
**PENNSYLVANIA LIFE AND
HEALTH INSURANCE
GUARANTY ASSOCIATION**

PLAN OF OPERATION

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**PENNSYLVANIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION**

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**(As Adopted 2/3/21)
(Effective 2/26/21)**

Preface

Act 178, enacted on December 18, 1992 (the “1992 Act”), effected certain amendments to The Insurance Company Law of 1921. Section 19 of the 1992 Act added Article XVII (“Article XVII”) to The Insurance Company Law of 1921 and created The Pennsylvania Life and Health Insurance Guaranty Association (the “Association”) effective December 18, 1992.

Act 113, enacted on November 3, 2020 (the “2020 Act”), further amended The Insurance Company Law of 1921 including Article XVII. Sections 1.2, 2, and 3 of the 2020 Act amended Article XVII effective immediately, subject to the transition provisions of Section 4 of the 2020 Act.

Article XVII may sometimes be referred to as the Pennsylvania Life and Health Insurance Guaranty Association Act.

Article 1. Plan of Operation.

- A. **Effective Date.** This Plan of Operation (“the Plan”) shall become effective upon written approval of the Plan by the Insurance Commissioner of the Commonwealth of Pennsylvania (the “Commissioner”) as provided in Section 1708 of Article XVII or 30 days after submission of this Plan to the Commissioner if the Commissioner has not theretofore disapproved this Plan. Unless otherwise defined herein, the terms used in this Plan shall have the same meaning as those defined in Article XVII. In the event of any conflict between this Plan and Article XVII, Article XVII will prevail.
- B. **Amendments.** Amendments to this Plan, as necessary or suitable to assure the fair, reasonable and equitable administration of the Association, shall be adopted by the Association's Board of Directors (the “Board”) and submitted to the Commissioner for approval. Any such amendment so submitted shall be effective upon written approval of the Commissioner or 30 days after submission of such amendment to the Commissioner if the Commissioner has not theretofore disapproved such amendment.
- C. **Availability of Copies.** A copy of this Plan shall be provided to any member insurer upon request.
- D. **Notices.** Unless otherwise specified in this Plan, actions and communications including notices, approvals, consents and signatures will be deemed to be written and acceptable

if they are written and provided by the United States Postal Service mail, courier service, or by e-mail, facsimile, or other electronic means. Contemporaneous documentation of such actions and communication should be maintained in the Association's records in a hard copy or an electronic file for future reference.

Article 2. Annual Meetings of the Member Insurers.

- A. **Location.** An annual meeting of the member insurers of the Association shall be held for the election of directors at the office of the Association in June, immediately preceding the annual meeting of the Board, unless the Chair of the Board ("the Chair"), upon proper notice, shall designate some other time, day or place. The annual meeting of the member insurers may be held in person, by telephone, or by other electronic means.
- B. **Notice.** Member insurers and the Commissioner shall be notified of the time, day and place of the annual meeting of the member insurers, and the nominees for election at the annual meeting as Director approved by the Commissioner pursuant to Article 3.A.3.c. below, at least 30 days prior to such annual meeting. A member insurer's attendance or participation at any meeting shall constitute a waiver of the notification requirement.
- C. **Election Procedures.** At all annual meetings of the member insurers:
1. Proxy voting shall be permitted, except that the presence of not fewer than five member insurers shall be required to constitute a quorum.
 2. The member insurers receiving the greatest number of votes shall be elected.
 3. Each member insurer shall be entitled to one vote in person or by proxy for each member of the Board to be elected. Cumulative voting shall not be allowed in any such election.

Article 3. Board of Directors.

