

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0425.01 Christy Chase x2008

SENATE BILL 18-065

SENATE SPONSORSHIP

Gardner, Aguilar

HOUSE SPONSORSHIP

Kraft-Tharp, Arndt, Coleman, Landgraf, Liston

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING MODIFICATIONS TO THE "LIFE AND HEALTH INSURANCE
102 PROTECTION ASSOCIATION ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill amends the "Life and Health Insurance Protection Association Act" as follows:

- ! Adds health maintenance organizations (HMOs) as members of the association and subjects HMOs to assessments from the association;
- ! Allocates responsibility for long-term care insurance

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

assessments between health insurance and life insurance association members; and

- ! Requires member insurers that write health benefit plans in Colorado to collect a fee of up to \$2 per month from each certificate holder, policyholder, or contract holder for each certificate, policy, or contract the member insurer issues, to be deposited into a fund for the purpose of defraying the costs of a health insurer insolvency.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 10-20-101 as
3 follows:

4 **10-20-101. Short title.** ~~This article shall be known and may be~~
5 ~~cited as~~ THE SHORT TITLE OF THIS ARTICLE 20 IS the "Life and Health
6 Insurance Protection Association Act".

7 **SECTION 2.** In Colorado Revised Statutes, **amend** 10-20-102 as
8 follows:

9 **10-20-102. Legislative declaration.** (1) The general assembly
10 finds and declares that the purpose of this ~~article~~ ARTICLE 20 is to protect,
11 subject to certain limitations, the persons specified in section 10-20-104
12 (1) against failure by member insurers in the performance of their
13 contractual obligations under life ~~and~~ INSURANCE POLICIES, health
14 insurance policies, HEALTH BENEFIT PLANS, and annuity contracts
15 specified in section 10-20-104 (2) because of the insolvency of the
16 member insurer that issued the policies, PLANS, or contracts.

17 (2) To provide the protection specified in subsection (1) of this
18 section, an association of MEMBER insurers shall be created and shall exist
19 to pay benefits and to continue coverages as limited pursuant to this
20 ~~article. Members~~ ARTICLE 20. MEMBER INSURERS of the association are
21 subject to assessment to provide funds to carry out the purpose of this

1 ~~article~~ ARTICLE 20.

2 **SECTION 3.** In Colorado Revised Statutes, 10-20-103, **amend**
3 the introductory portion, (6), (6.7), (8) introductory portion, (8)(i.5),
4 (8)(j), (10.5), (12), (12.7), and (13); **repeal** (8)(b); and **add** (6.6) and (6.9)
5 as follows:

6 **10-20-103. Definitions.** As used in this ~~article~~ ARTICLE 20, unless
7 the context otherwise requires:

8 (6) "Covered policy", "COVERED CONTRACT", OR "COVERED
9 POLICY OR CONTRACT" means a policy or contract, or a portion of a policy
10 or contract, for which coverage is provided under section 10-20-104.

11 (6.6) (a) "HEALTH BENEFIT PLAN" MEANS ANY HOSPITAL OR
12 MEDICAL EXPENSE POLICY OR CERTIFICATE, HEALTH MAINTENANCE
13 ORGANIZATION SUBSCRIBER CONTRACT, OR OTHER SIMILAR HEALTH
14 CONTRACT THAT IS SUBJECT TO THE JURISDICTION OF THE COMMISSIONER
15 AND AVAILABLE FOR USE, OFFERED, OR SOLD IN COLORADO.

16 (b) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE:

17 (I) AN ACCIDENT ONLY PLAN;

18 (II) CREDIT INSURANCE;

19 (III) DENTAL INSURANCE;

20 (IV) VISION INSURANCE;

21 (V) A MEDICARE SUPPLEMENT PLAN;

22 (VI) BENEFITS FOR LONG-TERM CARE, HOME HEALTH CARE,
23 COMMUNITY-BASED CARE, OR ANY COMBINATION THEREOF;

24 (VII) DISABILITY INCOME INSURANCE;

25 (VIII) LIABILITY INSURANCE INCLUDING GENERAL LIABILITY
26 INSURANCE AND AUTOMOBILE LIABILITY INSURANCE;

27 (IX) COVERAGE FOR ON-SITE MEDICAL CLINICS;

1 (X) COVERAGE ISSUED AS A SUPPLEMENT TO LIABILITY
2 INSURANCE, WORKERS' COMPENSATION, OR SIMILAR INSURANCE;

3 (XI) AUTOMOBILE MEDICAL PAYMENT INSURANCE; OR

4 (XII) SPECIFIED DISEASE, HOSPITAL CONFINEMENT INDEMNITY, OR
5 LIMITED BENEFIT HEALTH INSURANCE IF THE TYPE OF COVERAGE DOES NOT
6 PROVIDE COORDINATION OF BENEFITS AND IS PROVIDED UNDER A
7 SEPARATE POLICY OR CERTIFICATE.

8 (6.7) ~~"Impaired insurer" means a member insurer that is not an~~
9 ~~insolvent insurer and is placed under an order of rehabilitation or~~
10 ~~conservation by a court of competent jurisdiction~~ "HEALTH BENEFIT PLAN
11 FUND" MEANS THE FUND ESTABLISHED IN SECTION 10-20-106 FOR THE
12 DEPOSIT OF FEES COLLECTED FROM MEMBER INSURERS WRITING HEALTH
13 BENEFIT PLANS.

14 (6.9) "IMPAIRED INSURER" MEANS A MEMBER INSURER THAT IS NOT
15 AN INSOLVENT INSURER AND THAT IS PLACED UNDER AN ORDER OF
16 REHABILITATION OR CONSERVATION BY A COURT OF COMPETENT
17 JURISDICTION.

18 (8) "Member insurer" means any insurer OR HEALTH
19 MAINTENANCE ORGANIZATION THAT IS licensed or ~~who~~ holds a certificate
20 of authority in this state to write any kind of insurance OR HEALTH
21 MAINTENANCE ORGANIZATION BUSINESS for which coverage is provided
22 pursuant to section 10-20-104 and includes any insurer OR HEALTH
23 MAINTENANCE ORGANIZATION whose license or certificate of authority in
24 this state may have been suspended, revoked, not renewed, or voluntarily
25 withdrawn. ~~but~~ "Member insurer" does not include:

26 (b) ~~A health maintenance organization;~~

27 (i.5) A health care coverage cooperative ~~and~~ WITH A CERTIFICATE

1 OF AUTHORITY ISSUED AND OPERATING UNDER PART 10 OF ARTICLE 16 OF
2 THIS TITLE 10; OR

3 (j) Any entity similar to those specified in ~~this subsection (8)~~
4 SUBSECTIONS (8)(a) TO (8)(i.5) OF THIS SECTION.

5 (10.5) "Owner" of a policy or contract, ~~for insurance, or~~ "policy
6 owner", "POLICYHOLDER", "CONTRACT HOLDER", or "contract owner"
7 means the person who is identified as the legal owner under the terms of
8 the policy or contract ~~for insurance~~ or who is otherwise vested with legal
9 title to the policy or contract ~~for insurance~~ through a valid assignment
10 completed in accordance with the terms of the policy or contract ~~for~~
11 ~~insurance~~ and properly recorded as the owner on the books of the
12 MEMBER insurer. The terms "owner", "contract owner", "POLICYHOLDER",
13 "CONTRACT HOLDER" and "policy owner" do not include persons with a
14 beneficial interest in a policy or contract.

15 (12) (a) "Premiums" means ~~amounts~~ THE AMOUNT of money or
16 other consideration, however designated, received on covered policies or
17 contracts less returned premiums, returned consideration, and returned
18 deposits, and less dividends and experience credits thereon.

19 (b) "Premiums" does not include:

20 (I) Any ~~amounts~~ FEES COLLECTED AND REMITTED TO THE HEALTH
21 BENEFIT PLAN FUND PURSUANT TO SECTION 10-20-106 BY MEMBER
22 INSURERS WRITING HEALTH BENEFIT PLANS;

23 (II) ANY AMOUNT of money or other consideration received for
24 any policies or contracts or for the portions of any policies or contracts for
25 which coverage is not provided under section 10-20-104 (2); except that
26 assessable premiums shall not be reduced on account of section
27 10-20-104 (2)(b)(III) relating to interest limitations and section 10-20-104

1 (3)(b) relating to limitations with respect to any one life; "Premiums"
2 ~~does not include:~~

3 (a) (III) Premiums on an unallocated annuity contract; or

4 (b) (IV) Premiums in excess of five million dollars with respect
5 to multiple nongroup policies of life insurance owned by one owner,
6 regardless of:

7 (H) (A) Whether the policy owner is an individual, firm,
8 corporation, or other person;

9 (H) (B) Whether the persons insured are officers, managers,
10 employees, or other persons; or

11 (H) (C) The number of policies or contracts held by the owner.

