

NEW HAMPSHIRE LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION

COMBINED PLAN OF OPERATION
RSA 404-D and 408-B

January 1, 1996

Amended May 19, 1998

Amended May 18, 1999

NEW HAMPSHIRE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
COMBINED PLAN OF OPERATION

Article 1. Plan of Operation

This Plan of Operation, hereinafter referred to as the "Combined Plan", shall become effective upon written approval of the Commissioner and shall supersede and replace the existing Plan of Operation. This Combined Plan shall serve as the Plan of Operation under both Chapter 404-D and Chapter 408-B of the New Hampshire Revised Statutes Annotated. Chapter 404-D applies to impairments and insolvencies of member insurers which occurred prior to January 1, 1996. Chapter 408-B applies to impairments and insolvencies of member insurers which occur on or after January 1, 1996.

Article 2. Board of Directors

A. There shall be one Board of Directors constituted pursuant to RSA 404-D:7 and RSA 408-B:7.

1. The initial Board of Directors shall consist of six member insurers, and shall be the same Board of Directors existing on January 1, 1996 pursuant to RSA 404-D:7. Thereafter,

the Board of Directors shall consist of five to nine member insurers; the number to be determined prior to each annual meeting by the Board of Directors. Each Director is to be elected for a term of three years scheduled so that the terms of all Directors shall not expire in the same year. To provide for staggered terms, some Directors may be elected initially for terms of less than three years.

The Board of Directors shall be elected by the member insurers as provided in Section B of this Article and shall fairly represent the member insurers. If the Commissioner determines that all member insurers are not fairly represented, the Commissioner may disapprove the membership of the Board and order another election. In the interim between such disapproval and the subsequent election, the Commissioner may appoint a temporary Board of Directors which fairly represents the member insurers. Each member insurer of the Board shall designate a representative and an alternate.

2. Upon the election of the Board of Directors, the Association shall notify the Commissioner and request written approval of the Board as elected.

3. The Board of Directors shall:
 - a. Appoint, from among its members, a nominating committee which shall each year, at least 30 days prior to the annual meeting of the Board of Directors, recommend to the Board nominees for Chairman, Secretary and Treasurer, from the members of the Board, and nominees for other offices as the Board deems appropriate.
 - b. Elect a Chairman, Secretary and Treasurer from among its members, and other such officers as it deems appropriate based upon recommendations made by the nominating committee. The same member may serve as both Secretary and Treasurer. Previously elected and appointed Board members shall serve until their successors have been duly elected or appointed and qualified to serve.
 - c. Make known to members at least 30 days prior to the annual meeting the nominating committee's recommended nominees to succeed each member of

the board whose term expires at the next annual meeting. Other member nominees may be submitted to the Board upon the petition of ten member insurers, not less than 20 days prior to the next annual meeting. Nominee(s) may be member(s) of the Board whose term is expiring.

- d. Provide to the members at least 10 days prior to the next annual meeting the names of said nominees if there is more than one nominee for each vacancy. If there is only one nominee for each vacancy, the Secretary shall cast one ballot for each such nominee.

- 4. Vacancies occurring on the Board of Directors between annual meetings shall be filled by the Board acting upon recommendation of the nominating committee with the approval of the Commissioner. Vacancies occurring in elective offices between annual meetings shall be filled by the Board acting upon recommendation of the nominating committee. Such appointees shall serve until the next succeeding annual meeting at which time a director or officer, as the case may be, shall be elected to serve for the

unexpired term of the retired, resigned or deceased director or officer.

- B. The initial Board of Directors shall be the same Board of Directors existing on January 1, 1996 pursuant to RSA 404-D:7. The members of the Board of Directors to be elected at each annual meeting shall be elected by member insurers by votes cast on a weighted basis using the new direct premium volume as provided by the Commissioner for the last available year for the kinds of insurance specified in RSA 408-B:5 as the determining factor in the number of votes allowed each such member insurer. Each member insurer shall have at least one vote in electing a member to the Board of Directors and shall be permitted to cast such vote or votes in person or by proxy.
- C. 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 that an affirmative vote of four Board members is required to:
 - 1. Approve a contract with a servicing facility,

2. Levy an assessment or provide for a refund,
3. Borrow money, or
4. Approve reinsurance contracts, assumption agreements or guaranty plans.

