

## PROJECT HISTORY - 2017

### LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT (#520)

#### 1. Description of the Project, Issues Addressed, etc.

On December 13, 2016, Executive (EX) Committee and Plenary adopted two new charges for the Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force:

- Evaluate and consider the changing marketplace of long-term care (LTC) products and the potential guaranty fund impact.
- Evaluate the need for amendments to the *Life and Health Insurance Guaranty Association Model Act* (#520) to address issues arising in connection with the insolvency of LTC insurers.

The charges were adopted in response to issues arising out of the Penn Treaty Network of America Insurance Company insolvency and other potential insolvencies involving LTC insurance.

On December 15, 2016, the Working Group requested comments regarding the new charges. Eleven comments were received by the February 7, 2017, deadline. The primary concerns raised by the comments involved guaranty association assessments on LTC insurance insolvencies and guaranty association coverage of LTC insurance. Specific issues that were identified included:

- The need to expand the assessment base.
- Whether to include health maintenance organizations (HMOs) as guaranty association members.
- Guaranty associations' ability to modify LTC insurance benefits and provide alternative policies.
- Clarifying the application of the "Moody's Limitation" to LTC insurance.
- Premium rate increases by guaranty associations.
- The allocation of premiums between the guaranty association and liquidator.

In addition, the National Organization of Life and Health Guaranty Associations (NOLHGA) gave a presentation of background information on LTC insurance on March 30, 2017.

The Working Group discussed the comments at the April 2017 NAIC Spring National Meeting in Denver, and on four conference calls held in May 2017 and June, 2017. The Working Group determined that changes were needed to Model #520 and submitted a Request for NAIC Model Law Development on June 21, 2017. The request proposed amendments to Model #520 to address guaranty association assessments, coverage issues, and the potential inclusion of HMOs as guaranty association members.

On its July 10, 2017, conference call, the Working Group supported the concepts of aggregating the life/annuity and health insurance accounts and including HMOs as members of the guaranty association, subject to the NAIC's approval of the Request for NAIC Model Law Development. At the 2017 Summer National Meeting, the Executive (EX) Committee approved the request to revise Model #520. The Working Group formed a drafting group, which included regulators, receivers and the industry representatives.

#### 2. Name of Group Responsible for Drafting the Model and States Participating

The Receivership and Insolvency (E) Task Force is responsible for Model #520. The 2017 members of the Task Force include: New Jersey (Chair); Texas (Vice Chair), Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Utah, Washington and Wisconsin.

The Receivership Model Law (E) Working Group evaluated the issues and completed the amendments to Model #520. The 2017 members of the Working Group include: Texas (Chair), Washington (Vice Chair); Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, Pennsylvania, Utah, and Wyoming.

The amendments to Model #520 were drafted by an informal drafting group of the Receivership Model Law (E) Working Group. The conference calls and interim meeting participation included attendees representing 12 state insurance departments and 35 interested parties including life and health industry trade groups, life insurers, health insurers, HMOs, guaranty associations, receivers, consumer representatives, health care provider trade groups and academics. The attendees were as follows:

- State Insurance Regulators: Arkansas; Colorado; Connecticut; Florida; Maine; Michigan; Missouri; New Jersey; Pennsylvania; Texas; Utah; and Washington.
- Interested Parties: Aetna Inc.; American Council of Life Insurers (ACLI); American Hospital Association (AHA); American Medical Association (AMA); America's Health Insurance Plans (AHIP); Anthem Blue Cross and Blue Shield of Connecticut; Arbor Strategies LLC; Blue Cross and Blue Shield Association (BSBCA); California Health Advocates; Cantilo & Bennett LLP; Center for Insurance Research; Cigna; Delaware Life and Health Insurance Guaranty Association; Delta Dental Plans Association; Faegre Baker Daniels LLP; GHR Consulting, LLC; Health Care Services Corporation (HCSC); Kaiser Permanente; Katten Muchin Rosenman LLP; Lewis Roca Rothgerber Christie LLP; Life Insurance Guaranty Corp of New York; Mark Pratt Consulting LLC; Maryland Life and Health Guaranty Association; Michigan Life and Health Guaranty Association; Morgan Lewis & Brockius LLP; Mutual of Omaha; National Organization of Life and Health Guaranty Association (NOLHGA); New York Life Insurance Company; Northwestern Mutual Life Insurance Company; Priority Health; Protective Life Corp.; Risk Regulatory Consulting LLC (RRC); RPGLTC Services, LLC; Sonya Larkin-Thorne (Consumer Advocate); United American Insurance Company; United Health Group; and the University of Connecticut School of Law.