12 (12.7) "Receivership court" means the court in an impaired or
13 insolvent insurer's state having jurisdiction over the conservation,
14 rehabilitation, or liquidation of the MEMBER insurer.

15 (13) "Resident" means any person to whom a contractual
16 obligation is owed and who resides in this state on the date of entry of a
17 court order that determines a member insurer to be an impaired insurer or
18 a court order that determines a member insurer to be an insolvent insurer.

19 A person ~~may~~ MUST be a resident of only one state, which in the case of
20 a person other than a natural person ~~shall~~ MUST be its principal place of
21 business. Citizens of the United States who are residents of a foreign
22 country, United States possession, United States territory, or United States
23 protectorate, which country, possession, territory, or protectorate does not
24 have an association similar to the association created by this ~~article, shall~~
25 ~~be~~ ARTICLE 20, ARE deemed residents of the state of domicile of the
26 MEMBER insurer that issued the policies or contracts.

27 **SECTION 4.** In Colorado Revised Statutes, 10-20-104, **amend**

1 (1) introductory portion, (1)(a) introductory portion, (1)(a)(II)(A),
2 (1)(a)(II)(B), (1)(b), (1.5), (1.7), (2)(a), (2)(b) introductory portion,
3 (2)(b)(XII), (2)(b)(XVI), (2)(b)(XVIII) introductory portion,
4 (2)(b)(XVIII)(B), (2)(b)(XVIII)(C), (3)(a), (3)(b)(I) introductory portion,
5 (3)(b)(I)(B), (3)(b)(II)(A), and (4); and **add** (2)(c) and (3.5) as follows:

6 **10-20-104. Coverage and limitations - coordination of benefits.**

7 (1) This ~~article shall provide~~ ARTICLE 20 PROVIDES coverage for the
8 policies and contracts specified in subsection (2) of this section and to
9 persons:

10 (a) Who are owners of, ~~or~~ certificate holders under, ~~OR ENROLLEES~~
11 ~~IN~~ such policies or contracts, other than structured settlement annuities,
12 and who:

13 (II) Are not residents, but only under all of the following
14 conditions:

15 (A) The MEMBER insurer ~~which~~ THAT issued ~~such~~ THE policies or
16 contracts is domiciled in this state;

17 (B) ~~Such~~ THE MEMBER insurer never held a license or certificate
18 of authority in the states in which such persons reside;

19 (b) Regardless of where they reside, except for nonresident
20 certificate holders under group policies or contracts, who are the
21 beneficiaries, assignees, or payees, ~~INCLUDING HEALTH CARE PROVIDERS~~
22 ~~RENDERING SERVICES UNDER A HEALTH INSURANCE OR HEALTH~~
23 ~~MAINTENANCE ORGANIZATION POLICY, CONTRACT, OR CERTIFICATE,~~ of the
24 persons covered under ~~paragraph (a) of this subsection (1)~~ SUBSECTION
25 (1)(a) OF THIS SECTION.

26 (1.5) This ~~article shall~~ ARTICLE 20 DOES not provide coverage to
27 a person who is a payee or beneficiary of ~~a contract~~ AN owner OR

1 ENROLLEE who is a resident of this state if the payee or beneficiary is
2 afforded any coverage by the association of another state.

3 (1.7) This ~~article~~ ARTICLE 20 is intended to provide coverage to a
4 person who is a resident of this state and, in special circumstances, to a
5 nonresident. In order to avoid duplicate coverage, if a person who would
6 otherwise receive coverage under this ~~article~~ ARTICLE 20 is provided
7 coverage under the laws of any other state, the person shall not be
8 provided coverage under this ~~article~~ ARTICLE 20. In determining the
9 application of the provisions of this subsection (1.7) in situations where
10 a person could be covered by the association of more than one state,
11 whether as an owner, payee, beneficiary, ENROLLEE, or assignee, this
12 ~~article~~ ARTICLE 20 shall be construed in conjunction with other state laws
13 to result in coverage by only one association.

14 (2) (a) This ~~article~~ ARTICLE 20 provides coverage to the persons
15 specified in subsections (1) and (1.3) of this section for direct, nongroup
16 life INSURANCE, health INSURANCE, HEALTH MAINTENANCE
17 ORGANIZATION, annuity, and supplemental policies or contracts and for
18 certificates under direct group life INSURANCE, health INSURANCE,
19 HEALTH MAINTENANCE ORGANIZATION, OR annuity policies or contracts,
20 and FOR supplemental contracts to any of these, issued by member
21 insurers pursuant to ~~articles 7 and 8~~ ARTICLE 7 and parts 1, ~~and 2~~ 2, AND
22 4 of article 16 of this ~~title~~ TITLE 10, except as limited by this ~~article~~
23 ARTICLE 20. Annuity contracts and certificates under group annuity
24 contracts include allocated funding agreements, structured settlement
25 annuities, and any immediate or deferred annuity contracts.

26 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)(c) OF
27 THIS SECTION, this ~~article~~ ARTICLE 20 does not provide coverage for:

1 (XII) Any MEMBER insurer ~~which~~ THAT was insolvent or unable
2 to fulfill its contractual obligations as of July 1, 1991; except that an
3 annuity contract issued or assumed by such ~~an~~ A MEMBER insurer shall be
4 covered under this ~~article~~ ARTICLE 20 if ~~such~~ THE MEMBER insurer was
5 ordered into liquidation between July 1, 1991, and August 31, 1991;

6 (XVI) Any policy or contract providing hospital, medical,
7 prescription drug, or other health care benefits under:

8 (A) Part C or part D of ~~subchapter~~ TITLE XVIII, chapter 7 of title
9 42, United States Code, or any regulation issued under ~~these~~ THOSE parts
10 C OR D; OR

11 (B) TITLE XIX, CHAPTER 7 OF TITLE 42, UNITED STATES CODE, OR
12 ANY REGULATION ISSUED UNDER TITLE XIX;

13 (XVIII) Any obligation that does not arise under the expressed
14 written terms of the policy or contract issued by the MEMBER insurer to
15 the ~~contract~~ owner, ~~or to the policy owner~~ CERTIFICATE HOLDER, OR
16 ENROLLEE, including: ~~and without limitation:~~

17 (B) Claims based on side letters, riders, or other documents that
18 were issued by the MEMBER insurer without meeting applicable policy OR
19 CONTRACT form filing or approval requirements;

20 (C) Misrepresentations of, or regarding, policy OR CONTRACT
21 benefits;

22 (c) THE EXCLUSIONS FROM COVERAGE SPECIFIED IN SUBSECTION
23 (2)(b)(III) OF THIS SECTION DO NOT APPLY TO ANY PORTION OF A POLICY
24 OR CONTRACT, INCLUDING A RIDER, THAT PROVIDES LONG-TERM CARE OR
25 ANY OTHER HEALTH INSURANCE BENEFITS.