- A. **Composition of Board.** There shall be a Board in accordance with the provisions of Section 1705 of Article XVII. The Board shall be comprised of three classes of Directors, including the Board as of the adoption of this Plan, comprised of three classes of three Directors each, plus two additional Directors for a total of eleven Directors, as follows: (i) a class of three Directors whose terms are scheduled to expire in 2021, and at three-year intervals thereafter; (ii) a class of four Directors whose terms are scheduled to expire in 2022, and at three-year intervals thereafter; and (iii) a class of four Directors whose terms are scheduled to expire in 2023, and at three-year intervals thereafter. Vacancies established by the addition of two additional Directors upon the adoption of this Plan may be filled, as determined by the Board, pursuant to Article 3.A.4 below or by special election at the next annual members meeting.
1. **Election and Terms.** The members of the class of the Board whose term of office shall expire in each year shall be elected for terms of three years so that the terms of all Directors shall not expire in the same year.

- a. The Board shall be elected by the member insurers as provided in Article 2 hereof. No two members of the Board shall be from the same or affiliated insurers.
 - b. Each member of the Board shall designate its representative and any alternate from the same member insurer.
 - c. Subject to subparagraph (d) below and Article 3 I, below, the previously elected Board members shall serve until their successors have been duly elected and qualified to serve.
 - d. In the event of a change in a Board member's corporate or licensing status, the Executive Committee if there is such a Committee, or the Board, will review whether such change is consistent with the conditions and requirements for Board membership. Based on its review the Executive Committee, if there is one, will recommend action to the full Board, or the Board may take action. Such action may include requesting the company to resign from the Board if it is determined that the company's new status is no longer consistent with the basis for inviting it to be a nominee or to fill a vacancy. The Board member shall be replaced in accordance with the provisions of paragraph 3.A.4. below.
2. **Approval by the Commissioner.** Upon the nomination of member insurers for election to the Board, the Association shall notify the Commissioner in writing and request approval of the members of the Board who have been nominated for election. Any such nominations submitted in writing to the Commissioner shall be effective upon written approval of the Commissioner or 30 days after submission of the nominations to the Commissioner for approval unless the Commissioner has theretofore disapproved such nominations as not being fairly representative of the member insurers. In the event the Commissioner shall determine that all member insurers are not fairly represented by reason of such nominations, the Commissioner shall disapprove the nomination of the Board members and order another nomination.
3. **Officers and Committees.** The Board:
- a. Shall elect a Chair, Vice Chair, Secretary and Treasurer from among its members, and such other officers as it deems necessary. The posts of Secretary and Treasurer may be held by the same member. Each officer shall serve a term of one year or until a successor is elected.
 - b. Shall have its Chair, with the advice and consent of the Board, appoint an Executive Committee from among its members for the purpose of facilitating the operations of the Association. Such Committee shall have as its members the Chair, Vice Chair, Secretary and Treasurer, and such other Directors, if any, as appointed by the Board. The Executive

Committee shall have, to the extent permitted by law, all the powers and authority of the Board, provided it shall not have the authority to act on matters requiring a majority vote of the full Board as provided in Article 3.B.3. below.

- c. Shall have its Chair, with the advice and consent of the Board, appoint, from among its members, a Nominating Committee. Such committee shall select a nominee to succeed each Board member whose term expires at the next succeeding annual meeting of the member insurers, and for each additional Director position authorized in Article 3.A. Other nominees may be submitted in writing to the Board upon the petition of ten member insurers made not later than the first day of March preceding the annual meeting at which such nominees are to be elected. The Board shall submit all such nominations to the Commissioner in writing not later than 60 days prior to the annual meeting at which such nominees are candidates for election and, upon the Commissioner's approval, shall make the names of said nominees known to the member insurers at least 30 days prior to the annual meeting of the member insurers.
- d. May have its Chair, with the advice and consent of the Board, appoint from among its members, such other committees as the Chair may deem necessary or appropriate to serve at the pleasure of the Board, each of which shall have such powers as may be delegated by the Board, provided it shall not have the authority to act on matters requiring a majority vote of the full Board as provided in Article 3.B.3. below.