D. The Board shall hold an annual meeting at the office of the Association on the Third Tuesday in the month of May, unless the Chairman of the Board, upon proper notice, shall designate some other date or place. At each annual meeting the Board shall:

1. Review the Combined Plan and submit proposed amendments, if any, to the Commissioner for approval.
2. Review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements or additions.
3. Review operating expenses and outstanding contractual obligations and determine if 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. If such

assessment or refund is deemed to be necessary, the Board shall levy such assessment or make such refund in accordance with RSA 404-D:9 for any impairment or insolvency occurring prior to January 1, 1996 and in accordance with RSA 408-B:9 for any impairment or insolvency occurring on or after January 1, 1996. The Board may abate or defer the collection of any assessment from a member insurer in accordance with RSA 404-D:9 or RSA 408-B:9. In order to avoid disproportionate clerical expense, the board may establish a minimum assessment and an amount below which 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.
5. If the only business to come before the Board at an annual meeting is the election of Directors or officers, the Board may, subject to the approval of the Commissioner, conduct the election by mail in lieu of an annual meeting.

- E. The Board shall hold regular meetings at such times and with such frequency as it deems appropriate to conduct the business of the

Association. At such meetings the Board shall:

1. Consider and decide what method, methods or facilities, as permitted under RSA 404-D:8 or RSA 408-B:8, shall be adopted or utilized to assure fulfillment of the contractual obligations of any impaired member insurer for each of the categories of covered policies. If the Board decides to contract with a servicing facility in regard to any such impairment, every effort shall be made to secure the participation of liquidators, rehabilitators, conservators or ancillary receivers, if any, in such contract to assist the Association in the performance of its legally imposed duties.
2. Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of any impaired member insurer which are deemed necessary to the prompt and economical handling by the Association of its statutory duties.
3. Consider and decide what persons, if any, should be hired or retained by the Association to implement and carry out broad directives of the Board made pursuant to its statutory duties. Such persons may include an Executive Director

who would have such authority as is properly delegated by the Board. An Executive Director 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 statutory duties. The Board may agree to compensate such persons so as to best serve the interest of the Association and the public.

4. Consider and decide to what extent and in what manner the Board shall exercise the powers authorized by RSA 404-D:8 or RSA 408-B:8 to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims.
5. Consider and decide what assessments, if any, should be levied, whether any refund should be made to a member insurer, and consider and decide whether any assessment shall be deferred or abated. If an assessment, refund, deferral or abatement shall be determined to be appropriate,

such action or actions shall be taken in accordance with the requirements specified in the appropriate item or items of RSA 404-D:9 or RSA 408-B:9. The Board shall inform the Commissioner of the failure of any member to pay an assessment made pursuant to this paragraph after 30 days written notice to the member that payment is due. In order to avoid disproportionate clerical expense, the Board may establish a minimum assessment and an amount below which refunds shall not be made.

6. Take all steps permitted by law, and deemed necessary, to protect the Association's rights pertaining to any impaired 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 statutory duties and responsibilities.

- F. Special meetings of the Board of Directors may be called by the Chairman and shall be called upon request of any two Board members. Not less than five days notice shall be given to each Board member of the time, place and purpose or purposes of any special meeting. 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 a special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at an annual or a regular meeting of the Board. At a special meeting the Board may consider and decide any matter deemed by it to be necessary for the proper administration of the Association.

- G. Members of the Board may participate in a meeting of the Board through the use of a conference telephone or similar communications equipment, by means of which all persons participating in the meeting are able to hear each other, and the participation by such means shall constitute presence in person at such meeting.
- H. Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors upon approval of such expenses by the Board, but members of the Board shall not otherwise be compensated by the Association for their services.
- I. The Board of Directors, by resolution adopted by the affirmative vote of a majority of the full Board, may appoint an Executive

Committee, whose members shall include the Chairman, Secretary and Treasurer of the Board, and may include other Board members. Action taken at a meeting of the Executive Committee shall be reported in writing to the Board within 60 days and presented to the Board for ratification at its next meeting. The Executive Committee shall have the power, during intervals between meetings of the Board, to act for the Board, except that the Executive Committee shall not have the power to:

1. Approve a contract with a servicing facility for overall administration of the Association, except the Committee shall have the power to administer specific functions with regard to specific insolvencies;
2. Levy an assessment or provide for a refund;
3. Borrow money;
4. Approve reinsurance contracts, assumption agreements or guaranty plans; or
5. Adopt amendments to the Plan of Operation.