26 (3) The benefits for which the association may become liable shall
27 not exceed the lesser of:

1 (a) The contractual obligations for which the MEMBER insurer is
2 liable or would have been liable if it were not an impaired or insolvent
3 insurer; or

4 (b) (I) With respect to any one life, regardless of the number of
5 policies or contracts with that MEMBER insurer:

6 (B) For health insurance benefits OR COVERAGE RECEIVED UNDER
7 HEALTH MAINTENANCE ORGANIZATION CONTRACTS: One hundred
8 thousand dollars for coverages not defined as disability, ~~basic hospital,~~
9 ~~medical and surgical, or major medical insurance~~ COVERAGE OR SERVICES
10 UNDER HEALTH BENEFIT PLANS, or long-term care insurance, including
11 any net cash surrender and net cash withdrawal values; three hundred
12 thousand dollars for disability insurance; three hundred thousand dollars
13 for long-term care insurance; or five hundred thousand dollars for ~~basic~~
14 ~~hospital, medical and surgical, or major medical insurance~~ COVERAGE OR
15 SERVICES UNDER HEALTH BENEFIT PLANS;

16 (II) The association is not obligated to cover:

17 (A) More than three hundred thousand dollars in benefits, in the
18 aggregate, with respect to any one life under ~~sub-paragraphs (A) to~~
19 ~~(D) of subparagraph (I) of this paragraph (b)~~ SUBSECTION (3)(b)(I) OF
20 THIS SECTION; except that, with respect to benefits for ~~basic hospital,~~
21 ~~medical and surgical, and major medical insurance~~ COVERAGE OR
22 SERVICES UNDER HEALTH BENEFIT PLANS under ~~sub-paragraph (B) of~~
23 ~~subparagraph (I) of this paragraph (b)~~ SUBSECTION (3)(b)(I)(B) OF THIS
24 SECTION, the aggregate liability of the association shall not exceed five
25 hundred thousand dollars with respect to any one individual; or

26 (3.5) FOR PURPOSES OF THIS ARTICLE 20, BENEFITS PROVIDED BY
27 A LONG-TERM CARE RIDER TO A LIFE INSURANCE POLICY OR ANNUITY ARE

1 CONSIDERED THE SAME TYPE OF BENEFITS AS THE BENEFITS PROVIDED BY
2 THE UNDERLYING LIFE INSURANCE POLICY OR ANNUITY CONTRACT TO
3 WHICH THE RIDER RELATES.

4 (4) In performing its obligations to provide coverage under section
5 10-20-108, the association is not required to guarantee, assume, reinsure,
6 REISSUE, or perform, or cause to be guaranteed, assumed, reinsured,
7 REISSUED, or performed, the contractual obligations of the impaired or
8 insolvent insurer under a covered policy or contract that do not materially
9 affect the economic values or economic benefits of the covered policy or
10 contract.

11 **SECTION 5.** In Colorado Revised Statutes, 10-20-106, **amend**
12 (1) introductory portion and (1)(b); and **add** (3) as follows:

13 **10-20-106. Creation of the association - health benefit plan**
14 **fund.** (1) There is hereby created a private nonprofit legal entity to be
15 known as the life and health insurance protection association. All member
16 insurers shall be and remain members of the association as a condition of
17 their authority to transact insurance OR HEALTH MAINTENANCE
18 ORGANIZATION BUSINESS in this state. The association shall perform its
19 functions pursuant to the plan of operation specified in section 10-20-110
20 and shall exercise its powers through the board of directors provided in
21 section 10-20-107. For purposes of administration and assessment, the
22 association shall maintain three accounts:

23 (b) The health ~~insurance~~ account; and

24 (3) (a) FOR PURPOSES OF ADMINISTRATION OF THE FEES
25 COLLECTED AND REMITTED UNDER THIS SUBSECTION (3), THE ASSOCIATION
26 SHALL MAINTAIN A HEALTH BENEFIT PLAN FUND. EXCEPT AS SPECIFIED IN
27 SUBSECTION (3)(c) OF THIS SECTION, ALL MEMBER INSURERS WRITING

1 HEALTH BENEFIT PLANS IN THIS STATE SHALL COLLECT FROM EACH
2 CERTIFICATE HOLDER, POLICYHOLDER, OR CONTRACT HOLDER OF A
3 HEALTH BENEFIT PLAN A FEE, NOT TO EXCEED TWO DOLLARS PER MONTH,
4 FOR EACH CERTIFICATE, CONTRACT, OR POLICY. THE ASSOCIATION SHALL
5 SET THE FEE AFTER CONSULTATION WITH THE COMMISSIONER. MEMBER
6 INSURERS SHALL REMIT THE FEE TO THE ASSOCIATION ON A QUARTERLY
7 BASIS, AND THE ASSOCIATION SHALL DEPOSIT THE FEES IN THE HEALTH
8 BENEFIT PLAN FUND. A MEMBER INSURER THAT FAILS TO COLLECT OR
9 REMIT FEE AMOUNTS COLLECTED IS SUBJECT TO AN INTEREST PENALTY
10 THAT ACCRUES AT THE RATE SET FORTH IN SECTION 10-20-109 AND SHALL
11 PAY THE INTEREST PENALTY TO THE ASSOCIATION FOR DEPOSIT INTO THE
12 HEALTH BENEFIT PLAN FUND.

13 (b) MONEY HELD IN THE HEALTH BENEFIT PLAN FUND MAY NOT BE
14 EXPENDED, LOANED, OR APPROPRIATED EXCEPT TO PAY EXPENSES OF THE
15 FUND AND TO REDUCE A CLASS B ASSESSMENT AUTHORIZED, CALLED, AND
16 OWING BY THE MEMBER INSURERS WRITING HEALTH BENEFIT PLANS. THE
17 AMOUNT OF ANY CLASS B ASSESSMENT OWED COLLECTIVELY BY THE
18 MEMBER INSURERS WRITING HEALTH BENEFIT PLANS SHALL BE FIRST PAID
19 BY THE HEALTH BENEFIT PLAN FUND. THE ASSOCIATION SHALL INVEST THE
20 MONEY IN THE FUND PURSUANT TO THE PLAN OF OPERATION, AND ALL
21 EARNINGS FROM INVESTMENTS SHALL BE RETAINED IN THE HEALTH
22 BENEFIT PLAN FUND. THE FEES COLLECTED AND REMITTED BY MEMBER
23 INSURERS PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION DO NOT
24 CONSTITUTE PREMIUMS FOR ANY PURPOSE AND SHALL NOT BE USED FOR
25 ANY PURPOSE OTHER THAN TO PAY A CLASS B ASSESSMENT ASSOCIATED
26 WITH A HEALTH IMPAIRMENT OR INSOLVENCY AND EXPENSES OF THE FUND
27 FOR MEMBER INSURERS WRITING HEALTH BENEFIT PLANS IN THIS STATE.

1 (c) IF THE UNENCUMBERED BALANCE IN THE HEALTH BENEFIT PLAN
2 FUND AS OF DECEMBER 31 IN ANY ONE YEAR EQUALS OR EXCEEDS
3 SEVENTY-FIVE MILLION DOLLARS, THE ASSOCIATION SHALL SUSPEND THE
4 FEE AUTHORIZED IN SUBSECTION (3)(a) OF THIS SECTION UNTIL THE
5 UNENCUMBERED HEALTH BENEFIT PLAN FUND BALANCE DROPS TO
6 TWENTY-FIVE MILLION DOLLARS. ONCE THE FUND BALANCE DROPS TO
7 TWENTY-FIVE MILLION DOLLARS OR LESS, THE ASSOCIATION SHALL
8 REINSTATE THE FEE. BEGINNING JANUARY 1, 2019, THE ASSOCIATION,
9 SUBJECT TO THE APPROVAL OF THE COMMISSIONER, SHALL DETERMINE
10 ANNUALLY WHETHER THE MAXIMUM FEE OR THRESHOLD IN THE HEALTH
11 BENEFIT PLAN FUND SHOULD BE ADJUSTED FOR INFLATION BASED ON THE
12 THEN-CURRENT MEDICAL CONSUMER PRICE INDEX PUBLISHED ANNUALLY
13 BY THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR
14 STATISTICS.

15 **SECTION 6.** In Colorado Revised Statutes, 10-20-107, **amend**
16 (1) and (2) as follows:

17 **10-20-107. Board of directors.** (1) The board of directors of the
18 association shall consist of ~~not less~~ NO FEWER than ~~five~~ SEVEN nor more
19 than ~~nine~~ ELEVEN member insurers serving terms as established in the
20 plan of operation. ~~The members of the board~~ MEMBER INSURERS shall be
21 ~~selected by member insurers~~ SELECT MEMBERS OF THE BOARD, subject to
22 the approval of the commissioner. ~~Vacancies on the board shall be filled~~
23 IF A VACANCY OCCURS, THE REMAINING BOARD MEMBERS SHALL FILL THE
24 VACANCY for the remaining period of the term by a majority vote, ~~of the~~
25 ~~remaining board members~~, subject to the approval of the commissioner.
26 To select the first board and initially organize the association, the
27 commissioner shall give notice to all member insurers of the time and

1 place of the organizational meeting. At the organizational meeting, each
2 member insurer ~~shall be~~ IS entitled to one vote in person or by proxy. If
3 the board is not selected within sixty days after notice of the
4 organizational meeting, the commissioner may appoint the initial
5 members.