### **3. Project Authorized by What Charge and Date First Given to the Group**

The Receivership and Insolvency (E) Task Force is charged with addressing any issues that affect receivership law.

In 2017, the Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force was charged to:

- Evaluate and consider the changing marketplace of LTC products and the potential guaranty fund impact.
- Evaluate the need for amendments to Model #520, to address issues arising in connection with the insolvency of LTC insurers.

### **4. A General Description of the Drafting Process and Due Process**

- a. The Working Group held eight conference calls between February 2017 and August 2017 and meetings at the NAIC Spring National Meeting and Summer National Meeting, during which the issues were evaluated, and the plan was decided for drafting amendments to Model #520. On July 10, 2017, the Receivership Model Law (E) Working Group formed a drafting group to draft the amendments to Model #520, contingent upon the approval of the Request for NAIC Model Law Development. The Executive (EX) Committee approved the request at the 2017 Summer National Meeting.
- b. The drafting group held 12 conference calls and an interim meeting between September 2017 and October 2017 to draft the amendments to Model #520. Written comments were received during the drafting process from ACLI, AHIP, AMA, Arbor Strategies, LLC, Cantilo and Bennett, LLP, Kaiser Permanente, Morgan Lewis Brockius LLP, NOLHGA, Colorado Division of Insurance, Maine Bureau of

Insurance, and the Washington Office of the Insurance Commissioner.

- c. The Working Group held a conference call on Oct. 27, 2017, at which time it received a report of the drafting group and exposed the draft amendments for a 30-day public comment period ending Nov. 27, 2017. Written comments on the exposure draft were received from Alliance for Community Health Plans (ACHP), AHA, joint comment letter from ACLI and Arbor Strategies LLC, BCBSA, Cantilo & Bennett LLP, Health Partners, and Kaiser Permanente. Technical edits were received from NAIC legal staff, BCBSA and NOLHGA.
- d. The Working Group and the Receivership and Insolvency (E) Task Force held a joint conference call on Nov. 29, 2017. During the call, discussion on the amendments was heard from interested parties and interested regulators. The Working Group agreed to make certain non-substantive technical edits. No substantive changes were made to the amendments. The Working Group and the Task Force adopted the amendments to Model #520 on Nov. 29, 2017.
- e. The Financial Condition (E) Committee received one comment letter from Kaiser Permanente. No changes were made to the amendments. The Financial Condition (E) Committee adopted the amendments to Model #520 on December 4, 2017.
- f. The Executive (EX) Committee and Plenary adopted the amendments to Model #520 in December 2017.

## 5. A Discussion of the Significant Issues

- a. Timeline: Members of the Receivership Model Law (E) Working Group and numerous interested parties urged that amendments to Model #520 be developed and adopted by the NAIC as expeditiously as possible. It was noted that legislation to amend life and health insurance guaranty acts was anticipated in some states as early as January 2018, regardless of whether the NAIC revised Model #520. Some interested parties suggested that the Working Group take more time to draft the amendments to fully consider all of the potential ramifications of the proposed changes.

***The Working Group concluded that it was imperative that it complete its amendments before the end of 2017, so the revised Model could be considered in the 2018 legislative sessions.***

- b. Adding HMOs as Member Insurers: The Working Group considered comments favoring and opposing the inclusion of HMOs as members of the guaranty association. See *NAIC Proceedings – Summer 2017, Receivership and Insolvency (E) Task Force, Attachment Three*. The following summarizes some of the key arguments.

Arguments in support of HMO membership in guaranty associations included, but were not limited to the following:

- Some states already include HMOs in their life and health guaranty association.
- The marketplace for HMOs and major medical carriers is similar, both types of carriers now largely write network-based managed care policies, and the distinctions between them have diminished or in many markets are non-existent. As HMOs compete with major medical carriers, there is no compelling public policy to exclude HMOs. There are concerns that large health insurance groups could move business to their HMOs to avoid assessments.
- As illustrated by health cooperative insolvencies, consumers and providers are at risk without guaranty association coverage. When HMOs become insolvent, claims of medical providers and are often unpaid, and consumers have been improperly billed for unpaid medical services, despite hold-harmless provisions. Some states have even enacted emergency legislation – similar to traditional guaranty association coverage and often partially funded by health insurers - upon the insolvency of

state HMOs to ensure continued care of members and payment of providers.

- If only LTC insurance writers are assessed, there might not be enough capacity to absorb future LTC insurance insolvencies. Broadening the assessment base would simplify the guaranty association system by providing more uniformity and enhance the overall stability of the system.

