Date: 8/3/17

Receivership Model Law (E) Working Group
Conference Call
July 10, 2017

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force met via conference call July 10, 2017. The following Working Group members participated: James Kennedy, Chair (TX); Doug Hartz, Vice Chair (WA); Steve Uhrynowycz (AR); Jack Hom (CA); Peg Brown (CO); Jon Arsenault (CT); Toma Wilkerson (FL); Kevin Baldwin (IL); Jim Armstrong and Kim Cross (IA); Christopher M. Joyce (MA); Tamara W. Kopp (MO); Christy Neighbors (NE); Peter L. Hartt and Kristine Maurer (NJ); Crystal McDonald (PA); Brett J. Barratt (UT); and Tom Glause and Linda Johnson (WY).

1. Discussed LTCI Guaranty Association Assessments and Approved the Working Group’s Direction

Nat Shapo (Katten Muchin Rosenman LLP), representing the Alliance for Community Health Plans (ACHP) and Kaiser Permanente, summarized the comment letter (Attachment x-x). Mr. Shapo said including health maintenance organizations (HMOs) is not good public policy. He said the issues raised go beyond receivership law. On the merits, he does not see a nexus between HMOs and long-term care insurance (LTCI) products. He said other interested parties—including doctors and hospitals—would need to be included in this analysis. David Link (Kaiser Permanente) said life insurers wrote about 97% of LTCI, while health insurers wrote about 3%, of which Kaiser wrote none. He said Medicare considers long-term care (LTC) to be custodial care, which is why it is not included. He said this cross-subsidy is a long-term concern the NAIC should review.

Bruce Ferguson (American Council of Life Insurers—ACLI) summarized its comment letter (Attachment x-x). In response to the argument that HMOs do not write LTCI, many ACLI members do not write LTCI but they recognize the importance of the guaranty association system and the protection it provides to consumers. If only LTCI writers are assessed, there would not be enough capacity to absorb another LTCI insolvency. He said all market participants should share the responsibly. With regard to the argument that HMOs are regulated differently, the extent to which there are different regulatory requirements should not be a consideration. For example, life and health insurers have different regulations, and a life insurer writing disability income insurance can be assessed for a major medical health insurer insolvency. HMOs are significant marketplace participants and are direct competitors with major medical carriers. He said there is no compelling public policy reason for HMOs to be excluded. He said the ACLI will work toward a solution with the Working Group.

Chris Petersen (Arbor Strategies, LLC), representing a coalition of national major medical health insurers, summarized the comment letter (Attachment x-x). He believes adding HMOs is not as complicated as has been stated. Some states already include HMOs in their life and health guaranty association. He said the recent legislation in Colorado and Florida was not difficult to draft, once all of the parties got together. He said the legislation should be drafted through one approach rather than going with one option first, and returning to the legislature with a second approach. He said including HMOs will benefit consumers. He said there have been experiences in some states where the hold harmless standards did not provide adequate protection to consumers. He said including doctors and hospitals in this process is not a complication. He said he feels the market place is very similar between HMOs and major medical carriers. He said it is not fair to major medical carriers and its consumers that a major competitor is not part of the guaranty association.

Paul Brown (Blue Cross and Blue Shield Association—BCBSA) summarized the comment letter (Attachment x-x). He said that Option One, which includes life insurers in assessments for LTCI insolvencies, would be easier to accomplish that Option 3, which includes HMOs. He said he recommends the Working Group look at both paths of including the life insurers and HMOs. He said one concern to consider with regard to including HMOs is that HMOs don’t pay premium taxes and would not be able to recoup assessments. These issues would need to be worked through.

Patrick Cantilo (Cantilo and Bennett LLP) summarized the comment letter (Attachment x-x). He suggested including the federal Centers for Medicare & Medicaid Services (CMS) in the discussion, due to the lessons learned from the health cooperatives insolvencies, where CMS was a large creditor. Regarding timing, assessments on life insurers can be addressed now and HMOs later.

Commissioner Glause said Wyoming has included HMOs as members in its guaranty association since the 1990s and has the experience of a recent HMO insolvency. He said Wyoming HMOs pay premium taxes. Ms. Johnson said Wyoming has a
Ms. Brown said the Kaiser model looks more like a contracted network model. In certain parts of Colorado, specifically in Denver, Kaiser has a staff model HMO. Mr. Link said this leaves out contractual provisions.