6 (2) In approving selections or in appointing members to the board,
7 the commissioner shall ~~consider, among other things, whether~~ ENSURE
8 THAT all member insurers are fairly represented BETWEEN MEMBER
9 INSURERS THAT WRITE PRIMARILY LIFE INSURANCE OR ANNUITY
10 CONTRACTS AND MEMBER INSURERS THAT WRITE PRIMARILY HEALTH
11 BENEFIT PLANS.

12 **SECTION 7.** In Colorado Revised Statutes, 10-20-108, **amend**
13 (1)(a), (2)(a), (2)(c), (5), (6), (11), (12), (13)(c), (13)(f), (19), (22)
14 introductory portion, and (24) introductory portion; and **add** (13)(i) as
15 follows:

16 **10-20-108. Powers and duties of the association.** (1) If a
17 member insurer is an impaired insurer, the association may, in its
18 discretion and subject to any conditions imposed by the association that
19 do not impair the contractual obligations of the impaired insurer and that
20 are approved by the commissioner:

21 (a) Guarantee, assume, REISSUE, or reinsure or cause to be
22 guaranteed, assumed, REISSUED, or reinsured any or all of the policies or
23 contracts of the impaired insurer; or

24 (2) If a member insurer is an insolvent insurer, the association
25 shall, in its discretion, either:

26 (a) Guarantee, assume, REISSUE, or reinsure or cause to be
27 guaranteed, assumed, REISSUED, or reinsured the covered policies OR

1 CONTRACTS of the insolvent insurer and provide such ~~moneys~~ MONEY,
2 pledges, notes, guarantees, or other means as are reasonably necessary to
3 discharge those duties; or

4 (c) Provide benefits and coverages in accordance with the
5 following provisions:

6 (I) With respect only to life ~~and~~ INSURANCE, health insurance,
7 ~~policies~~ HEALTH BENEFIT PLANS, and annuities, assure payment of benefits
8 ~~for premiums identical to the premiums and benefits, except for terms of~~
9 ~~conversion and renewability~~, that would have been payable under the
10 policies OR CONTRACTS of the insolvent insurer for claims incurred:

11 (A) With respect to group policies and contracts, not later than the
12 earlier of the next renewal date under ~~such~~ THE policies or contracts or
13 forty-five days, but in no event less than thirty days, after the date on
14 which the association becomes obligated with respect to ~~such~~ THE policies
15 or contracts;

16 (B) With respect to nongroup policies, contracts, and annuities,
17 not later than the earlier of the next renewal date, if any, under ~~such~~ THE
18 policies or contracts or one year, but in no event less than thirty days,
19 after the date on which the association becomes obligated with respect to
20 ~~such~~ THE policies or contracts.

21 (II) Make diligent efforts to provide to all known insureds,
22 ENROLLEES, or annuitants for nongroup policies and contracts, or to group
23 policy OR CONTRACT owners with respect to group policies and contracts,
24 thirty days' notice of the termination under ~~subparagraph (I) of this~~
25 ~~paragraph (c)~~ SUBSECTION (2)(c)(I) OF THIS SECTION of the benefits
26 provided.

27 (III) With respect to nongroup life ~~and~~ INSURANCE, health

1 insurance, ~~policies~~ HEALTH BENEFIT PLANS, and annuities covered by the
2 association, make available to each known insured, ENROLLEE, or
3 annuitant, or TO THE owner if other than the insured, ENROLLEE, or
4 annuitant, and with respect to an individual formerly insured OR
5 ENROLLED or formerly an annuitant under a group policy OR CONTRACT
6 who is not eligible for replacement group coverage, substitute coverage
7 on an individual basis in accordance with ~~the provisions of subparagraph~~
8 ~~(IV) of this paragraph (c)~~ SUBSECTION (2)(c)(IV) OF THIS SECTION, if the
9 insureds, ENROLLEES, or annuitants had a right under law or the
10 terminated policy, CONTRACT, or annuity to convert coverage to
11 individual coverage or to continue an individual policy, CONTRACT, or
12 annuity in force until a specified age or for a specified time, during which
13 the insurer OR HEALTH MAINTENANCE ORGANIZATION had no right to
14 unilaterally make changes in any provisions of the policy, CONTRACT, or
15 annuity or had a right only to make changes in premium by class.

16 (IV) (A) In providing the substitute coverage required under
17 ~~subparagraph (III) of this paragraph (c)~~ SUBSECTION (2)(c)(III) OF THIS
18 SECTION, the association may offer either to reissue the terminated
19 coverage or to issue an alternative policy OR CONTRACT AT ACTUARIALLY
20 JUSTIFIED RATES APPROVED BY THE COMMISSIONER.

21 (B) The association shall offer alternative or reissued policies OR
22 CONTRACTS without requiring evidence of insurability, and the policies
23 OR CONTRACTS must not provide for any waiting period or exclusion that
24 would not have applied under the terminated policy OR CONTRACT.

25 (C) The association may reinsure any alternative or reissued
26 policy OR CONTRACT.

27 (V) (A) Alternative policies OR CONTRACTS adopted by the

1 association are subject to the approval of the ~~domiciliary~~ commissioner.
2 ~~and the receivership court.~~ The association may adopt alternative policies
3 OR CONTRACTS of various types for future issuance without regard to any
4 particular impairment or insolvency.

5 (B) Alternative policies OR CONTRACTS must contain at least the
6 minimum statutory provisions required in this state and provide benefits
7 reasonably related to the premium charged. The association shall set the
8 premium in accordance with a table of rates ~~which it shall adopt~~ THAT
9 THE ASSOCIATION ADOPTS. The premium must reflect the amount of
10 insurance OR COVERAGE to be provided and the age and class of risk of
11 each insured but ~~shall~~ MUST not reflect any changes in the health of the
12 insured after the original policy OR CONTRACT was last underwritten.

13 (C) Any alternative policy OR CONTRACT issued by the association
14 must provide coverage of a type similar to that of the policy OR
15 CONTRACT issued by the impaired or insolvent insurer, as determined by
16 the association.

17 (VI) If the association elects to reissue terminated coverage at a
18 premium rate different from that charged under the terminated policy OR
19 CONTRACT, the association shall set ~~the~~ AN ACTUARIALLY JUSTIFIED
20 premium in accordance with the amount of insurance OR COVERAGE
21 provided and the age and class of risk, subject to approval by the
22 commissioner. ~~or by a court of competent jurisdiction.~~

23 (VII) The obligations of the association, with respect to coverage
24 under any policy OR CONTRACT of the impaired or insolvent insurer or
25 under any reissued or alternative policy OR CONTRACT, cease on the date
26 ~~such~~ THE coverage, ~~or~~ policy, OR CONTRACT is replaced by another similar
27 policy OR CONTRACT by the policy owner, ~~the~~ insured, ENROLLEE, or ~~the~~

1 association.

2 (VIII) When proceeding under this ~~paragraph (c)~~ SUBSECTION
3 (2)(c), with respect to any policy or contract carrying guaranteed
4 minimum interest rates, the association shall assure the payment or
5 crediting of a rate of interest consistent with section 10-20-104 (2)(b)(III).

6 (5) Nonpayment of premiums within thirty-one days after the date
7 required under the terms of any guaranteed, assumed, alternative, or
8 reissued policy or contract or substitute coverage ~~shall terminate~~
9 TERMINATES the obligations of the association under ~~such~~ THE policy,
10 CONTRACT, or coverage under this ~~article~~ ARTICLE 20 with respect to ~~such~~
11 THE policy, CONTRACT, or coverage, except with respect to any claims
12 incurred or any net cash surrender value ~~which~~ THAT may be due in
13 accordance with ~~the provisions of this article~~ ARTICLE 20.

14 (6) Premiums due for coverage after entry of an order of
15 liquidation of an insolvent insurer ~~shall~~ belong to and ~~be~~ ARE payable at
16 the direction of the association, and the association ~~shall be~~ IS liable for
17 unearned premiums due to policy OR contract owners arising after the
18 entry of ~~such~~ THE order.