Arguments opposing HMO membership in guaranty associations included, but were not limited to the following:

- There is no nexus between HMOs and LTC insurance; HMOs do not write LTC insurance policies and should not be assessed for a line of business they do not write.
- HMOs have a significant non-profit sector, and it is not good public policy for non-profits to subsidize for-profit enterprises;
- HMO enrollees are already protected through hold harmless provisions with contracted providers or other regulatory provisions.
- Other NAIC models treat HMOs differently than insurance. There are complexities surrounding tax treatment and insolvency protections in state laws.

***After considering the comments, the Working Group concluded that HMOs should be included as members largely for the reasons discussed above and because it was believed that distinctions regarding HMOs tax and non-profit status could be addressed through alternate provisions depending upon each state's market and existing laws.***

- c. Assessment Split: The Working Group considered alternative methodologies for Class B (claims payment) assessments for LTC insurance insolvencies. The options included different approaches for aggregating the life/annuity and health insurance accounts for LTC insurance insolvencies and including HMOs as members of the guaranty association.
  - The ACLI and certain large health insurers/groups proposed a compromise assessment methodology for LTC insurance insolvency assessments that would: increase the assessment base across the board by adding life and annuity premiums to the assessment base; and create a statutory 50% / 50% split of any needed assessment between life and health insurer members with the inclusion of HMOs as member health insurers.
  - Kaiser Permanente proposed an assessment methodology based on the proportion of LTC insurance premium written in the state, similar to the calculation in Model #520 for other lines.

***As the 50%/50% proposal with the inclusion of life and annuity premiums and HMOs would provide a broader and more predictable assessment base on a nationwide basis, would more equitably align assessments by reducing the current burden that is disproportionately on health insurers, and was widely supported by life and large health insurers, the Working Group adopted this methodology.***

## 6. Any Other Important Information

The material changes to Model #520 are described below.

### a. Guaranty Association Membership:

- HMOs are added to the definition of “member insurer” in Section 5M, and the exclusion of HMOs from the Act is removed. A reference to HMO business is added to Section 6A, Creation of the Association.
- A new definition for “health benefit plan” is added to Section 5J, which includes HMO subscriber contracts. This definition is consistent with other similar NAIC model definitions.

- Board membership is increased in Section 7A to account for HMO members. The drafting note gives states flexibility to address fair representation of membership on the board.

b. Assessments

- In the current Model, only the health account is assessed for LTC insurance insolvencies. In the revised Section 9C(2), Class B assessments for LTC insurance insolvencies are shared with the life account. The assessment methodology results in a 50% / 50% split between insurers of the life/annuity and health accounts. This formula factors in the assessments of life and annuity member insurers from the health account, and the assessments of health and HMO member insurers from the life account.
- The assessment methodology is to be included in the Plan of Operation, which is approved by the commissioner under the existing approval process of the state.
- The \$300 limitation on Class A assessments in Section 9C(1) is eliminated, to give boards flexibility to address Class A assessments as appropriate in each state. It was noted that some states have deleted this limitation.
- A pre-funding concept for health benefit plans is mentioned in the drafting note to Section 9. A provision based on this concept was not included in Model #520, however, as there was no consensus for pre-funding, and it may be appropriate only in certain states.
- There is an optional provision for the recoupment of assessments in Section 13B. Surcharges may be considered where a member insurer is exempt from tax liability, and unable to take a tax offset. The drafting note addresses considerations for tax-exempt member insurers, such as some HMOs.

c. Coverage and Limitations

- Section 3A(1) specifies that coverage under the Act applies to health care providers rendering services covered by a health insurance policy or certificate to which the Act applies (which includes HMO certificates). Section 3A(2) extends coverage to HMO enrollees.
- Section 3B(2)(m) excludes Medicaid from guaranty association coverage, similar to the current exclusion of Medicare. Section 3B(3) and the Drafting Note clarify that the “Moody’s Limitation” in Section 3B(2)(c) is not intended to apply to any portion of a policy or contract (including a rider) that provides LTC insurance or any other health insurance benefits.
- Section 3C(2)(a)(ii) and 3C(2)(d) clarify that “disability insurance” is intended to mean disability income insurance, which is consistent with the historical interpretation. The term “basic hospital, medical and surgical insurance or major medical insurance” is replaced with new definition of “health benefit plan” to encompass benefits provided by HMOs.
- Section 3C(2)(g) clarifies that LTC insurance riders to life and annuity contracts are considered the same as the base policy or contract.

d. Rates

- Section 8L(9)(c) clarifies that guaranty associations have the authority to file for rate or premium increases.
- Section 8B(2)(d) and (f) require that rates for substitute or reissued coverage must be “actuarially justified”.
- A requirement for approval of rates by the receivership court in Section 8B(2)(e) is deleted.

e. General Changes

- The Drafting Note in Section 2 is clarified to state that the purposes of the act include: (1) having sufficient assessment capacity for all insolvencies, and (2) assessing insurers in a fair and reasonable

manner.