Mr. Kennedy asked if there was a rationale for differing treatment of HMOs based on how they are licensed or regulated. Mr. Ferguson said that the ACLI would not be interested in including Medicare and Medicaid HMOs in guaranty associations. Mr. Kennedy asked if they would be excluded as guaranty association members, or if they would be excluded for assessment purposes. Mr. Ferguson said both. Mr. Petersen said all HMOs should be part of the guaranty association, but public programs would not be assessed. If they had commercial lines, that portion would be assessed. Mr. Link said he agrees the public programs should not be assessed. He suggested excluding non-profit HMOs, which have more complexities. Mr. Hartz said the guaranty association should also include health care service corporations. He said the Working Group may need to have guidance for how to effectively bring HMOs into the guaranty association. He said non-profit HMO can only recoup assessments through members and policyholders, rather than tax offsets. Howard Shapiro (ACHP) said the issues for including HMOs are complicated as there are multiple structures. There is a difference between for-profit and non-profit HMOs. Ms. Brown said HMOs and insurers both have many structures, but they look more like each other. Mr. Cantilo suggested forming two groups to provide the means for spreading the assessment base and bringing in HMOs into the assessment base. The Working Group can then consider both. Ms. Neighbors said, in talking to industry, it appears Option 1—of the four options the Working Group put forth in regard to potential changes to the Life and Health Insurance Guaranty Association Model Act (#520)—may not be supported by the life industry. She agrees with the approach of forming a group including the industry and those involved in drafting the Colorado legislation that looks at options one and Option 3 at the same time. Mr. Cantilo said it is important to know if Option 1 is viable.

Director Hartt said the extraordinary amount of consensus between major insurers and trade groups creates an opportunity to realize and put into practice the inclusion of HMOs. He said there are good public policy reasons for including HMOs in the guaranty association. As noted by other speakers, the distinctions between HMOs and health carries have greatly diminished or disappeared in many instances. He said inclusion of HMOs in the guaranty association fulfills the charges of this Working Group, not only with respect to LTCI, but also with the Financial Stability Board’s (FSB) “Key Attributes of Effective Resolution Regimes for Financial Institutions”. Broadening the assessment base for all health insolvencies ensures policyholder protection in ways that currently does not exist and simplifies the guaranty association system by providing for more uniformity. He said, while there are practical considerations, the underlying policy purpose of including HMOs will help the Working Group fulfill its obligations under the charges.

Ms. Neighbors said life insurers want to be included in the discussions in Colorado, and she agreed it would be fairer to include life insurers in the assessment. She said she wants to continue this approach, but believes HMOs should be included for the reasons stated by Director Hartt. Director Hartt said Option 3 is preferred to address the public policy matters. He said concerns that need to be addressed in the interim can be addressed, but, at this stage, the Working Group should set a direction. Other issues can be worked out during the process of developing the model revisions.

Ms. Neighbors asked if the discussion in developing the Colorado legislation is transferable to this Working Group’s process. Ms. Brown said it is, as are the discussions within the organizations that participated. Ms. Neighbors suggested a small group look at Option 1 and Option 3 at the same time, with direct participation from the industry. Mr. Hartz agreed that an ad hoc group should look at Option 1 and Option 3 simultaneously. Mr. Kennedy suggested the Working Group formulate the general direction it is considering. He said he would like to share the Working Group’s direction and get feedback from the Long-Term Care Insurance (B/E) Task Force, the Receivership and Insolvency (E) Task Force before work begins.

Peter Gallanis (National Organization of Life and Health Guaranty Associations—NOLHGA), said NOLHGA has not taken a position on the proposals being discussed but can assist the Working Group with technical analysis. Mr. Kennedy said if HMOs are included in the guaranty associations, there is the potential for a need for guidance on other models to comport with changes to Model520.

Sonja Larkin-Thorne (Consumer Advocate) and Brenden Bridgeland (Center for Insurance Research) said they support the Working Group’s efforts on this issue.
Ms. Neighbors made a motion, seconded by Director Hartt, that the Working Group support both aggregating the life/annuity and health insurance accounts and including HMOs as members of the guaranty association and that a drafting group work with the industry to resolve issues related to achieving both goals subject to the NAIC’s approval of the Request for Model Law Development form at the Summer National Meeting. The motion passed unanimously.

Mr. Kennedy asked for volunteers for the drafting group and suggestions for the issues to be further discussed in advance of the Summer National Meeting.

2. Discussed Other Matters

Mr. Kennedy asked how the Working Group will report to the Long Term Care (B/E) Task Force. Dan Daveline (NAIC) said that while the Task Force is yet to consider its charges, it is intended to be a coordinating group, and ensure the two Committees are working together. It can provide input or direction, if requested by the Working Group.

Having no further business, the Receivership Model Law (E) Working Group adjourned.
Date: 8/3/17

Receivership Model Law (E) Working Group
Conference Call
June 21, 2017

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force met via conference call June 21, 2017. The following Working Group members participated: James Kennedy, Chair (TX); Doug Hartz, Vice Chair (WA); Steve Uhrynowycz (AR); Jack Hom (CA); Peg Brown (CO); Jon Arsenault (CT); Toma Wilkerson (FL); Jim Armstrong and Kim Cross (IA); James Stephens and Kevin Baldwin (IL); Christopher Joyce (MA); James Gerber (MI); Tamara Kopp (MO); Christy Neighbors (NE); Brendan Peppard (NJ); Joe DiMemmo and Laura Slaymaker (PA); and Brett J. Barratt (UT).