4. **Vacancies.** Vacancies occurring on the Board between annual meetings of the member insurers shall be filled by a majority vote of the remaining members of the Board for the remainder of the unexpired term. Any director so appointed shall be submitted to the Commissioner in writing for approval and such appointment shall be effective upon written approval of the Commissioner or 30 days after submission of the appointment to the Commissioner in writing for approval unless the Commissioner has theretofore disapproved such appointment as not being fairly representative of the member insurers. Vacancies occurring in elective offices between the annual meetings shall be filled by majority vote of the Board. Such appointees shall serve for the remainder of the unexpired terms to which appointed.

B. **Procedures and Voting.** All Directors shall receive notice of all meetings of the Board and committees appointed by the Board, and be afforded the opportunity to participate. Meetings of the Board and committees appointed by the Board may be held in person, by telephone, or by other electronic means. Any one or more members of the Board or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

1. **Voting Rights.** At any meeting of the Board, each member of the Board shall have one vote.
 2. **Quorum.** A majority of the Board shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board, except as provided in paragraph 3 hereof.
 3. **Actions Requiring Approval by Full Board Majority.** An affirmative vote of a majority of the full Board is required to:
 - a. approve a contract with a servicing facility for overall administration of the Association, except that administrations of specific functions with regard to specific insolvencies shall not require an affirmative vote of a majority of the full Board;
 - b. authorize and call an assessment or provide for a refund;
 - c. borrow money or establish or change a line of credit;
 - d. approve reinsurance contracts, assumption agreements or guarantee plans; or
 - e. adopt amendments to this Plan.
- C. **Annual Meeting of the Board.** An annual meeting of the Board shall be held immediately following the annual meeting of the member insurers, unless the Chair, upon proper notice, shall designate some other time, day or place. At each annual meeting, the Board shall:
1. Review the Plan and adopt proposed amendments pursuant to Section 1708 of Article XVII for approval by the Commissioner.
 2. Review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements or additions.
 3. Review operating expenses and outstanding contractual obligations and determine whether an assessment, or a refund of a prior assessment, is necessary for the proper administration of the Association and, if so, the amount of either. In order to avoid disproportionate clerical expense, the Board may establish an amount below which assessments or refunds shall not be made.
 4. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association.
- D. **Other Meetings.** The Board may hold other regular or special meetings at such times and with such frequency as it deems appropriate to conduct the business of the

Association. Any Board member not present may consent in writing to any specific action taken by the Board, but this shall not permit Board members to act through other Board members by proxy. Any action approved by the required number of Board members at such meeting, including those consenting in writing, shall be as valid a Board's action as though authorized at an annual or regular meeting of the Board or at a meeting held in person.

- E. **Unanimous Written Consent.** Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action, and such resolution and the written consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.
- F. **Special Meetings.** Special meetings of the Board may be called by the Chair and shall be called upon the request of any two Board members. At such special meeting, the Board may consider and decide any matter deemed necessary for the proper administration of the Association. Reasonable notice under the circumstances shall be given to each Board member of the time, place and purpose of any such special meeting. The Association may provide that a member insurer's attendance or participation at any meeting shall constitute waiver of the notification requirement.
- G. **Meetings on Impairment or Insolvency of a Member Insurer.** At meetings at which the impairment or insolvency of a member insurer is considered, the Board shall:
1. Consider and determine the legal obligations of the Association with regard to any reported impairment or insolvency.
 2. Consider and decide what methods or facilities, as permitted under Section 1706 of Article XVII, shall be adopted or utilized to assure fulfillment of the covered obligations of the impaired or insolvent member insurer for each of the categories of covered policies.
 3. Assure that timely action is taken to gain access to and effect proper retention of records of the impaired or insolvent member insurer which are deemed necessary to the prompt and economical handling of its legally imposed duties.
 4. Consider and decide to what extent and in what manner the Board shall exercise the powers authorized by Section 1706 of Article XVII to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims.
 5. Consider and decide or defer the decision as to 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