- Throughout Model #520, amendments were made to insert terminology for “contract,” “enrollee,” “certificate,” “health maintenance organization,” “health benefit plan,” “reissue,” “health care providers”, etc., as applicable to address the addition of HMOs as member insurers.
- Outdated language with regard to “identical ...premium” is removed from Section 8B(2)(a).

## **PROJECT HISTORY – 2016**

### **LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT (#520)**

#### **1. Description of the Project, Issues Addressed, etc.**

At the 2013 Summer National Meeting, the Rhode Island Insurance Division requested that the Receivership and Insolvency

(E) Task Force study the topic of guaranty fund coverage of life settlements and factored structured settlements.

At the 2013 Fall National Meeting, the Task Force heard presentations about life settlements and factored structured settlements from industry trade groups, including the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA), the National Structured Settlements Trade Association (NSSTA), the Life Insurance Settlement Association (LISA) and the American Council of Life Insurers (ACLI). Life settlements and factored structured settlements were identified as being different types of products. The Task Force limited its focus to factored structured settlements.

The Task Force postponed further discussion on the topic until 2015, when the ACLI had completed its own policy discussion. The ACLI presented clarifications for Model #520 to the Task Force at the 2015 Spring National Meeting for discussion purposes. The Task Force requested comments on the topic and received no objection to proceeding with revisions to Model #520. The Task Force submitted a Request for Model Law Development, which was adopted by the Executive (EX) Committee on Nov. 20, 2015.

The Task Force proposed to amend applicable sections of Model #520, including Section 3(A)5 and Section 3(B)2, as well as any other sections deemed relevant to this topic, to provide clarity with regard to the inapplicability of guaranty association coverage to factored structured settlement annuity benefits, which are structured settlement annuity benefits that have been sold to a third-party by the original annuitant.

#### **2. Name of Group Responsible for Drafting the Model and States Participating**

The Receivership and Insolvency (E) Task Force is responsible for Model #520. The 2016 members of the Task Force include: California, Chair; Texas, Vice Chair; Alaska; Arkansas; Connecticut; Delaware; District of Columbia; Florida; Hawaii; Illinois; Indiana; Iowa; Kansas; Louisiana; Massachusetts; Michigan; Missouri; Nebraska; Nevada; New Jersey; North Carolina; Oklahoma; Pennsylvania; Puerto Rico; Utah; Washington; and Wyoming.

#### **3. Project Authorized by What Charge and Date First Given to the Group**

The Receivership and Insolvency (E) Task Force is charged with addressing any issues that affect receivership law. The issue was first identified by the Rhode Island Insurance Division on Aug. 25, 2013.

#### **4. A General Description of the Drafting Process and Due Process**

The ACLI and the NSSTA submitted potential clarifications and proposed revisions relating to the applicable sections of Model #520. The Task Force exposed the concept at the 2015 Spring National Meeting for a 60-day public comment period ending May 29, 2015. The Task Force did not receive any comments in opposition.

The revisions to Model #520 were drafted and exposed April 5, 2016, for a 60-day public comment period ending June 3, 2016. The draft revisions reflected the recommendations submitted by the ACLI and the NSSTA. Comment letters were received from the ACLI and the International Association of Insurance Receivers (IAIR). Both comment letters were in support of the revisions.

The Receivership and Insolvency (E) Task Force adopted the revisions to Model #520 on Aug. 27, 2016.  
The Financial Condition (E) Committee adopted the revisions to Model #520 on Aug. 28, 2016.

**A Discussion of the Significant Issues**

None.

**5. Any Other Important Information**

None.



## **PROJECT HISTORY - 2009**

### **LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT (#520)**

#### **1. Description of the Project, Issues Addressed, etc.**

Following the adoption of the revised Insurer Receivership Model Act in 2005, the Receivership and Insolvency Task Force realized revisions were necessary to update the guaranty association model acts for changes in the industry since 1996. The purpose of the Model is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, and to the extent provided in the Model, minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to provide an association to assess the cost of such protection among insurers.