1. Discussed Options for LTC Guaranty Association Assessments

On its June 1 conference call, the Working Group requested comments on four options for consideration regarding guaranty association assessments for long-term care (LTC) insurance insolvencies (Attachment x-x). Comment letters were received from the American Council of Life Insurers (ACLI), Arbor Strategies LLC, Alliance of Community Health Plans (ACHP), Kaiser Permanente and Health Partners (Attachment x-x).

Mr. Arsenault urged the Working Group to pursue Option 3, which would include health maintenance organization (HMO) members of the guaranty association. He said if HMOs are not included, it would destabilize the assessment base available to pay health account claims due to major medical writers moving business to HMO platforms. Connecticut favors HMOs being part of the health insurance account, rather than in a separate account. He said the Working Group should engage stakeholders, the life and health insurers, and others to quickly work out a roadmap and language for Option 3. In response to concerns that Option 3 provides for a separate HMO account, Mr. Kennedy said that the Working Group should focus on the merits of including HMOs as members of guaranty associations, and the question of whether there should be a separate HMO account could be discussed at a later point.

Mr. Barrett said if addressing HMOs is a good long-term goal, it should be a good short-term goal. He said having the HMOs participate in the conversation is critical. He said Utah supports Option 3.

Ms. Brown said Colorado supports Option 3, as Colorado’s previous proposed legislation included HMOs in the guaranty association. If there is not sufficient funding for an HMO insolvency, the hold harmless provisions will not protect providers and consumers. Not including the HMOs in the guaranty association creates an anticompetitive situation in life and health insurance markets for carriers who are guaranty association members. In regulating all of the industry under a single set of rules, it makes sense to treat them equally. Mr. Hartz asked what would be the covered HMO claims in insolvency. Ms. Brown said in Colorado, even some traditional HMOs operates substantial portions of their business under a contract similar to a preferred provider network contract.

Mr. Peppard said he agreed with comments made in support of Option 3. The way HMOs operate today is substantially different from 20 years ago. They look and act more like health insurance companies. There may be differences between providing services vs. coverage for health benefits, but it practically amounts to the same thing when considering the benefit design. He said New Jersey agrees with Option 3, recognizing there is complexity and issues to deal with.

Ms. Slaymaker said Pennsylvania supports Option 1, recognizing that Option 3 may need more time to study. She suggested starting with Option 1, and then consider Option 3.

Ms. Wilkinson said she is not against including the HMOs, but the concern is that it may involve other regulatory aspects of HMOs that could delay the work on revising the Life and Health Insurance Guaranty Association Model Act (#520). While HMOs may operate more like an indemnity insurer, they are regulated as an HMO, so the implications to other regulations need to be considered.

Ms. Neighbors said Nebraska supports Option 3. Ms. Neighbors said her concern with a two-step approach would be the difficulty in getting the life insurance industry to participate without considering the HMOs, and accomplishing any results in a timely manner. She recommended an ad hoc group that includes industry to work through the issues.
Mr. Barrett, Ms. Brown and Mr. Arsenault said they agree with Nebraska. Mr. Gerber said Michigan would favor Option 1 as a first step and developing Option 3 in the future. Mr. Hartz suggested looking at both Option 1 and Option 3 at the same time. Mr. Kennedy asked if other states had opinions on the options. Mr. Uhrynnowycz, Mr. Hom, Mr. Joyce and Ms. Kopp said Arkansas, California, Massachusetts and Missouri, respectively, have not made a decision on the options. Mr. Kennedy said Texas has concerns about Option 3. Mr. Kennedy noted that there is significant commonality in states’ life and health guaranty association laws. If Model 520 was changed to include HMOs, and some states didn’t adopt the new model, there would be a lack of commonality. Ms. Brown said that since some states such as Wyoming include HMOs, there is already a lack of congruence. Mr. Baldwin said Illinois has a separate guaranty association for HMOs. He said if there is a hold harmless provision, it would not result in a covered claim. There are differences that would be difficult to work into a life and health model. Mr. Stephens said Illinois is leaning toward Option 1 but said they needs to discuss further with the Director before they finalize a decision. Mr. Kennedy said to consider Option 3 is considered, the Working Group would need to identify all of the coverage and regulatory aspects of HMO members of guaranty associations. Mr. Uhrynnowycz said given the urgency that has been expressed regarding the LTC charge, Option 3 may take too much time.

Patrick Cantilo (Cantilo & Bennett LLP) said there is no harm in starting with Option 1 and then include HMOs in Model 520, once there is a solution to Option 3. He also said that the Working Group will need to include providers in the discussions regarding Option 3.