19 (11) The association ~~shall have~~ HAS standing to appear or
20 intervene before any court or agency in this state ~~which~~ THAT has
21 jurisdiction over a member insurer for which the association is or may
22 become obligated under this ~~article~~ ARTICLE 20, or with jurisdiction over
23 any person or property against which the association may have rights
24 through subrogation or otherwise. ~~Such~~ THE ASSOCIATION'S standing ~~shall~~
25 ~~extend~~ EXTENDS to all matters germane to the powers and duties of the
26 association, including ~~but not limited to~~ proposals for reinsuring,
27 REISSUING, modifying, or guaranteeing the policies or contracts of the

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

7 (12) (a) Any person receiving benefits under this ~~article shall be~~
8 ARTICLE 20 IS deemed to have assigned the rights under, and any causes
9 of action against any person for losses arising under, resulting from, or
10 otherwise relating to, the covered policy or contract to the association to
11 the extent of the benefits received because of this ~~article~~ ARTICLE 20,
12 whether the benefits are payments of or on account of contractual
13 obligations, continuation of coverage, or the provision of substitute or
14 alternative POLICIES, CONTRACTS, OR coverage. The association may
15 require ~~an assignment to it of such rights and causes of action by any~~
16 payee, policy, or contract owner, beneficiary, insured, ENROLLEE, or
17 annuitant TO ASSIGN HIS OR HER RIGHTS UNDER, AND CAUSES OF ACTION
18 AGAINST ANY PERSON FOR LOSSES ARISING UNDER, RESULTING FROM, OR
19 OTHERWISE RELATING TO, THE COVERED POLICY OR CONTRACT TO THE
20 ASSOCIATION as a condition precedent to the receipt of any right or
21 benefits conferred by this ~~article~~ ARTICLE 20 upon ~~such~~ THE person.

22 (b) The subrogation rights of the association under this subsection
23 (12) ~~shall~~ have the same priority against the assets of the impaired or
24 insolvent insurer as ~~that~~ THE RIGHTS possessed by the person entitled to
25 receive benefits under this ~~article~~ ARTICLE 20.

26 (c) In addition to ~~paragraphs (a) and (b) of this subsection (12)~~
27 SUBSECTIONS (12)(a) AND (12)(b) OF THIS SECTION, the association ~~shall~~

1 ~~have~~ HAS all common-law rights of subrogation and any other equitable
2 or legal remedy ~~which~~ THAT would have been available to the impaired
3 or insolvent insurer, owner, beneficiary, ENROLLEE, or payee of a policy
4 or contract.

5 (d) If any provision of ~~paragraph (a), (b), or (c) of this subsection~~
6 ~~(12)~~ SUBSECTION (12)(a), (12)(b), OR (12)(c) OF THIS SECTION is invalid
7 or ineffective with respect to any person or claim for any reason, the
8 amount payable by the association with respect to the related covered
9 obligations is reduced by the amount realized by any other person with
10 respect to the person or claim that is attributable to the policies OR
11 CONTRACTS or portions of the policies OR CONTRACTS covered by the
12 association.

13 (e) If the association has provided benefits with respect to a
14 covered obligation and a person recovers amounts as to which the
15 association has rights as described in ~~paragraphs (a) to (d) of this~~
16 ~~subsection (12)~~ SUBSECTIONS (12)(a) TO (12)(d) OF THIS SECTION, the
17 person shall pay to the association the portion of the recovery attributable
18 to the policies OR CONTRACTS, or portions of policies OR CONTRACTS,
19 covered by the association.

20 (13) The association may:

21 (c) Borrow money to effect the purposes of this ~~article~~ ARTICLE
22 20, and any notes or other evidence of indebtedness of the association not
23 in default ~~shall be~~ ARE legal investments for domestic MEMBER insurers
24 and may be carried as admitted assets;

25 (f) Exercise, for the purposes of this ~~article~~ ARTICLE 20 and to the
26 extent approved by the commissioner, the powers of a domestic life ~~or~~
27 INSURER, health insurer, OR HEALTH MAINTENANCE ORGANIZATION, but

1 the association shall not issue ~~insurance~~ policies or ~~annuity~~ contracts
2 other than those issued to perform its obligations under this ~~article~~
3 ARTICLE 20;

4 (i) FILE FOR AN ACTUARIALLY JUSTIFIED RATE OR PREMIUM
5 INCREASE FOR ANY POLICY OR CONTRACT THAT IT GUARANTEES, ASSUMES,
6 REINSURES, REISSUES, OR OTHERWISE PROVIDES COVERAGE UNDER THIS
7 SECTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE
8 POLICY OR CONTRACT AND IN ACCORDANCE WITH OTHER APPLICABLE
9 PROVISIONS OF STATE LAW.

10 (19) A person who has a claim against ~~an~~ A MEMBER insurer
11 pursuant to a provision of ~~an insurance~~ A policy OR CONTRACT, other than
12 a policy OR CONTRACT of an impaired or insolvent insurer, that also is a
13 contractual obligation under this ~~article~~ ARTICLE 20, must first exhaust his
14 or her right under that policy OR CONTRACT. The amount of an approved
15 claim under this ~~article shall~~ ARTICLE 20 MUST be reduced by the policy
16 OR CONTRACT limits of, or amount paid under, that ~~insurance~~ policy OR
17 CONTRACT, whichever amount is greater. If a claimant exhausts all rights
18 under a policy OR CONTRACT, other than a policy OR CONTRACT of an
19 impaired or insolvent insurer, the MEMBER insurer issuing that policy OR
20 CONTRACT is not entitled to sue or continue a suit against the insured of
21 the impaired or insolvent insurer to recover an amount paid to the
22 claimant under the policy OR CONTRACT; except that a person having a
23 contractual obligation, as defined by this ~~article~~ ARTICLE 20, under a life
24 insurance policy or an annuity contract issued by an impaired or insolvent
25 insurer is not required to exhaust other coverage for that claim, and the
26 amount of an approved claim under a life insurance policy or annuity
27 contract issued by an impaired or insolvent insurer may not be reduced

1 because of that duplicate coverage.

2 (22) In carrying out its duties in connection with guaranteeing,
3 assuming, REISSUING, or reinsuring policies or contracts under this
4 section, the association may issue substitute coverage AT ACTUARIALLY
5 JUSTIFIED RATES for a policy or contract that provides for the calculation
6 of returns or changes in value OR BENEFITS by the use of an interest rate,
7 crediting rate, or similar factor determined by use of an index or other
8 external reference, by issuing an alternative policy or contract in
9 accordance with the following provisions:

10 (24) In carrying out its duties in connection with guaranteeing,
11 assuming, REISSUING, or reinsuring policies or contracts under subsection
12 (1) or (2) of this section, the association may ~~subject to approval by the~~
13 ~~receivership court,~~ issue substitute coverage for a policy or contract that
14 provides an interest rate, crediting rate, or similar factor, determined by
15 use of an index or other external reference stated in the policy or contract,
16 employed in calculating returns or changes in value by issuing an
17 alternative policy or contract in accordance with the following provisions:

18 **SECTION 8.** In Colorado Revised Statutes, 10-20-109, **amend**
19 (2) introductory portion, (2)(a), (3)(b), (4), (5)(a), (5)(b), (6), (7), (8)
20 introductory portion, and (9) as follows:

21 **10-20-109. Assessments.** (2) ~~There~~ THE BOARD shall ~~be~~ IMPOSE
22 two assessments, as follows:

23 (a) Class A assessments must be authorized and called for the
24 purpose of meeting administrative and legal costs and other expenses and
25 examinations conducted under the authority of ~~section 10-20-112 (5)~~
26 SECTION 10-20-115. Class A assessments may be authorized and called
27 whether or not related to a particular impaired or insolvent insurer.

1 (3) (b) (I) THE BOARD SHALL DETERMINE class B assessments
2 against member insurers for each account ~~shall be in~~ BASED ON the
3 proportion that the premiums received on business in this state by each
4 assessed member insurer on policies or contracts covered by each account
5 for the three most recent calendar years for which information is available
6 preceding the year in which the MEMBER insurer became impaired or
7 insolvent, bear to ~~such~~ THE premiums received on business in this state
8 for ~~such~~ THOSE calendar years by all assessed member insurers.

9 (II) OF THE AMOUNT OF CLASS B ASSESSMENTS FOR LONG-TERM
10 CARE INSURANCE WRITTEN BY THE IMPAIRED OR INSOLVENT INSURER, THE
11 BOARD SHALL ALLOCATE:

12 (A) FIFTY-SIX AND FOUR-TENTHS PERCENT TO THE HEALTH
13 ACCOUNT; AND

14 (B) FORTY-THREE AND SIX-TENTHS PERCENT, ON A PRO RATA
15 BASIS, TO THE LIFE INSURANCE ACCOUNT AND THE ANNUITY ACCOUNT.