1707 of Article XVII. Notices of assessments to member insurers shall be in sufficient detail as to form a basis for the payment of such assessment by the member insurer. The Board shall promptly inform the 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. In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement its powers and responsibilities under Article XVII.
7. Issue to each member insurer a certificate of contribution for each class of assessment paid for which certificates are to be provided under Section 1707 of Article XVII. The certificate shall show the amount paid by each such insurer, the date of the assessment, name of the particular insolvent or impaired insurer for which the assessment was made, the value, if any, of such certificate as determined by the Commissioner, and such other information as the Board shall find relevant.
8. In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement the provisions of Article XVII.

- H. **Reimbursement.** Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board upon approval of such expenses by the Treasurer or other authorized officer of the Association, but members of the Board shall not be compensated by the Association for their services as members of the Board. The Treasurer or such other officer may not approve the reimbursement of his own expenses or of the member insurer with which he is affiliated.
- I. **Removal for Cause.** The Board shall establish procedures whereby a Board Member may be removed for cause, including in the case where a Board Member becomes an impaired or insolvent insurer.
- J. **Conflicts of Interest.** The Board shall establish and maintain a policy and procedure for addressing conflicts of interest.

Article 4. Operations.

- A. **Address.** The official address of the Association shall be the address designated from time to time by the Board.
- B. **Employment or Retention of Persons, Firms or Corporations.** The Board and the officers of the Association may employ or retain such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed upon the Association. The Board may use the mailing address of such

person, firm or corporation as the official address of the Association. Such persons may include an executive director with such authority as may be delegated by the Board to implement and carry out broad directives of the Board made pursuant to its statutory authority and duties. Such persons shall be knowledgeable about insurance matters, conversant with the law as it relates to covered policies of insurance and administratively capable of implementing the Board's directives. 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 to be necessary to the discharge of its duties imposed by law. The Board 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 and Article XVII.

- C. **Bank Accounts and Investment Policy.** The Board may open such bank accounts as it deems necessary for the proper administration of Association business. Reasonable delegation and withdrawal authority to such accounts for Association business will be made consistent with prudent fiscal policy. Check signature limits and wire authority limits and procedures shall be determined by the Treasurer and approved by the Board. Investment policy shall be recommended by the Investment Committee or, in the absence of the Investment Committee, the Treasurer and approved by the Board, and shall be reviewed at the annual meeting of the Board, and may be amended by the Board from time to time as financial and other conditions warrant.
- D. **Partial and Periodic Payments on Claims.** In the event in the judgment of the Board the maximum assessment under Section 1707 of Article XVII, in combination with the Association's borrowing authority, will be insufficient over any two years to cover the outstanding and anticipated covered claims against the Association relating to one or more impaired or insolvent member insurers under any account or accounts, the Board may provide that the Association shall make partial and periodic payments on such claims in accordance with a schedule to be adopted by the Board. Such schedule may give preference to health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals under emergency or hardship standards proposed by the Board under Section 1707 of Article XVII. Such schedule may be adjusted from time to time as changes in the volume and type of such covered claims may warrant, and may be structured so as not to give preference to claims in the order in which they were incurred or made or in the order of which member insurers first became impaired or insolvent, or to require retroactive adjustments.
- E. **Long-Term Care Assessments.** The purpose of this paragraph is to provide the framework for allocating Class B assessments attributable to the Association's obligations for any covered long-term care policies between the "Health Account" and the "Life and Annuity Account" defined below. The allocation method outlined below is intended to implement the requirements of Section 1707(c)(2) and (3) of Article XVII, consistent with Section 9C(3) of the Model Act and the drafting note thereto. The instructions are intended to result in a net allocation of any Class B assessments for the Association's long-term care policy obligations in equal 50% shares to "Accident and Health Member Insurers" and "Life and Annuity Member Insurers" as those two

categories of member insurers are defined in Section 1707(c)(3) of Article XVII.