Article 3. Operations

- A. The official address of the Association shall be the address of the office of the Commissioner unless otherwise designated by the Board of Directors.
- B. The Board of Directors may employ 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 persons, firm or corporation as the official address of the Association. Such persons, firms or corporations shall keep and maintain such records of their activities as may be required by the Board.
- C. 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.
- D. In order to effectuate the purposes set forth in RSA 408-B:12

concerning the prevention of impairments, the Board of Directors may develop procedures for discovering and reporting any member insurer that may be insolvent or in an impaired financial condition which is hazardous to the interest of the policyholders of such insurer or to the public interest. Such reports shall not be considered public documents. The Board of Directors may review the Insurance Code and appropriate regulations with a view towards making recommendations to the Commissioner for the improved and more certain detection and prevention of member insurer insolvencies or impairments.

Article 4. Records and Reports

- A. A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained by the Secretary of the Board of Directors with copies being furnished to each Board member and to the Commissioner.
- B. The Board shall make an annual report as required by RSA 404-D:15 and RSA 408-B:15 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.

- C. The Board shall, once each calendar year, appoint certain of the member insurers as an audit committee. The audit committee shall consist of three member insurers, at least two of which shall not have representatives on the Board of Directors. The audit committee shall see to the proper auditing of all books and records of the Association and shall report its findings to the Board of Directors. In lieu of appointing an audit committee, the Board of Directors may retain the services of an independent accountant to properly audit all books and records of the Association and to report thereon to the Board of Directors.

Article 5. Membership

- A. Pursuant to RSA 404-D:5 insurers which were admitted as of September 4, 1971 to transact the kinds of insurance covered by Chapters 404-D of the Revised Statutes Annotated of the State of New Hampshire shall be member insurers of this Association. Each insurer admitted after said date to transact the kinds of insurance covered by RSA 404-D:5 and RSA 408-B:5 shall automatically become, effective on the date of its admission, a member insurer of this

Association. A member insurer which ceases to be admitted after said date shall automatically cease to be a member effective on the day following the termination or expiration of its license to transact the kinds of insurance covered by RSA 404-D:5 and RSA 408-B:5; provided, however, such insurer shall remain liable for any assessment or assessments based on an insolvency or insolvencies occurring prior to the cessation of its status as a member insurer in the Association.

- B. Any member insurer aggrieved by an act of the Association shall appeal to the Board of Directors before appealing to the Commissioner. If such member insurer is aggrieved by the final action or decision of the Board, or if the Board does not act on such complaint within 30 days, the member insurer may appeal to the Commissioner within 30 days after the action or decision of the Board or the expiration of the 30-day period in which the Board failed to act on such complaint.

Article 6. Indemnification

- A. Definitions. For purposes of this Article 6:

1. "Director/officer" means each member of the Board of Directors of

the Association, each individual serving as a representative of a member insurer on the Board of Directors of the Association, each employee, officer or agent of the Association, each employee, officer or agent of any association or other entity which performs services, including without limitation claims handling services, on behalf of the Association (in their capacity of performing such services on behalf of the Association only) and each person who is serving or has served at the request of the Association or such other entity as a director, officer, trustee, fiduciary, principal, partner, member of a committee, employee, consultant or agent of any other entity (sometimes referred to in this Article 6 as an "Association Related Entity").

2. "Proceeding" means any action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom, brought in or before, or threatened to be brought in or before, any court, tribunal, administrative or legislative body or agency, and any claim which could be the subject of a Proceeding.

- B. Indemnification. The Association shall indemnify and hold harmless any Director/officer that is a party or is threatened to be made a party to any threatened, pending or completed Proceeding (any such Director/officer being referred to hereinafter as "Indemnatee") by reason of the fact that

Indemnatee is or was a Director/officer or by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of the Article 6, from and against any and all expenses, including attorneys' fees, judgments, fines, interest and amounts paid in settlement actually and reasonably incurred by the Indemnatee in connection with the Proceeding if (i) Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceeding, had no reasonable cause to believe Indemnatee's conduct was unlawful, and (ii) such Proceeding is not an action by or in the right of the Association. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceedings, had reasonable cause to believe that Indemnatee's conduct was unlawful.

- C. Proceedings by or in the Right of the Association. The Association shall indemnify and hold harmless Indemnatee in the event Indemnatee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Association to procure a judgment in its favor by reason of the

fact that Indemnatee is or was a Director/officer, officer, employee or agent or by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of this Article 6, from and against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnatee in connection with the defense or settlement of the Proceeding if Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, except that no such indemnification shall be made in respect of any Proceeding as to which Indemnatee shall have been adjudged to be liable for negligence or misconduct in the performance of Indemnatee's duty to the Association unless and only to the extent that the Court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification for expenses which the court shall deem proper.