Bruce Ferguson (ACLI) submitted a comment letter that supports a modified Option 3, which includes HMOs in the health account. The ACLI’s board of directors approved its approach after consideration by its membership and ACLI is committed to working through the issues. A two-step process of considering Options One and Three sequentially could take many years. He said lessons can be learned from Wyoming, which has HMOs in its guaranty association and has had experience with an HMO insolvent. He said he believes providers will be in favor of Option 3. He said health insurers and HMOs are offering substantially similar products and operating in the same marketplace. Treating them differently with respect to GA assessments creates a competitive imbalance in the health insurance market. Consequently, there is a concern that key participants will move to an HMO platform, leaving the health account without the capacity to fund a major insolvency going forward. He said a two-step process is unworkable, and ACLI would oppose Option 1.

David Link (Kaiser Permanente) said to the extent that HMOs are included, there is not an unfair burden placed on HMOs. Where HMOs are already in guaranty associations, those would need to be dissolved or moved into the life and health insurance guaranty association. Protections for HMOs that do not have claims would have to be addressed. Providers need to be involved in the discussion since they bear risk and have interests at issue.

Chris Petersen (Arbor Strategies LLC), representing a coalition of major medical carriers, said the Colorado draft legislation can be used to draft optional language for Model 520. The concern with the two-step approach is getting weighed down with details. He said by moving straight toward Option 3 and addressing resolutions to the other regulatory issues, the goals can be achieved more quickly.

Mr. Kennedy asked that Working Group members determine their preference for one of the options. He also asked members and interested parties to: 1) provide any responses to comment letters that have been submitted, and 2) identify issues that would need to be addressed regarding Option 3, and any potential resolutions. He requested these items in advance of the next conference call.

2. **Adopted a Model Law Development Request Form**

Mr. Hartz made a motion, seconded by Ms. Wilkinson, to adopt the model law development request form to amend the *Life and Health Insurance Guaranty Association Model Act* (#520) as drafted and exposed. Mr. Arsenault requested the form address the suggested edits included in the comment letter from the ACLI (Attachment X-x). Mr. Hartz amended his motion to adopt the form including the following statement in the purpose under #3, “Such issues may include the potential inclusion of HMOs as member insurers of a state guaranty association.” The motion was seconded by Ms. Brown and passed unanimously (Attachment X-x).

Having no further business, the Receivership Model Law (E) Working Group adjourned.

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Date: 8/3/17

Receivership Model Law (E) Working Group
Conference Call
June 1, 2017

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force met via conference call on June 1, 2017. The following Working Group members participated: James Kennedy, Chair (TX); Doug Hartz, Vice Chair (WA); Steve Ubrynowycz (AR); Jack Hom (CA); Michael Conway (CO); JonArsenault (CT); Kevin Baldwin (IL); Kim Cross (IA); Christopher Joyce (MA); James Gerber (MI); Tamara Kopp (MO); Christy Neighbors (NE); Kristine Maurer (NJ); Joe DiMemmo and Laura Slaymaker (PA); and Brett Barratt (UT).

1. Discussed Long-Term Care Insurance Guaranty Association Assessments

Bruce Ferguson, American Council of Life Insurers (ACLI), summarized the ACLI’s comment letter (Attachment x-x). ACLI’s members believe the guaranty association system needs to be preserved. They do not want to see the system dismantled or devolve into a state-by-state approach, and believe that uniformity should be emphasized. He said ACLI worked with the coalition of major medical writers in Colorado on its proposed legislation.

Chris Petersen (Arbor Strategies LLC) on behalf of a coalition of national major medical health insurers, said it is critical to address guaranty association assessment issues on a national basis. He argued that it would not be feasible to have each state guaranty association establish its own assessment methodology. Rather, assessments need to reflect certainty and predictability. There should be two goals: 1) the Life and Health Insurance Guaranty Association Model Act (#520) should be amended to reflect the new insurance market place; and 2) Model 520 should be amended to provide stability and fairness for the guaranty association system and major medical health insurers. To accomplish this, health maintenance organizations (HMOs) should be included in the assessment formula. The model should address a new assessment approach for long-term care insurance (LTCI) insolvencies that includes HMOs, life/annuity carriers and major medical health insurers. Mr. Peterson said the health insurance market place has changed significantly, with new products, competition, and changed regulatory structure. However, Model 520 currently favors HMOs over other types of health coverage with respect to assessments. This creates an unjust and inequitable situation for major medical health insurers and consumers. The exclusion of HMOs in the Model is an outdated concept. Health products compete directly and are much more similar than when the Model was first drafted. He said another concern is that if changes are not made, the marketplace will react and move more business to HMOs. The additional cost on major medical health insurers will drive more consumers to HMO products, and lower the assessment pool. Companies that directly compete with each in the same marketplace should be required to shoulder the same responsibility for the guaranty association system. HMOs with out-of-network coverage are not protected by the guaranty association system. LTCI assessments also need to be changed to address the changing market place. Major medical health insurers carry 70% of the assessment burden but only write 3% of the LTCI business. HMOs pay no assessments for LTCI insolvencies while their connection to LTCI is almost the same as major medical health insurers. The LTCI assessment base should be re-aligned and needs to consider the growth in hybrid annuity/LTCI products that make up 24% of the market and 85% of new sales. Mr. Peterson said elements of the Colorado’s proposed legislation could constitute a template for a national solution. He said the collateral is in agreement with the ACLI that an alignment is necessary.