In accordance with Section 1707(c)(2) and (3) of Article XVII, if a Class B assessment is authorized due to covered long-term care policies, a portion of the Association's Class B assessment authorized to meet its obligations for the covered long-term care policies (the "LTC Assessment") shall be allocated to the Life and Annuity Account, without dividing it between the subaccounts thereof, with the remaining portion of the LTC Assessment allocated to the Health Account.

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

"Accident and Health Member Insurer" means any member insurer that does not qualify as a Life and Annuity Member Insurer, in accordance with Section 1707(c)(3) of Article XVII.

"Health Account" shall mean the health account established under Section 1704 Article XVII.

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

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

"Life and Annuity Account" shall mean the aggregate life insurance and annuity account established under Section 1704(a)(1) of Article XVII, without dividing such account into subaccounts.

"Life and Annuity Member Insurers," in accordance with Section 1707(c)(3) of Article XVII, shall mean each and every member insurer having (i) total assessable premium in the Life and Annuity Account greater than or equal to (ii) its total assessable premium in the Health Account, where assessable premium in the Health Account includes, but is not limited to, the member insurer's assessable RANLI PPO, hospital plan corporation, professional health services plan corporation and health maintenance organization premiums but shall exclude the member insurer's assessable premiums for disability income and long-term care insurance. For purposes of this definition, assessable premiums shall be measured within the Commonwealth. The exclusion of a member insurer's assessable premiums for disability income and long-term care insurance shall be applied only for the purpose of the definition of "Life and Annuity Member Insurers," and such exclusion shall not apply for any other purposes.

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

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

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

The amount of any LTC Assessment allocated to the Life and Annuity Account or to the Health Account shall be allocated among member insurers in accordance with Section 1707(c)(4) of Article XVII, except that the total assessable premium in the entire Life and Annuity Account shall be used in the aggregate without dividing it between the subaccounts.

F. **Refunds.** The Board shall determine at least annually if an excess of funds in any account exists such that the funds are not reasonably needed to fund future obligations of current or future insolvencies for the payment of the obligations of the Association. If the Board determines an excess exists, it can in its sole discretion, and in proportion to the contribution of each insurer to that account or upon such formula as the Board may reasonably determine:

- (1) refund in cash; or,
- (2) refund in the form of a credit against any future assessments with respect to that account; to the extent a credit is granted to an insurer, it shall be reflected in the next subsequent assessment of the insurer for that account; or,
- (3) reallocate excess funds to any other impairment or insolvency within the same account, or place the excess funds in a composite account to be held for this purposes.

In order to avoid disproportionate clerical expense, the Board may establish an amount below which refunds shall not be made.

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

Article 5. Records and Reports.

A. **Minutes, Records and Reports.** Minutes of the proceedings of each meeting of the Board, annual meeting of the members and committee meetings shall be written. The original of these minutes shall be retained by the Secretary or by such other person as the

Board may designate. Records of such meetings, or of any negotiations regarding the association's activities in carrying out its powers and duties under Article XVII, shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the member insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the Association to render a report of its activities under Section C of this Article 5. The Board may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or to the solvency of any company seeking to do an insurance business in Pennsylvania. Such reports and recommendations shall not be considered public documents.