16 (4) The association may abate or defer, in whole or in part, the
17 assessment of a member insurer if, in the opinion of the board, payment
18 of the assessment would endanger the ability of the member insurer to
19 fulfill its contractual obligations. In the event an assessment against a
20 member insurer is abated, or deferred in whole or in part, the amount by
21 which ~~such~~ THE assessment is abated or deferred may be assessed against
22 the other member insurers in a manner consistent with the basis for
23 assessments set forth in this section. THIS SUBSECTION (4) DOES NOT
24 APPLY TO A MEMBER INSURER WRITING HEALTH BENEFIT PLANS IN THIS
25 STATE THAT DOES NOT RECEIVE A DIRECT ASSESSMENT FOR PAYMENT BUT
26 IS REQUIRED TO REMIT MONEY COLLECTED FROM CERTIFICATE, CONTRACT,
27 OR POLICYHOLDERS PURSUANT TO SECTION 10-20-106 (3)(a).

1 (5) (a) Subject to ~~paragraph (b) of this subsection (5)~~ SUBSECTION
2 (5)(b) OF THIS SECTION, the total of all assessments authorized by the
3 association with respect to a member insurer for each account must not
4 exceed, in any one calendar year, two percent of the average premiums
5 received by the MEMBER insurer in this state on the policies and contracts
6 covered by the account during the three calendar years preceding the year
7 in which the MEMBER insurer became impaired or insolvent.

8 (b) If two or more assessments are authorized in one calendar year
9 with respect to MEMBER insurers ~~who~~ THAT become impaired or insolvent
10 in different calendar years, the average annual premiums for purposes of
11 the aggregate assessment percentage limitation referenced in ~~paragraph~~
12 ~~(a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION is equal and
13 limited to the highest of the three-year average annual premiums for the
14 applicable account as calculated under this section.

15 (6) (a) The board shall, by an equitable method as established in
16 the plan of operation, refund to member insurers, in proportion to the
17 contribution of each MEMBER insurer to that account, the amount by
18 which the assets of the account exceed the amount the board finds is
19 necessary to carry out, during the coming year, the obligations of the
20 association with regard to that account, including assets accruing from
21 assignment, subrogation, net realized gains, and income from
22 investments. THE BOARD SHALL RETAIN a reasonable amount ~~shall be~~
23 ~~retained~~ in each account to provide funds for the continuing expenses of
24 the association and for future losses.

25 (b) THIS SUBSECTION (6) DOES NOT APPLY TO THE HEALTH BENEFIT
26 PLAN FUND DESCRIBED IN SECTION 10-20-106 (3)(a).

27 (7) ~~It shall be proper for any~~ A member insurer, in determining its

1 premium rates and policyholder dividends ~~as to~~ FOR any kind of insurance
2 OR HEALTH MAINTENANCE ORGANIZATION BUSINESS within the scope of
3 this ~~article, to~~ ARTICLE 20, MAY consider the amount reasonably necessary
4 to meet its assessment obligations under this ~~article~~ ARTICLE 20.

5 (8) The association shall issue to each MEMBER insurer paying an
6 assessment for the life and annuity accounts under this ~~article~~ ARTICLE 20,
7 other than a class A assessment, a certificate of contribution from the
8 association, in a form prescribed by the commissioner, for the amount of
9 the assessment so paid. All outstanding certificates shall be of equal
10 dignity and priority without reference to amounts or dates of issue. ~~Such~~
11 THE MEMBER INSURER MAY SHOW THE certificate of contribution ~~may be~~
12 ~~shown by the insurer~~ in its financial statement as an asset in such form
13 and for such amount, if any, and period of time as the commissioner may
14 approve; but the MEMBER insurer, ~~shall,~~ at its option, ~~have~~ HAS the right
15 in any event to show ~~such~~ THE certificate of contribution as an admitted
16 asset at percentages of the original face amount of the assessment for
17 calendar years as follows:

18 (9) Any member insurer whose certificate of authority OR LICENSE
19 has been terminated for any reason whatsoever ~~shall be~~ IS liable for
20 QUARTERLY REMITTANCES AS REQUIRED BY SECTION 10-20-106 (3) AND
21 any assessment based on insolvencies arising prior to ~~such~~ termination OF
22 A MEMBER INSURER'S CERTIFICATE OF AUTHORITY OR LICENSE.

23 **SECTION 9.** In Colorado Revised Statutes, 10-20-110, **amend**
24 (1)(b) and (4) as follows:

25 **10-20-110. Plan of operation - rules.** (1) (b) If the association
26 fails to submit a suitable plan of operation or suitable amendments to the
27 plan ~~by January 1, 1992~~ WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE

1 OF THIS SUBSECTION (1)(b), AS AMENDED, the commissioner shall, after
2 notice and hearing, adopt and promulgate ~~such~~ reasonable rules as ~~are~~
3 necessary or advisable to effectuate ~~the provisions of this article. Such~~
4 ARTICLE 20. THE rules shall continue in ~~force~~ EFFECT until modified by
5 the commissioner or superseded by a plan submitted by the association
6 and approved by the commissioner.

7 (4) The plan of operation may provide that any or all powers and
8 duties of the association, except those established pursuant to sections
9 ~~10-20-108 (12)(c)~~ 10-20-108 (13)(c) and 10-20-109, are delegated to a
10 corporation, association, or other organization ~~which~~ THAT performs, or
11 will perform, functions similar to those of the association established
12 pursuant to this ~~article~~, ARTICLE 20 or its equivalent in two or more states.
13 ~~Such~~ THE ASSOCIATION SHALL REIMBURSE a corporation, association, or
14 organization ~~shall be reimbursed~~ TO WHICH THE ASSOCIATION HAS
15 DELEGATED ITS POWERS AND DUTIES for any payments made on behalf of
16 the association and shall ~~be paid~~ PAY THE CORPORATION, ASSOCIATION, OR
17 ORGANIZATION for its performance of any ASSOCIATION function. ~~of the~~
18 ~~association~~. A delegation pursuant to this subsection (4) ~~shall take~~ TAKES
19 effect only with the approval of both the board and the commissioner, and
20 THE ASSOCIATION may ~~be made~~ DELEGATE ITS POWERS AND DUTIES only
21 to a corporation, association, or organization ~~which~~ THAT extends
22 protection not substantially less favorable and effective than ~~that~~ THE
23 PROTECTION provided by this ~~article~~ ARTICLE 20.

24 **SECTION 10.** In Colorado Revised Statutes, 10-20-111, **amend**
25 (1) introductory portion, (1)(c), and (2) as follows:

26 **10-20-111. Powers and duties of the commissioner.** (1) In
27 addition to any other powers and duties specified in this ~~article~~ ARTICLE

1 20, the commissioner shall:

2 (c) In any liquidation proceeding involving a domestic MEMBER
3 insurer, be appointed as the liquidator.

4 (2) The commissioner may suspend or revoke, after notice and
5 hearing, the certificate of authority OR LICENSE to transact insurance OR
6 THE BUSINESS OF A HEALTH MAINTENANCE ORGANIZATION in this state of
7 any member insurer ~~which~~ THAT fails to pay an assessment when due,
8 FAILS TO REMIT FEES COLLECTED UNDER SECTION 10-20-106 (3)(a) WHEN
9 DUE, or fails to comply with the plan of operation. As an alternative, the
10 commissioner may levy a forfeiture on any member insurer ~~which~~ THAT
11 fails to pay an assessment when due ~~Such~~ OR REMIT FEES COLLECTED
12 UNDER SECTION 10-20-106 (3)(a) WHEN DUE. THE forfeiture shall not
13 exceed five percent of the unpaid assessment OR UNREMITTED FEES per
14 month, but no forfeiture shall be less than one hundred dollars per month.

15 **SECTION 11.** In Colorado Revised Statutes, 10-20-112, **amend**
16 (1) introductory portion, (1)(a)(III), (1)(c), (2), (3), and (6) as follows:

17 **10-20-112. Prevention of insolvencies.** (1) To aid in the
18 detection and prevention of MEMBER insurer insolvencies, it ~~shall be~~ IS the
19 duty of the commissioner:

20 (a) To notify the commissioners of all the other states, territories
21 of the United States, and the District of Columbia when action is taken in
22 any of the following matters against a member insurer:

23 (III) Issuance of a formal order that ~~such~~ THE member insurer
24 restrict its premium writing, obtain additional contributions to surplus,
25 withdraw from the state, reinsure all or any part of its business, or
26 increase capital, surplus, or any other account for the security of
27 ~~policyholders~~ OWNERS, CERTIFICATE HOLDERS, ENROLLEES, or creditors.