Mr. Hartz asked how the guaranty association would cover HMOs. Mr. Peterson said they should be treated like any other health insurer. Mr. Ferguson said the ACLI’s Guiding Principle Number Six was written in the context of the surcharge that was developed with the Colorado proposed legislation. Products written by health insurers covered in the health account would be subject to the post-assessment mechanism and surcharge. The surcharge would be limited to major medical products written by health insurers or HMOs. Mr. Hartz asked if the definition of covered claims includes claims of providers. Mr. Petersen said it would cover out-of-network claims, but the working group would have to deal with the issue of provider claims subject to hold-harmless provisions. The market place has changed such that many health insurers also have hold-harmless provisions.

Mr. Gerber said the Michigan guaranty association excludes certain Medicare or Medicaid programs. He asked if these programs would be excluded from assessments. Mr. Petersen said federal law may preempt the ability to include a surcharge on federal programs. The surcharge was unique to the Colorado legislation and may not be appropriate in a national model. Mr. Ferguson said the unique aspects of the HMO market would have to be considered. Ms. Maurer said that there are concerns with federal law with regard to Medicare or Medicaid only programs. Mr. Kennedy noted that under this proposal,
HMOs could be assessed for an insolvency involving policies that they are not authorized to write. Mr. Petersen said many of the ACLI members pay assessments even though they do not have health insurance licenses.

Ms. Maurer asked if including HMOs in guaranty associations goes beyond the Working Group’s charges, which include evaluating the LTCI marketplace. This change could impact various statutory provisions, such as how statutory deposits are handled. Mr. Kennedy said the entirety of Model 520 should be considered if HMOs were included, and it would involve issues unrelated to LTCI.

Mr. Baldwin agreed that the issue of assessments should be addressed on a uniform basis, but said that the structural problem with the assessment burden on health insurers could be fixed while giving flexibility to each guaranty association’s board. The solutions may never keep up with the evolution of the products. Mr. Ferguson said the flexibility may allow radically different assessments state-to-state, which could result in instability in the guaranty association system. Mr. Kennedy said that NAIC models can have alternate provisions. This could allow each state’s legislature to decide on the process, as opposed to delegating it to the guaranty association board.

Mr. Uhrynowycz said that property and casualty guaranty associations have separate accounts, but allow borrowing among the accounts. He asked if there been any study of the benefits the health insurers have received in insolvencies from LTCI insurers paying assessments. Mr. Kennedy and Mr. Petersen said they were not aware of any study. Patrick Cantilo, Cantilo & Bennett LLP, said there haven’t been any large health insurers, so the aggregate assessment for health insolvencies has been small.

Mr. Cantilo said he would strongly caution against include HMOs because it is a broader issue than LTCI. He said he submitted a comment letter in January 2017 (see NAIC Proceedings – Spring 2017, Receivership and Insolvency (E) Task Force, Attachment One-B). The solution in his letter is to include LTCI as both a health and life insurance product so that it is assessed proportionately between the life and health accounts for LTCI insolvencies. He said his letter includes specific draft language. He suggested combining the two accounts for LTCI only. Ms. Wilkinson suggested combining the life and health accounts, but did not think that this concept should be limited to LTCI insolvencies. Ms. Wilkinson noted that Model 520 §9.E.2 provides for allocating funds when the maximum assessment is insufficient. Mr. Cantilo said borrowing is only a temporary solution, and doesn’t resolve the burden on the health account.

Mr. Kennedy said the Working Group should look at related provisions of the Insurer Receivership Model Act (#555, commonly referred to as IRMA) that would need to be enacted with any changes to Model 520. Mr. Hartz agreed that guidance should be provided to states to update corresponding provisions in states’ laws. Ms. Maurer said the broader charges of the Working Group are to evaluate necessary changes to all the receivership model laws. She said regulators need to ensure the system can handle a significant insolvency. Mr. Ferguson said ACLI supports a holistic approach.

David Link (Kaiser Permanente) said there appears to be good understanding of the practical difficulties in including HMOs and the changes that would result to the NAIC models. He said the non-HMO plans have advantages in the market place. HMOs and non-HMOs have different plan models. He said Kaiser is willing participate in discussions on policy issues.