- D. Successful Defense of Proceedings. To the extent that Indemnatee is successful on the merits or otherwise in defense of any Proceeding, Indemnatee shall be indemnified against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnatee in connection therewith.

- E. Determination that Indemnification is Available. Any indemnification under Sections B or C of this Article 6, unless ordered by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of Indemnatee is proper in the circumstances because Indemnatee has met the applicable standard of conduct set forth in Sections B and C of this Article 6. This determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of directors who are not parties to the Proceeding and whose representatives on the Board of Directors are not parties to the Proceeding, (ii) by independent legal counsel in a written opinion if such a quorum is not obtainable or, even if obtainable, if such a quorum so directs, or (iii) in the absence of a determination pursuant to clauses (i) or (ii), by the Board of Directors of the Association by a majority vote of a quorum, including directors who are parties to such Proceeding, after providing each member insurer of the Association notice of its intention to make such determination and asking such member insurers to provide the Association with notice of any objections thereto; provided that the determination provided in clause (iii) shall not be effective until sixty (60) days following such Board notice and shall not be effective at all in the event a majority of the member insurers provide notice to the Association within such sixty (60) day period of their objection to such determination.

- F. Advances. The Association shall pay sums on account of indemnification, including, without limitation, attorneys' fees and related disbursements, in advance of a final disposition of a Proceeding upon receipt of a written undertaking by Indemnatee to repay such sums if it is subsequently determined that Indemnatee is not entitled to indemnification pursuant to this Article 6, which undertaking may be accepted without reference to the financial ability of the Indemnatee to make repayment.
- G. Partial Indemnification. If indemnatee is entitled under any provision of this Article 6 to indemnification by the Association for a portion of the liability or expense of any Proceeding but not, however, for the total amount thereof, the Association shall nevertheless indemnify Indemnatee for the portion of such expense to which Indemnatee is entitled.
- H. Allocation of Indemnification Expense. The expense of indemnification provided hereunder shall be assessed against and paid by the member insurers in the proportion that the net direct written premiums of each member insurer for the calendar year preceding such assessment, bears to the net direct written premiums of all member insurers for the calendar year preceding such assessment, except in the case of insurers who shall cease to be a member of the Association, as to which assessments shall be as follows: any insurer which ceases to be a member of the Association shall remain liable for assessments on account of the

expense of indemnification with respect to any and all acts and omissions occurring prior to the time such insurer ceases to be a member of the Association, and in the case of such insurers the assessment for indemnification expense shall be in the proportion that the net direct written premiums of the insurer for the calendar year preceding the year in which the act or omission with respect to which indemnification is claimed, bears to the net direct written premiums of all member insurers for the calendar year in which the act or omission with respect to which indemnification is claimed.

- I. Non-Exclusive. Nothing in this Article 6 shall limit any lawful rights to indemnification existing independently of this Article 6. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Sections 404-D:17 and 408-B:17 of the New Hampshire Revised Statutes Annotated.
- J. Amendment. The provisions of this Article may be amended or repealed by the member insurers, provided however that no amendment or repeal of such provisions shall adversely affect the rights of a person or entity entitled to indemnification under this Article with respect to acts or omissions occurring prior to such amendment or repeal.

Article 7. Conformity to Statute

Chapters 404-D and 408-B of the New Hampshire Revised Statutes Annotated as enacted, and as may be hereafter amended, are incorporated as part of this Combined Plan and as such are attached hereto.

Return to: Laura A. Condon, Administrator
New Hampshire Life and Health
Insurance Guaranty Association
10 Chestnut Drive, Unit B
Bedford NH 03110

NEW HAMPSHIRE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

ACCEPTANCE OF THE PLAN OF OPERATION

The undersigned member insurer hereby accepts the Plan by causing its corporate name to be hereunto subscribed by its president or by an authorized officer. Each member so accepting does hereby declare its unqualified authorization to the Board to levy such assessments and to take such other actions as are deemed by the Board to be necessary to assure the fair, reasonable and equitable administration of the Association, as required by law.

Enclosed please find a \$25.00 Class A Assessment to be used for administrative purposes.

Date accepted: _____

Name of member insurer: _____

NAIC#: _____

Address: _____

By: _____

Printed name: _____

Title: _____