1 ~~Such~~ THE COMMISSIONER SHALL MAIL THE notice ~~shall be mailed~~ to all
2 commissioners within thirty days following the action taken or the date
3 on which ~~such~~ THE action occurs.

4 (c) To report to the board when the commissioner has reasonable
5 cause to believe from an examination, whether completed or in process,
6 of a member ~~company~~ INSURER that ~~such~~ THE member ~~company~~ INSURER
7 may be an impaired or insolvent insurer;

8 (2) The commissioner may seek the advice and recommendations
9 of the board concerning any matter affecting ~~said~~ THE commissioner's
10 duties and responsibilities regarding the financial condition of member
11 insurers and companies seeking admission to transact insurance OR
12 HEALTH MAINTENANCE ORGANIZATION business in this state.

13 (3) UPON THE COMMISSIONER'S REQUEST, the board shall ~~upon~~
14 ~~request of the commissioner~~, report and make recommendations to the
15 commissioner upon any matter germane to the solvency or liquidation of
16 any member insurer or germane to the solvency of any company seeking
17 to do ~~an~~ insurance OR HEALTH MAINTENANCE ORGANIZATION business in
18 this state. ~~Such~~ THE reports and recommendations ~~shall~~ ARE not ~~be~~
19 ~~considered~~ public documents.

20 (6) The board may make recommendations to the commissioner
21 for the detection and prevention of MEMBER insurer insolvencies.

22 **SECTION 12.** In Colorado Revised Statutes, 10-20-113, **amend**
23 (1)(d) as follows:

24 **10-20-113. Credits for assessments paid - tax offsets.**

25 (1)(d)(I) Each member insurer writing health insurance ~~is required to~~ OR
26 HEALTH MAINTENANCE ORGANIZATION POLICIES OR CONTRACTS MAY
27 recoup over a reasonable length of time a sum reasonably calculated to

1 recoup the assessments paid by the member insurer under this ~~article~~
2 ARTICLE 20, OTHER THAN THE ASSESSMENTS SATISFIED FROM THE HEALTH
3 BENEFIT PLAN FUND, by ~~way of~~ IMPOSING a surcharge on premiums
4 charged for health insurance OR HEALTH MAINTENANCE ORGANIZATION
5 policies OR CONTRACTS to which this ~~article~~ ARTICLE 20 applies. Amounts
6 recouped ~~shall~~ ARE not ~~be considered~~ premiums for any other purpose,
7 including the computation of gross premium tax or agent's commission.

8 (II) A MEMBER INSURER THAT IMPOSES A SURCHARGE UNDER
9 SUBSECTION (1)(d)(I) OF THIS SECTION SHALL INCLUDE the amount of the
10 surcharge ~~shall be filed~~ as part of ~~an~~ THE MEMBER insurer's rate filing
11 pursuant to section 10-16-107 (1). ~~Such~~ THE MEMBER INSURER MUST
12 SHOW THE surcharge ~~must be shown~~ in the rate filing as a separate
13 component of the rate and shall include supporting documentation.

14 (III) ~~Such member insurers who collect~~ A MEMBER INSURER THAT
15 COLLECTS surcharges in excess of assessments paid pursuant to this ~~article~~
16 ARTICLE 20 for an insolvent insurer shall remit the excess to the
17 association as an additional assessment within one hundred twenty days
18 after the end of the collection period as determined by the association.
19 The ASSOCIATION SHALL APPLY THE excess ~~shall be applied~~ AMOUNT to
20 reduce future assessments for that MEMBER insurer in the appropriate
21 category.

22 (IV) ~~Any such member insurer may omit the collection of the~~
23 ~~surcharge in any year from its insureds when the expense of collecting the~~
24 ~~surcharge in any such year would exceed the amount of the surcharge.~~
25 ~~However, nothing in this paragraph (d) shall relieve the member insurer~~
26 ~~of its ultimate obligation to recoup the amount of the surcharge otherwise~~
27 ~~collectible from any such previous year.~~

1 **SECTION 13.** In Colorado Revised Statutes, **amend** 10-20-114
2 as follows:

3 **10-20-114. Miscellaneous provisions.** (1) Nothing in this ~~article~~
4 ARTICLE 20 reduces the liability for unpaid assessments of the insureds of
5 an impaired or insolvent insurer operating under a plan with assessment
6 liability.

7 (2) The association must keep records of all meetings of the board
8 ~~of directors~~ to discuss the activities of the association in carrying out its
9 powers and duties pursuant to section 10-20-108. Records of ~~such~~ THE
10 meetings may be made public only upon the termination of a liquidation,
11 rehabilitation, or conservation proceeding involving the impaired or
12 insolvent insurer, upon the termination of the impairment or insolvency
13 of the MEMBER insurer, or upon the order of a court of competent
14 jurisdiction. Nothing in this subsection (2) limits the duty of the
15 association to render a report of its activities under section 10-20-115.

16 (3) For the purpose of carrying out its obligations under this
17 ~~article~~ ARTICLE 20, the association is deemed a creditor of the impaired
18 or insolvent insurer to the extent of assets attributable to covered policies
19 AND COVERED CONTRACTS, reduced by any amounts to which the
20 association is entitled as assignee or subrogee pursuant to section
21 10-20-108 (12). Assets of the impaired or insolvent insurer attributable
22 to covered policies AND COVERED CONTRACTS shall be used to continue
23 all covered policies AND COVERED CONTRACTS and pay all contractual
24 obligations of the impaired or insolvent insurer as required by this ~~article~~
25 ARTICLE 20. "Assets OF THE IMPAIRED OR INSOLVENT INSURER attributable
26 to covered policies AND COVERED CONTRACTS", as used in this subsection
27 (3), ~~are~~ MEANS that proportion of the assets ~~which~~ THAT the reserves that

1 should have been established for ~~such~~ THE policies OR CONTRACTS bear
2 to the reserves that should have been established for all policies ~~of~~
3 ~~insurance~~ OR CONTRACTS written by the impaired or insolvent insurer.

4 (3.5) As a creditor of an impaired or insolvent insurer as
5 established in this section and consistent with section 10-3-533, the
6 association and other similar associations are entitled to receive a
7 disbursement of assets out of the marshaled assets from time to time as
8 the assets become available to reimburse the association, as a credit
9 against contractual obligations under this ~~article~~ ARTICLE 20. If the
10 liquidator has not made an application to the receivership court for
11 approval of a proposal to disburse assets out of marshaled assets to
12 guaranty associations having obligations because of the insolvency within
13 one hundred twenty days after a final determination of insolvency of ~~an~~
14 A MEMBER insurer by the receivership court, the association may apply to
15 the receivership court for approval of its own proposal to disburse these
16 assets.

17 (4) (a) Prior to the termination of any rehabilitation, conservation,
18 or liquidation proceeding, the court may take into consideration the
19 contributions of the respective parties, including the association,
20 shareholders, ~~and policyholders~~ OWNERS, CERTIFICATE HOLDERS, OR
21 ENROLLEES of the impaired or insolvent insurer, and any other party with
22 a bona fide interest, in making an equitable distribution of the ownership
23 rights of the insolvent insurer. In ~~such~~ MAKING a determination
24 ~~consideration~~ UNDER THIS SUBSECTION (4)(a), THE COURT shall ~~be given~~
25 ~~to~~ CONSIDER the welfare of the ~~policyholders~~ OWNERS, CERTIFICATE
26 HOLDERS, OR ENROLLEES of the continuing or successor MEMBER insurer.

27 (b) ~~No~~ A distribution SHALL NOT BE MADE to stockholders, if any,

1 of an impaired or insolvent insurer ~~shall be made until and unless~~ the total
2 amount of valid claims of the association ~~with~~ FOR REIMBURSEMENT,
3 INCLUDING interest, ~~thereon for~~ OF funds expended in carrying out its
4 powers and duties pursuant to section 10-20-108 with respect to the
5 IMPAIRED OR INSOLVENT insurer, have been fully recovered by the
6 association.