- B. **Copies and Confidential Minutes and Records.** Copies of minutes, reports, recommendations, records and documents shall be furnished to each Board member and to the Commissioner and to any member insurer upon request provided, however, that such minutes, reports, recommendations or other records and documents relating to the portions of such proceeding which were closed, because of the confidential nature of the matters addressed, shall also be confidential, and distribution of such minutes, reports, recommendations, records and documents shall be limited to the members of the Board and the Association's attorneys, employees or agents, considered by the Board to be necessary or pertinent to the discussion of the matters addressed or performance of the actions taken during such confidential proceedings.
- C. **Annual Report to the Commissioner.** The Board shall make an annual report as required by Section 1713 of Article XVII not later than May 1 of each year to the Commissioner. Such report shall include a financial report for the preceding calendar year in a form approved by the Commissioner and a review of the activities of the Association during the preceding calendar year. The form of financial report submitted by the Association shall be approved upon written approval of the Commissioner or 30 days after submission of such financial report to the Commissioner unless the Commissioner has theretofore disapproved the form of such financial report.
- D. **Annual Audit.** The Board shall, once each calendar year, engage a certified public accountant to audit the financial affairs of the Association. The outside auditor shall report its findings to the Audit Committee if one has been appointed; otherwise to the full Board.

Article 6. Membership.

- A. Pursuant to Section 1704 of Article XVII, any insurer, RANLI PPO, hospital plan corporation, professional health services plan corporation or health maintenance organization licensed or which holds a certificate of authority to transact in the Commonwealth of Pennsylvania any kinds of insurance, RANLI PPO, hospital plan corporation, professional health services plan corporation or health maintenance organization business for which coverage is provided under Section 1703 of Article XVII

shall be members of this Association, as set forth in Section 1702 of Article XVII. Each insurer, RANLI PPO, hospital plan corporation, professional services plan corporation or health maintenance organization which is licensed or receives a certificate of authority after said date to transact in the Commonwealth of Pennsylvania the kinds of insurance or business covered by Section 1703 of Article XVII shall automatically become, effective on the date on which it receives such a license or certificate of authority, a member insurer of this Association.

- B. A member insurer which ceases to be admitted shall automatically cease to be a member effective on the day following the termination or expiration of its license to transact the kinds of insurance or business covered by Section 1703 of Article XVII. However, such member insurer shall remain liable for any assessments based on impairments or insolvencies occurring prior to the termination of its license. Such member insurer shall also be entitled to a refund of all or part of any assessments which were made prior to termination of its license which later proves to be excessive.
- C. A member insurer which becomes an impaired or insolvent insurer after its license or certificate of authority in Pennsylvania 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 7. Appeals.

- A. Any member insurer aggrieved by an act of the Board or Association shall appeal to the Board before appealing to the Commissioner. Such appeal shall be taken within 60 days of the date on which such member insurer knew or should have known of such act. If such member insurer is aggrieved by the final action or decision of the Board on the appeal, or if the Board declines or fails to act on such appeal within 60 days, the member insurer may appeal to the Commissioner within 60 days after the action or decision of the Board or the expiration of the 60-day period within which the Board failed to act on such appeal. Any member insurer which makes an appeal to the Commissioner pursuant to this Article must provide the Association with notice of the appeal by mailing a copy of the appeal to the Association by certified mail on the same day on which the appeal is submitted to the Commissioner. Failure to take an appeal within the time and in the manner set forth in this Plan shall bar any claim that a member insurer might otherwise have with respect to any act taken by the Association or its Board. If the appeal pertains to a protest of all or part of an assessment, the member insurer shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.
- B. With regard to protests of assessments subject to the amendments in the 2020 Act pursuant to Section 4 of the 2020 Act, as provided in Section 1707(i) of Article XVII:
 - 1. A member insurer that wishes to protest all or part of an assessment shall pay

when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

2. Within sixty (60) days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination 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. Within thirty (30) days after a final decision has been made, the Association shall notify the protesting member insurer in writing of the final decision. Within sixty (60) days of receipt of the notice of the final decision, the protesting member insurer may appeal that final action to the Commissioner.
4. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer protests to the Commissioner for a final decision, with or without a recommendation from the Association.
5. If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the Association.
6. The Association may request information of member insurers in order to aid in the exercise of its powers under Section 1707 of Article XVII and member insurers shall promptly comply with a request.

Article 8. Indemnification.

A.