Howard Shapiro (Alliance of Community Health Plans—ACHP), said ACHP would have concerns about including HMOs in the guaranty associations for long-term care insolvencies. There is a long history of distinguishing HMOs from other health insurers. HMOs are subject to separate solvency protections. Subjecting HMOs to assessments would increase premium costs with no benefits.

Mr. Barratt said the HMO structure has evolved over time and many look more like preferred provider organizations (PPOs). He said Utah is most interested in fairness and capacity on a prospective basis.

Mr. Hartz requested comments on why HMOs should not be included in guaranty associations. Mr. Kennedy said there are questions regarding dual licensed writers that issue HMO contracts and health insurance, as they are existing guaranty association members that have HMO products. Also, some holding company structures include both HMOs and health insurers. Mr. Kennedy said he would draft a summary of the various approaches discussed on this call and request comments on the options in advance of the next call, which will be scheduled in July.

Having no further business, the Receivership Model Law (E) Working Group adjourned.
Date: 8/3/17

Receivership Model Law (E) Working Group
Conference Call
May 16, 2017

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force met via conference call May 16, 2017. The following Working Group members participated: James Kennedy, Chair (TX); Doug Hartz, Vice Chair (WA); Steve Uhrynnowycz (AR); John Battle (CA); Peg Brown (CO); Jon Arsenault (CT); Kevin Baldwin (IL); Christopher Joyce (MA); Christine Neighbors (NE); Laura Slaymaker (PA); and Brett J. Barratt (UT).


Mr. Kennedy said comment letters were received from the International Association of Insurance Receivers (IAIR) and National Conference of Insurance Guaranty Funds (NCIGF) (Attachment x-x). Jane Koenigsman (NAIC) said the IAIR included a requested edit to the referral to Financial Analysis Handbook (E) Working Group and Financial Examiners Handbook (E) Technical Group regarding instructions for analysis and examination to ensure affiliated management, service and cost-sharing agreements; however, the language in the referral as drafted matches the language included in §19.B of the *Insurance Holding Company Model Regulation and Reporting Forms and Instructions (#450)*. Mr. Uhrynnowycz made a motion, seconded by Mr. Baldwin, to adopt the referral as drafted. The motion passed unanimously (Attachment x-x).

2. **Adopted a Recommendation on Stays and Injunctions**

Mr. Kennedy said the comment letters from the IAIR and the NCIGF also included comments on the recommendation on stays and injunctions. Barbara Cox (NCIGF) said that the NCIGF supports the recommendation and also supports modernizing special deposit language in state laws similar to §1002 of the *Insurer Receivership Model Act (#555, commonly known as “IRMA”).* Mr. Hartz made a motion, seconded by Mr. Arsenault, to adopt the recommendations on stays and injunctions to the Receivership and Insolvency (E) Task Force with a note that additional recommendations on receivership topics may follow at a later time. The motion passed unanimously (Attachment x-x).

3. **Exposed a Draft Request for Model Law Development to Amend Model #520**

Mr. Kennedy asked if there is agreement that amendments to the *Life and Health Insurance Guaranty Association Model Act (#520)* need to be considered to address long-term care (LTC) insolvency issues. Mr. Baldwin said that given the comments received previously, he agrees. Mr. Arsenault said that to the extent health maintenance organizations (HMOs) would be included in Model #520, it may affect other HMO models and that recommendations may need to be made to other groups to address issues impacts to other models. Ms. Brown said individual markets would need to be considered—i.e. differences in sickness and accident—versus HMO. Mr. Kennedy said the changes the Working Group makes may require more flexibility to recognize the differences in states’ markets.

Patrick Cantilo (Cantilo & Bennett LLP) said he recommends the Working Group not consider HMOs in Model #520 for addressing LTC insolvencies. He said assessments and the Moody’s adjustment are the two issues the Working Group should address first and are the two areas that will have the most benefit should another long-term care insurance (LTCI) insolvency occurs.

David Link (Kaiser Permanente) said if HMO members were brought into the guaranty association, they would not benefit from the assessment.

Mr. Barratt suggested the Working Group comment on guiding principles by topic. The Working Group agreed to discuss assessments first. Mr. Kennedy asked for comments on assessment issues by May 30, in advance of the next Working Group’s conference call on June 1. Mr. Kennedy said a draft request for model law development to amend Model #520 would be exposed for a 30-day public comment period ending June 16.

Having no further business, the Receivership Model Law (E) Working Group adjourned.
Date: 8/3/17

Receivership Model Law (E) Working Group
Conference Call
May 2, 2017

The Receivership Model Law (E) Working Group of the Receivership and Insolvency (E) Task Force met via conference call on May 2, 2017. The following Working Group members participated: James Kennedy, Chair (TX); Doug Hartz, Vice Chair (WA); Steve Uhrynowycz (AR); Jack Hom (CA); Jon Arsenault (CT); Belinda Miller and Toma Wilkerson (FL); Kevin Baldwin (IL); Christopher Joyce (MA); James Gerber (MI); Tamara Kopp (MO); Christine Neighbors (NE); Steve Kerner (NJ); and Laura Slaymaker (PA). Also participating were: Peg Brown and Michael Conway (CO).