7 (5) (a) If an order for rehabilitation or liquidation of ~~an~~ A MEMBER
8 insurer domiciled in this state has been entered, the receiver appointed
9 under ~~such~~ THE order ~~shall have~~ HAS a right to recover on behalf of the
10 MEMBER insurer, from any affiliate that controlled it, the amount of
11 distributions, other than stock dividends paid by the MEMBER insurer on
12 its capital stock, made at any time during the five years preceding the
13 petition for liquidation, subject to the limitations of ~~paragraphs (b) to (d)~~
14 ~~of this subsection (5)~~ SUBSECTIONS (5)(b) TO (5)(d) OF THIS SECTION.

15 (b) ~~No such~~ A distribution ~~shall be~~ DESCRIBED IN SUBSECTION
16 (5)(a) OF THIS SECTION IS NOT recoverable if the MEMBER insurer shows
17 that ~~when paid~~ the distribution, WHEN IT WAS PAID, was lawful and
18 reasonable and that the MEMBER insurer did not know, and could not
19 reasonably have known, that the distribution might adversely affect the
20 ability of the MEMBER insurer to fulfill its contractual obligations.

21 (c) Any person who was an affiliate ~~which~~ THAT controlled the
22 MEMBER insurer at the time the distributions were paid ~~shall be~~ IS liable
23 up to the amount of distributions ~~such~~ THE person received. Any person
24 who was an affiliate ~~which~~ THAT controlled the MEMBER insurer at the
25 time the distributions were declared ~~shall be~~ IS liable up to the amount of
26 the distributions ~~such~~ THE person would have received if ~~said~~ THE
27 distributions had been paid immediately. If two or more persons are liable

1 with respect to the same distributions, they ~~shall be~~ ARE jointly and
2 severally liable.

3 (d) The maximum amount recoverable under this subsection (5)
4 is the amount needed, in excess of all other available assets of the
5 impaired or insolvent insurer, to pay the contractual obligations of the
6 impaired or insolvent insurer.

7 (e) If any person liable pursuant to ~~paragraph (c) of this subsection~~
8 ~~(5)~~ SUBSECTION (5)(c) OF THIS SECTION is insolvent, all of its affiliates
9 ~~which~~ THAT controlled it at the time the distribution was paid ~~shall be~~ ARE
10 jointly and severally liable for any resulting deficiency in the amount
11 recovered from the insolvent affiliate.

12 (6) Nothing in this ~~article shall be construed to make~~ ARTICLE 20
13 IMPOSES ANY LIABILITY OR RESPONSIBILITY ON the state of Colorado ~~in~~
14 ~~any way liable~~ for the obligations of the life and health insurance
15 protection association or the unpaid claims of impaired or insolvent ~~life~~
16 ~~and health insurance companies~~ INSURERS.

17 **SECTION 14.** In Colorado Revised Statutes, **amend** 10-20-119
18 as follows:

19 **10-20-119. Prohibited advertisement of association article in**
20 **insurance sales - notice to owners, certificate holders, and enrollees.**

21 ~~No~~ A person, including ~~an~~ A MEMBER insurer AND ANY agent or
22 affiliate of ~~an~~ A MEMBER insurer, shall NOT make, publish, disseminate,
23 circulate, or place before the public, or cause directly or indirectly to be
24 made, published, disseminated, circulated, or placed before the public, in
25 any newspaper, magazine, or other publication, or in the form of a notice,
26 circular, pamphlet, letter, or poster, or over any radio station or television
27 station, or in any other way, any advertisement, announcement, or

1 statement, written or oral, ~~which~~ THAT uses the existence of the life and
2 health insurance protection association for the purpose of sales,
3 solicitation, or inducement to purchase any form of insurance OR OTHER
4 COVERAGE covered by the ~~"Life and Health Insurance Protection
5 Association Act"~~ THIS ARTICLE 20. However, this section ~~shall~~ DOES not
6 apply to the association or any other entity ~~which~~ THAT does not sell or
7 solicit insurance OR COVERAGE BY A HEALTH MAINTENANCE
8 ORGANIZATION.

9 (2) ~~By December 1, 1991,~~ The association shall prepare a
10 summary document, IN COMPLIANCE WITH SUBSECTION (3) OF THIS
11 SECTION, describing the general purposes and current limitations of this
12 ~~article, and such summary document shall be in compliance with
13 subsection (3) of this section.~~ Such ARTICLE 20. THE ASSOCIATION SHALL
14 SUBMIT THE summary document ~~shall be submitted~~ to the commissioner
15 for approval. Sixty days after receiving ~~such~~ approval FROM THE
16 COMMISSIONER, each member ~~shall~~ INSURER, when delivering a policy or
17 contract as described in section 10-20-104 (2)(a) to a ~~policyholder or
18 contract holder~~ AN OWNER, A CERTIFICATE HOLDER, OR AN ENROLLEE,
19 SHALL deliver ~~such~~ THE summary document concurrently WITH or ~~prior
20 to the delivery of such~~ BEFORE DELIVERING THE policy or contract ~~except
21 when~~ UNLESS subsection (4) of this section applies. The MEMBER INSURER
22 SHALL ALSO MAKE THE summary document ~~shall also be~~ available upon
23 request by a ~~policyholder~~ AN OWNER, A CERTIFICATE HOLDER, OR AN
24 ENROLLEE. The distribution, delivery, or contents or interpretation of the
25 summary document ~~shall~~ DOES not mean that either the policy or the
26 contract or the ~~holder thereof~~ OWNER, CERTIFICATE HOLDER, OR ENROLLEE
27 will be covered in the event of impairment or insolvency of a member

1 insurer. The ASSOCIATION SHALL REVISE THE summary document ~~shall be~~
2 ~~revised by the association pursuant to~~ AS NECESSARY BASED ON
3 amendments to this ~~article~~ ARTICLE 20 or as other circumstances may
4 require. Failure to receive this summary document does not give a
5 ~~policyholder, a contract holder, or~~ AN OWNER, A CERTIFICATE HOLDER, an
6 insured, OR AN ENROLLEE any rights other than those stated in this ~~article~~
7 ARTICLE 20.

8 (3) The summary document prepared pursuant to subsection (2)
9 of this section ~~shall~~ MUST contain a clear and conspicuous disclaimer on
10 its face. The commissioner shall establish the form and content of the
11 disclaimer. The disclaimer ~~shall~~ MUST:

12 (a) State the name and address of the association and the division
13 of insurance;

14 (b) Prominently warn the ~~policyholder or contract holder~~ OWNER,
15 CERTIFICATE HOLDER, OR ENROLLEE that the association may not cover the
16 policy OR CONTRACT or, if coverage is available, ~~such~~ THE policy OR
17 CONTRACT may be subject to substantial limitations and exclusions and
18 ~~shall be~~ IS conditioned on the continued residence in the state by the
19 ~~policyholder or contract holder~~ OWNER, INSURED, CERTIFICATE HOLDER,
20 OR ENROLLEE;

21 (c) State that the MEMBER insurer and its agents are prohibited by
22 law from using the existence of the association for the purpose of sales,
23 solicitation, or inducement to purchase any form of insurance OR HEALTH
24 MAINTENANCE ORGANIZATION COVERAGE;

25 (d) Emphasize that the ~~policyholder or contract holder~~ OWNER,
26 CERTIFICATE HOLDER, OR ENROLLEE should not rely on coverage by the
27 association when selecting ~~an~~ A MEMBER insurer; AND

1 (e) Provide other information as directed by the commissioner.

2 (4) ~~No~~ A MEMBER insurer or agent ~~may~~ OF A MEMBER INSURER
3 SHALL NOT deliver a policy or contract THAT IS described in section
4 10-20-104 (2)(a) but excluded under section 10-20-104 (2)(b)(I) from
5 coverage under this ~~article~~ ARTICLE 20, unless the MEMBER insurer or
6 agent, ~~prior to~~ BEFORE or at the time of delivery, gives the ~~policyholder~~
7 ~~or contract holder~~ OWNER, CERTIFICATE HOLDER, OR ENROLLEE a separate
8 written notice ~~which~~ THAT clearly and conspicuously discloses that the
9 policy or contract is not covered by the association. The commissioner
10 shall specify the form and content of the notice.

11 **SECTION 15.** In Colorado Revised Statutes, **amend** 10-20-120
12 as follows:

13 **10-20-120. Prospective application.** This ~~article shall~~ ARTICLE
14 20 DOES not apply to any MEMBER insurer ~~which~~ THAT is declared
15 insolvent ~~before July 1, 1991~~ BEFORE THE EFFECTIVE DATE OF THIS
16 SECTION, AS AMENDED.

17 **SECTION 16. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.