal of the Association's decision it is determined, that the protesting member insurer is entitled to a refund of all or a portion of the amount paid under protest, such refund shall be made to the protesting member insurer. Interest on any refund due a protesting member insurer shall be paid at the rate actually earned by the Association

## ARTICLE 5 OPERATIONS

### A. Year

The fiscal year of the Association shall be set by the Board of Directors and may be on a calendar year basis.

### B. Officers

#### 1. Chair of the Board

The Chair of the Board shall preside over any and all meetings of the Board of Directors and of member insurers, and shall have such other powers and duties as may be assigned from time to time by the Board of Directors.

#### 2. Vice-Chair of the Board

The Vice-Chair of the Board shall in the absence or disability of the Chair of the Board, preside over any and all meetings of the Board of Directors and of member insurers, and shall have such other powers and duties as may be assigned from time to time by the Board of Directors.

3. Secretary

Subject to any other direction by the Board of Directors, the Secretary shall supervise the Executive Director with respect to the following: keeping a record of all proceedings of the member insurers and of the Board of Directors, causing all notices to the Board of Directors and member insurers to be duly given in accordance with the provisions of this Plan of Operation and as required by law, and maintaining custody of the records of the Association.

4. Treasurer

Subject to any other direction by the Board of Directors, the Treasurer shall supervise the Executive Director with respect to the following: charge and custody of the monies, securities, receipts and disbursements of the Association, causing the monies of the Association to be deposited in the name and to the credit of the Association in such banks or trust companies or with such other depositories as shall be selected by the Board of Directors, causing the monies of the Association to be disbursed by check, draft or fund transfer, signed as provided by the Board of Directors, against proper vouchers for all monies disbursed, and causing to be rendered to the Board of Directors, whenever requested, a statement of the financial condition of the Association and of all the financial transactions of the Association.

5. Qualification. The foregoing offices of Chair of the Board, Vice-Chair of the Board, Secretary and Treasurer shall be filled by Director Representatives.

C. Employees, Agents and Advisors

The Board of Directors may employ or retain such persons, firms, or corporations to perform such administrative functions as are necessary for the performance of the duties imposed upon the Association. The Board of Directors may use the mailing address of such person, firm, or corporation as the official address of the Association. Such employment shall be subject to reasonable standards of open hiring. Such persons may include an executive director, subject to the approval of the Commissioner, with such authority as may be delegated by the Board of Directors to implement and carry out broad directives of the Board of Directors 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 directives of the Board of Directors. Such persons may also include attorneys at law, actuaries, accountants, claims personnel and such other specialists or persons whose advice or assistance is deemed by the Board of Directors to be necessary to the discharge of its duties imposed by the law.

The Board of Directors may agree to compensate such persons so as best to 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 of Directors and as are required by Section 1067.12 of the Act.

D. Bank Accounts

1. The Board of Directors may open such bank accounts as it deems necessary for the proper administration of Association business. Reasonable withdrawal authority from such accounts for Association business shall be established by the Board of Directors.
- 2.. Without limiting the authority of the Association to borrow, the Association may cause or allow one or more accounts of the Association to loan funds in such account(s) to one or more of the other accounts of the Association at rates of interest as determined by the Board to be reasonable and upon such other terms and conditions as the Board may determine to be reasonable.

ARTICLE 6 RECORDS AND REPORTS

Minutes of the proceedings of each Board Meeting shall be written and retained by the Executive Director or such other person or entity as directed by the Secretary or Board of Directors.

1. The Board of Directors shall make an annual report to the Commissioner, the Governor, and the Legislature each year not later than 120 days after the end of the Association's fiscal year. Such report shall include, as required by Section 1067.13 of the Act, a financial report for the preceding year in a form approved by the Commissioner and a review of the activities of the Association during the preceding calendar year.
2. At the conclusion of any insurer insolvency in which the Association was required to pay covered claims, the Board of Directors may, in cooperation with other similar associations in other states which were also so obligated, prepare a report to the Commissioner bearing on the history and causes of the insolvency, as required under Section 1067.11(f) of the Act.

ARTICLE 7 MEMBERSHIP

- A. Pursuant to Section 1067.04(1) of the Act, insurers licensed or which hold certificates of authority to transact the kinds of insurance covered by the Act shall be members of this Association. Each insurer admitted after the effective date of the Act to transact the kinds of insurance covered by the Act shall automatically become, effective on the date of its admission, a member insurer of this Association.
- B. A member insurer which ceases to be admitted shall remain liable for any assessments based on an insolvency 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 8 INDEMNIFICATION

- A. The Association shall indemnify any person who was or is a party or is threatened to be made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that such person is or was a Director, Director Representative, committee member, officer, or executive director of the Association, against expenses (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith, or in good faith failed to act, in a manner such person reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such person's conduct was unlawful.
- B. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a Director, Director Representative, committee member, officer or executive director of the Association against expenses (including attorneys' fees and amounts paid in settlement) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith, or in good faith failed to act, in a manner such person reasonably believed to be in or not opposed to the best interests of the Association except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses as the court shall deem proper.
- C. To the extent that any person referred to in paragraphs (A) or (B) of this Article has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to therein or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.
- D. Any indemnification under paragraphs (A) and (B) of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because such person has met the applicable standard of conduct set forth in paragraphs (A) and (B)

of this Article. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs based upon a written opinion by independent legal counsel that indemnification is available under this Article.

- E. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case. The Board of Directors may require the receipt of an undertaking by or on behalf of the person by or on behalf of whom such expenses are incurred to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as provided in this Article.
- F. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, by-law, agreement, vote of disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Director Representative, committee member, officer or executive director and shall inure to the benefit of the heirs, executors and administrators of such a person.
- G. The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, Director Representative, committee member, officer, executive director, employee or agent of the Association against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability.
- H. The Board of Directors may, by resolution, extend the indemnification provisions of this Article to any person who is or was an employee or agent of the Association.
- I. The expense of such indemnification shall be assessed against member insurers.
- J. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by the Act.

## ARTICLE 9 DISSOLUTION OF ASSOCIATION

Unless otherwise specified in the California statute which provides for the dissolution of the Association, the assets of the Association shall be distributed as follows upon its dissolution:

- A. All liabilities and obligations of the Association shall be paid, satisfied and discharged, or adequate provision shall be made therefor;



- B. Assets which are held by the Association upon condition requiring the return, transfer or conveyance of such assets upon dissolution of the Association, shall be returned, transferred or conveyed in accordance with such requirements; and
- C. Any remaining assets shall be distributed to member insurers in a manner to be set forth in a plan of distribution adopted in accordance with the California General Not for Profit Corporation Act.

#### ARTICLE 10 CONFLICT OF INTEREST

- A. The Association shall adopt a Conflict of Interest policy and require that its Board of Directors and consultants complete and execute that policy in advance of the annual members meeting.
- B. Information about insurance companies prior to their liquidation is sometimes received by the Board. This may be information about a competitor which should be maintained in confidence, provided however, such information may be shared with the Commissioner and must not be utilized for any other purpose but the prompt and efficient administration of the Association's obligations under its Act.

#### ARTICLE 11 CONFORMITY TO STATUTE

The provisions of the Act as written, and as it may hereafter be amended, and the responsibilities and obligations of the Association, the Board and Association officers, committees and employees set forth in the Act, are incorporated as a part of this Plan and as such are attached hereto. Any conflict between the provisions of this Plan of Operations and the Act shall be resolved in favor of the terms of the Act. Unless otherwise specified, terms herein shall have the same meaning ascribed to such terms in the Act.