1. The Association shall indemnify any director, former director, officer, former officer, employee, former employee, agent or former agent who was or is a party to, or is threatened to be made a party to, or who is called as a witness in connection with, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Association, by reason of the fact that that person is or was a director, officer, employee or agent of the Association, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by that person in connection with such action, suit or proceeding unless the act or failure to act giving rise to the claim for indemnification is determined by a

court to have constituted willful misconduct or recklessness.

2. The indemnification advancement of expenses provided by, or granted pursuant to, this Article 8 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, contract, vote of members or directors or otherwise, both as to action in that person's official capacity and as to action in another capacity while holding such office. It is the policy of the Association that indemnification of, and advancement of expenses to, directors and officers of the Association shall be made to the fullest extent permitted by law. To this end, the provisions of this Article 8 shall be deemed to have been amended for the benefit of directors, officers, employees and agents of the Association effective immediately upon any adoption of any other law that expands or enlarges the power or obligation of the Association to indemnify or advance expenses to directors, officers, employees or agents of the Association.
3. The indemnification and advancement of expenses provided by or granted pursuant to this Article 8 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.
4. As soon as practicable after receipt by any person specified in Section 1 of this Article 8 of notice of the commencement of any action, suit or proceeding specified in Section 1 of this Article 8, such person shall, if a claim with respect thereto may be made against the Association under this Article 8, notify the Association in writing of the commencement or the threat thereof; however, the omission so to notify the Association shall not relieve the Association of any liability under this Article 8 unless the Association shall have been prejudiced thereby or from any other liability which it may have to such person other than under this Article 8. With respect to any such action as to which such person notifies the Association of the commencement or threat thereof, the Association may participate therein at its own expense and, except as otherwise provided herein to the extent that it desires, the Association jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel selected by the Association to the reasonable satisfaction of such person. After notice from the Association to such person of its election to assume the defense, the Association shall not be liable to such person under this Article 8 for any legal or other expenses subsequently incurred by such person in connection with the defense thereof otherwise than as provided herein. Such person shall have the right to employ its own counsel in such action, but the fees and expenses of such counsel incurred after notice from the Association of its assumption of the defense thereof shall be at the expense of such person unless: (i) the employment of counsel by such person shall have been authorized by the Association; (ii) such person shall have reasonably concluded that there may be a conflict of interest between the Association

and such person in the conduct of the defense of such proceeding or (iii) the Association shall not in fact have employed counsel to assume the defense of such action. The Association shall not be entitled to assume the defense of any proceeding brought by or on behalf of the Association or as to which such person shall have reasonably concluded that there may be a conflict of interest. The assumption of the defense by the Association shall not authorize the Association, without the written consent of the person indemnified, to propose or accept any settlement other than payment of monetary damages which is fully satisfied by the Association or any settlement that includes a statement or admission of fault, culpability or failure to act by or on the part of the person indemnified. If indemnification under this Article 8 or advancement of expenses are not paid or made by the Association, or on its behalf, within 90 days after a written claim for indemnification or a request for an advancement of expenses has been received by the Association, such person may, at any time thereafter, bring suit against the Association to recover the unpaid amount of the claim or the advancement of expenses. The right to indemnification and advancement of expenses provided hereunder shall be enforceable by such person in any court of competent jurisdiction. The burden of proving indemnification is not appropriate shall be on the Association. Expenses reasonably incurred by such person in connection with successfully establishing the right to indemnification or advancement of expenses, in whole or in part, shall also be indemnified by the Association.

- B. This Article 8 is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 1715 of Article XVII.

Article 9. Officers.

- A. The business and affairs of the Association shall be conducted by its officers under the direction of the Board, which may exercise all such powers of the Association and do all such lawful acts and things as are directed or required to be exercised and done under Article XVII. The Association shall have a Chair, a Vice Chair, a Secretary and a Treasurer, and may have such other officers as the Board may authorize from time to time. Except as provided for certain officers in Article 3, it shall not be necessary for officers to be directors. Each officer shall hold office at the pleasure of the Board and until his successor has been selected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Association. The resignation shall be effective upon receipt thereof by the Association or at such subsequent time as may be specified in the notice of resignation. The Association may secure the fidelity of any or all of the officers by bond or otherwise.
- B. Any officer or agent of the Association may be removed by the Board with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board.