1. Adopted its Spring National Meeting Minutes

Mr. Arsenault made a motion, seconded by Mr. Kerner, to adopt the Working Group’s April 8 minutes (see NAIC Proceedings – Spring 2017, Receivership and Insolvency (E) Task Force, Attachment One). The motion passed unanimously.

2. Heard Discussion on Proposed LTC Legislation in Colorado

Ms. Brown provided an overview of legislation introduced in Colorado to address long-term care insurance (LTCI) guaranty association assessments (Attachment xx-xx). The impetus for the legislation was the failure of a Colorado health cooperative. It was licensed as a sickness and accident carrier and was, therefore, a member of the Colorado life and health guaranty association. There were substantial assessments on health insurers, and under Colorado law, those health insurers were required to recoup the assessment through surcharges on health policies. This situation triggered a review of Colorado law with regard to assessment and recoupment requirements, and a discussion of issues related to LTCI insolvencies.

Mr. Conway said that Colorado proposed to a “one-dollar-fix”, that would assess $1 per policy across all life and health lines of insurance. In Colorado, that would raise $80 million in the first year. The concept would include a cap on this fund, and the ability for the guaranty association to invest funds to earn income to pay for future insolvencies. In response, the life and health insurers proposed to include HMOs in the Colorado guaranty association, and split the LTCI assessment 50%-50% between life and health. This proposal would have included the one-dollar-fix only on health insurers. Life and health insurers were tasked with drafting the proposed legislation. HMOs and other carriers raised objections to this concept.

Time ran out to address the remaining issues in the Colorado legislative session this year. Mr. Conway said the health insurers liked the one-dollar-fix as it would avoid the recoupment issue, it did not affect the medical loss ratio (MLR), and it addressed certain accounting issues. The life insurers were not in favor of the one-dollar-fix as they already build assessment funding into rates and do their own investment management. Life insurers also do not have the same per-member-per-month capacity that health insurers have because there is more variety in the types of policies, and life policies are paid in different ways.

Paul Graham (American Council of Life Insurers—ACLI) said the ACLI worked with the health insurers and the Colorado guaranty association to come up with a proposal that solved the competitive imbalance and the accounting issues regarding how assessments are handled under the federal Affordable Care Act (ACA). Mr. Conway said the 50%-50% split considers that life insurers write some health business. Wayne Mehlman (ACLI) said the Colorado bill’s percentage reflects a split of 54%-46%, which takes into account the current percentage of assessment for life insurers already. Mr. Conway said Colorado is concerned on a going forward basis that an HMO could fail. The issues are not just an issue over competition. Mr. Graham said he is not aware of any legislation similar to Colorado’s in other states at this time.

Mr. Kennedy asked if any states have HMOs as part of their guaranty association system. Bill O’Sullivan (National Organization of Life and Health Guaranty Associations—NOLHGA) and Randi Reichel (UnitedHealth Group) offered to provide a list of states with HMOs as part of their guaranty association and stand-alone HMO guaranty systems. Mr. Mehlman said that Idaho and Wyoming cover HMOs and that six states have their own health guaranty association. Ms. Neighbors said in Nebraska, the life and health guaranty act excludes HMOs unless it is controlled by another insurer.

Bart Boles (Texas Life & Health Insurance Guaranty Association) asked how the one-dollar-fix is measured (i.e., whether it is based on issue state vs. residency state), and how often it is measured and evaluated for policyholder movement between states. Mr. Conway said it is a residency requirement determined by the major medical line of business. Mr. Boles said
HMOs have a hold-harmless provision where providers are at risk, but they receive capitation payments. Mr. Boles asked if the intent of adding in the HMOs was to protect consumers or to spread the cost of insolvency. Ms. Brown said it is both. She said some large HMOs are more capitation basis; however, many health carriers also hold an HMO license, which could result in insurers moving policies to the HMO if LTCI insolvencies create large assessments. Mr. Conway said the guaranty association creates a secondary protection for providers so that providers do not fail because of an HMO failure. Mr. Conway said all insurers have a hold-harmless provision in Colorado.

3. Heard Discussion on Proposed LTC Legislation in Florida

Ms. Miller said the Florida draft legislation splits the assessment between life and health insurers, allowing premium to be assessed equally (Attachment xx-xx). Florida has a 1% cap on assessments per year, resulting in total assessments of $250 million per year. Insurers can recoup the assessment through premium tax offsets. Florida did not include HMOs in the draft bill. The intent of the bill was to broaden the assessment base. HMOs in Florida have the HMO Consumer Assistance Plan, which is designed to place consumers after insolvency, but it does not pay claims prior to the date of the insolvency.