#### **2. Name of Group Responsible for Drafting the Model and States Participating**

The Receivership and Insolvency (E) Task Force was charged with updating the Life and Health Insurance Guaranty Association Model Act during 1996. The 2008 members of the Task Force that adopted the revisions to the Model on November 4, 2008, were: Iowa (Chair at the time of adoption), Texas (Vice-Chair), Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington.

The Task Force delegated the charge to its Receivership Model Act Revision (E) Working Group. The 2008 members of the Working Group that adopted the proposed revisions to the Model during a October 21, 2008 conference call were: Pennsylvania (Chair), Arkansas, Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Massachusetts, Missouri, Nebraska, New York, Ohio, Oklahoma, Tennessee, Texas, and Utah.

#### **3. Project Authorized by What Charge and Date First Given to the Group**

Following the adoption of the revised Insurer Receivership Model Act in 2005, the Receivership and Insolvency Task Force drafted a charge to develop revisions to the NAIC's two guaranty association model acts, which was approved by the Financial Condition (E) Committee. The Task Force then delegated the charge to its Receivership Model Act Revision (E) Working Group, who first took up the Life and Health Insurance Guaranty Association Model Act during 2006.

During 2007, the NAIC created a new framework for considering and approving model law developments. The two factors necessary to receive authorization to continue drafting were: (1) whether the issue that is the subject of the model law necessitates a national standard and requires uniformity amongst all states; and (2) where NAIC members are committed to devoting significant regulator and association resources to educate, communicate and support a model that has been adopted by the membership. Further drafting was suspended until the complete review and approval process was completed at the Task Force and parent committee levels.

On September 30, 2007, it was determined by the Executive (EX) Committee that the Life and Health Insurance Guaranty Association Model Act met the criteria for development as a Model Act by NAIC.

#### **4. A General Description of the Drafting Process and Due Process**

The Receivership Model Act Revision Working Group began working on the Life and Health Insurance Guaranty Association Model Act during 2006 and continued reviewing it through 2007, with the active participation of interested parties, including guaranty funds, their associations, insurers, other industry groups and a number of experienced receivership contractors. The draft Model had also been widely distributed via e-mail to various

interested parties for an opportunity to submit written comments throughout 2006, early 2007 as well as posted for comment on the NAIC's Working Group Web page. However, during a May 30, 2007 conference call of the Task Force, the Chair advised the Working Group that it would not be able to work on the proposed revisions to the Model until the NAIC adopted a new model law process. The Task Force completed the appropriate review and paperwork according to the new process, which was subsequently exposed and adopted by E Committee. On September 30, 2007, the Executive (EX) Committee determined that the Model met the criteria for development as a Model Act and the Working Group continued discussions. Again, the Model was widely distributed via e-mail to various interested parties for comments throughout late 2007 and during 2008. Interested parties that provided written comment included: ACLI, AHIP, Arizona Life & Disability Insurance Guaranty Fund, Cantilo & Bennett LLP, Hogan & Hartson, Iowa Life & Health Insurance Guaranty Association, and NOLHGA. During an October 21, 2008, call, the Working Group adopted the proposed revisions to go before the Task Force.

During 2008, the Task Force had already provided the Working Group revisions to two sensitive and controversial topics before receiving the Working Group's adopted revisions. Interested parties that provided written comments included: ACLI, AHIP, Hogan & Hartson, and NOLHGA.

During a November 4, 2008, conference call, the Task Force exposed the revised Model for comment to interested parties and regulators and three comment letters were received. Interested parties that provided written comments were ACLI, Cantilo & Bennett LLP, and NOLHGA. The Task Force made no amendments and adopted the revised Model to be submitted to the Financial Condition (E) Committee.

On December 8, 2008, the Financial Condition (E) Committee adopted the Task Force's revised Model.

## **5. A Discussion of the Significant Issues**

The following significant issues were discussed by the Receivership Model Act Revision Working Group and Receivership and Insolvency Task Force:

### Coverage limits

Health insurance benefits-long-term care insurance coverage limits was increased from \$100,000 to \$300,000. Annuity benefits, Government Retirement Benefit Plan, Structured Settlement were all increased from \$100,000 to \$250,000. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C and Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (Commonly known as Medicare Part C and D) was specifically excluded from coverage.

## **6. Any Other Important Information**

As the Part A. Laws and Regulations of the NAIC Financial Regulation Standards and Accreditation Program only requires a regulatory framework such as contained in the NAIC's model acts on guaranty funds, the newly revised Life and Health Insurance Guaranty Association Model Act should not require a request to the Financial Regulation Standards and Accreditation (F) Committee to amend an accreditation standard.