- C. Except as otherwise provided in this Plan or as delegated by the Board, the Chair shall preside at all meetings of members and directors; shall be the chief executive officer of the Association; shall be responsible for the general and active management of the business of the Association; shall see that all orders and resolutions of the Board are put into effect, subject, however, to the right of the Board to delegate any specific powers to any other officer or officers of the Association and shall have the authority to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Association, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Association.
- D. Except as otherwise provided in this Plan or as delegated by the Board, the Vice Chair or, if more than one, the Vice Chairs in the order, if any, established by the Board shall, in the absence or incapacity of the Chair, have the authority to exercise all the powers and perform the duties of the Chair. The Vice Chairs, respectively, shall also have such other authority and perform such other duties as shall be determined by the Board or the Chair.
- E. Except as otherwise provided in this Plan or as delegated by the Board, the Secretary shall attend all meetings of the Board and of the members and keep accurate records thereof and shall perform the duties customarily performed by the secretary of a corporation and such other duties as may be assigned to him by the Board or the Chair.
- F. Except as otherwise provided in this Plan or as delegated by the Board, the Treasurer shall be responsible for the custody of the Association's funds and securities; shall be responsible for full and accurate accounts of receipts and disbursements in books belonging to the Association and shall perform such other duties as may be assigned by the Board or the Chair. The Treasurer shall give bond in such sum and with such surety as the Board may from time to time direct.

Article 10. Transition Provisions.

- A. As provided in Section 4 of the 2020 Act:
 - 1. The amendment or addition in the 2020 Act of sections 1701, 1702, 1703, 1704(a), 1705(a), 1706, 1707, 1708(c) introductory paragraph, (8), (9) and (d), 1709, 1710, 1711, 1712, 1713, 1715, 1716, 1717 and 1718 of Article XVII shall apply with respect to a member insurer:
 - (i) that on or after November 3, 2020 is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency; or
 - (ii) for which the Association elects to exercise its power and duties under Section 1706(a) of Article XVII on or after November 3, 2020.
 - 2. All matters relating to the insolvency or impairment of any member insurer

placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency before November 3, 2020, or for which the Association otherwise exercises its powers and duties under Section 1706(a) or (b) of Article XVII before November 3, 2020, including past, present and future assessments and credits, shall be governed by the provisions of Article XVII in effect before the November 3, 2020 effective date of the 2020 Act.

- B. This Article also recites and provides for the transition between the Association and the Pennsylvania Life and Health Insurance Guaranty Association (the “Prior Association”) created by the Act of November 26, 1978 (P.L. 1188, No. 280) (the “1978 Act”) which remains applicable to any member insurer thereof declared insolvent prior to December 18, 1992.
1. All assets, properties, rights, powers, privileges, interests, claims, obligations, liabilities and responsibilities of the Prior Association shall be and hereby are transferred and assigned to the Association, and the Association shall assume from the Prior Association all such assets, properties, powers, privileges, interests and claims and shall perform and discharge all such obligations, liabilities and responsibilities. The Association shall be the successor in all respects and for all purposes to the Prior Association and the Association and the Prior Association are authorized to do such further acts and things as either deems necessary or advisable to carry out more effectively the transfer of assets and assumptions of liabilities provided herein and to evidence such succession.
 2. All actions taken by the Association in respect of any insurer declared insolvent by a court of competent jurisdiction prior to December 18, 1992 shall be governed by the 1978 Act.

Article 11. Conformity to Statute.

Article XVII as written, and as may be hereafter amended, is incorporated as a part of this Plan.