Mr. Cantilo said if Florida HMOs are large enough to pay the assessments or whether it would impair the HMOs. Ms. Miller said there are some HMOs with thin profit margins. She said HMOs are more fee-for-service basis and fewer capitation basis. Mr. Conway said one of the indirect goals with pre-funding in Colorado was to cover the health insurers’ portion of the assessment, which would eliminate this concern for smaller HMOs; however, HMOs in Colorado did not agree the goal could be met successfully.

Mr. Kennedy asked if any Florida HMOs are dual-licensed or owned by insurance companies. Ms. Miller said they have holding companies that own health insurers and HMOs, but does not have dual-license HMOs and health insurers. With Florida HMOs, the consumer is held harmless for claims that would have been covered by the HMO. Providers carry the risk of an HMO insolvency. Mr. Cantilo said the priority of provider claims is not as clear as policyholder claims in all states. William Falck (Florida Life and Health Insurance Guaranty Association—FLAHIGA) said Florida has another bill pending related to delinquencies that includes an amendment that priority Class 2 includes physicians hospitals and health providers. Ms. Wilkinson said the bill picks up some elements of the Insurer Receivership Model Act (#555, commonly known as “IRMA”) but also clears up conflicting judicial rulings. Mr. Kennedy asked that Florida share the legislation with the Working Group members if it passes.

Ms. Miller asked what would be the overall assessment capacity of the life and health industries combined with HMOs. Mr. Hartz said a complication in aggregating this information is that some states’ HMOs are not regulated by the insurance department and do not file NAIC annual statement blanks. Jane Koenigsmann (NAIC) said the NOLHGA provided some HMO assessment information in its March 30 presentation to the Working Group (see NAIC Proceedings – Spring 2017, Receivership and Insolvency (E) Task Force, Attachment One-A1). Mr. O’Sullivan said the data was estimated and has some qualifications. If the Working Group needs more precise data, that will require additional work.

Having no further business, the Receivership Model Law (E) Working Group adjourned.
Volunteers for the Drafting Group

1. **Arkansas**: Steve Uhrynowycz
2. **Colorado**: Michael Conway, Peg Brown
3. **Connecticut**: Jon Arsenault
4. **New Jersey**: Kristine Maurer
5. **Pennsylvania**: Crystal McDonald
6. **Texas**: James Kennedy
7. **Utah**: Brett Barratt
8. **Washington**: Doug Hartz
9. **ACLI**: Bruce Ferguson, Kate Kiernan, Paul Graham
10. **Aetna**: Greg Martino
11. **AHIP**: Bob Ridgeway, Leanne Gassaway
12. **Anthem**: Christine Cappiello
13. **Arbor Strategies**: Chris Petersen
14. **BCBSA**: Paul Brown
15. **California Health Advocates**: Bonnie Burns
16. **Cantilo & Bennett, LLP**: Patrick Cantilo
17. **CIGNA**: Amy Lazzaro
18. **HCSC**: Pati McCandless
19. **Kaiser Permanente**: David Link
20. **Life Ins. Co. Guaranty Corp. of NY**: Alan Shortell
21. **Mass Mutual**: Bill Fisher
22. **NOLHGA**: Bill O’Sullivan, Peter Gallanis, Joni Forsythe
23. **Northwestern Mutual**: Mark Backe
24. **Priority Health**: Nicholas Gates
25. **United Health Care**: Randi Reichel, Jessica Walker
Receivership Model Law (E) Working Group
Potential Revisions to Address LTC Issues

A. Life and Health Insurance Guaranty Association Model Act

Section 2. Purpose
- Subsection A refers to “life and health insurance policies and annuity contracts”. A reference to HMO contracts is needed if HMOs are included as association members.

Section 3. Coverage and Limitations
- Clarify application of Moody’s limitation.
- If HMOs are included:
  - Specify residency requirements for HMO enrollees.
  - Establish amount of cap on HMO benefits.

Section 5. Definitions
If HMOs are included, new or revised definitions may be needed, e.g.:
- “account”
- “association”
- “contractual obligation”
- “covered policy”
- “impaired insurer”
- “insolvent insurer”
- “member insurer”
- “premiums”

Section 6. Creation of the Association
- If HMOs are included, specify whether HMOs are in health account, or a separate account.

Section 7. Board of Directors
- If HMOs are included, changes to composition of board of directors could be considered.

Section 8. Powers and Duties of the Association
- If HMOs are included, identify issues related to HMOs.

Section 9. Assessments
- Revise method for determining Class B assessments in case of LTC insolvency.
- If HMOs are included, address assessments for HMO insolvency.

Section 13. Credits for Assessments Paid
- If HMOs are included, address method for providing credits for assessments on HMOs.

- Specify authority of association regarding rate increases for LTC.

B. Insurer Receivership Model Act

- Inclusion of HMOs as entities subject to receivership.
- Classification of HMO enrollee and provider claims.