

11/29/21

Comments from Joni Forsythe, NOLHGA:

We were looking over the materials for the upcoming RITF meeting tomorrow and wanted to raise a concern with respect to Attachment Three, the Memo re Recently Adopted Model Amendments. We support the NAIC's outreach effort with respect the model laws, but believe there is a correction needed in the first bullet point relating to conflicts of laws. As written, it appears to contradict the actual text of IRMA section 102, which is pasted immediately below.

Here is the actual text of section 102

Section 102. Conflicts of Law

This Act, Title [XXX], and the state insurance guaranty association acts constitute this state's insurer receivership laws, and these laws shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws shall prevail.

IRMA section 102 provides that the state receivership act and the state GA acts collectively constitute the state's **insurer receivership laws**. The receivership and GA statutes are to be construed in a manner that is consistent, and if there is a conflict between these laws and other state laws, the state's **insurer receivership laws** prevail. The bullet point in the memo does not address the collective reference to receivership acts and GA acts as the state's **insurer receivership laws** and instead comments on potential conflicts between the two. This was an important and much negotiated provision that was ultimately adopted into IRMA. We would ask that the memo be adjusted to reflect that correction. The language noted in blue below could be used in place of the current bullet. The substitution should not be controversial since it tracks the language actually adopted into IRMA.

Insurer Receivership Model Act (#555, "IRMA")

- **Conflicts of Law (IRMA §102) was added as a new section in IRMA. It provides that the state's receivership act and insurance guaranty association acts constitute the state's insurer receivership laws, and these laws shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws shall prevail.**

Please let us know if you should have any questions about our request or if we can be of further assistance. We are happy to discuss if that would be helpful.

Best Regards,

Joni



Date: November 30, 2021
To: State Insurance Departments
From: Receivership and Insolvency (E) Task Force
Re: Recently Adopted Model Amendments and Guidelines; and Provisions of Receivership Laws Critical to a Multi-Jurisdiction Receivership

In 2020, the Task Force concluded its Macroprudential Initiative (MPI) to evaluate receivership and guaranty fund laws. Through this process the Task Force highlighted several topics that it identified as being critical for states laws with respect to a multi-jurisdictional receivership and which may require a state's attention.

The Task Force encourages state insurance departments to review their receivership and guaranty fund laws to ensure it addresses the following topics.

Insurer Receivership Model Act (#555, "IRMA")

- Conflicts of Law (IRMA §102) was added as a new section in IRMA. It provides that the state's receivership act and insurance guaranty association acts constitute the state's insurer receivership laws, and these laws shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws shall prevail, and [JMK1] it states that receivership and guaranty fund laws govern together; however, receivership law prevails when there is a conflict between the guaranty fund law or the provisions of any other law. The benefit of having this provision is that it prevents potential legal delays in the administration of a receivership.
- Continuation of Coverage (IRMA §502) provides that all insurance policies, excluding life, disability, long term care, health, or annuities, are cancelled at a specified time unless the Liquidator, with the consent of the receivership court, extends the period. This provision was re-written and improved in IRMA.

The Task Force conducted a survey in 2019 that showed that states' laws differ with respect to IRMA §502 from having provisions substantially similar to IRMA §502B, or to a prior version of Model #555, or a state has no continuation of coverage provision, or no exclusions for life and health lines of business. This provision has been the subject of litigation in receivership. For these reasons, states are encouraged to review their law against IRMA and consider amendments.

- Priority of Distribution (IRMA §801) of estate assets is a provision that was rewritten in IRMA. It outlines the priority scheme for payment of claims, which places policyholder claims above that of unsecured creditors or shareholders. The benefit of having this provision is that it furthers state insurance department goals to protect policyholders in the administration of a receivership.

Reciprocal State; Full Faith and Credit on Stays and Injunctions

Washington, DC 444 North Capitol Street NW, Suite 700, Washington, DC 20001-1509 p | 202 471 3990 f | 816 460 7493

Kansas City 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197 p | 816 842 3600 f | 816 783 8175

New York One New York Plaza, Suite 4210, New York, NY 10004 p | 212 398 9000 f | 212 382 4207

An effective stay provision promotes judicial economy and predictability, which benefits all participants in the receivership process. However, the significant improvements in IRMA regarding stays have not been widely adopted. Further background on the topic is available in the 2017 Financial Condition (E) Committee memorandum posted to the NAIC website.¹ States are encouraged to review their receivership laws, and consider the following:

- 1) States with no stay provisions, or provisions based on older NAIC models, should compare their laws to the more recent NAIC Models, and evaluate the benefits of a more comprehensive stay. (IRMA §108)
- 2) States with no reciprocity provisions, or provisions based on older NAIC models, should consider adopting a provision similar to IRLMA § 5 (C) (2) or IRMA § 1002 (A). In the alternative, a state could update its definition of a “reciprocal state.” In 2021, the NAIC adopted the *Guideline for Definition of Reciprocal State in Receivership Laws* (GDL#1985) that defines reciprocal state as any state that has enacted a law setting forth a scheme for receivership.²

Ancillary Conservation of Foreign Insurers (IRMA §1001) provides for ancillary conservation of an insurer writing in the state but domiciled in another state, in limited circumstances. Ancillary conservation is relevant to insurers conducting business in multiple jurisdictions, should be coordinated with the domiciliary state, and may require consideration of whether the involved states are reciprocal.

2021 Revisions to the Insurance Holding Company System Model Act and Regulation (#440 & #450)

In 2021, the NAIC adopted receivership revisions to the NAIC *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The revisions address the continuation of essential services through affiliated agreements with an insurer that is placed into receivership by bringing affiliate service providers deemed “integral” or “essential” to an insurer’s operations under the jurisdiction of the receiver; clarify the ownership of data and records and premiums of the insurer that are held by the affiliate; and, outline provisions that should be included in affiliated management services and cost sharing agreements in the event the insurer is placed into receivership.

The Task Force encourages state insurance departments to consider these Model amendments based on the benefits these revisions add to state regulation, and to the goal of improving efficiencies in receivership and reducing costs to a receivership estate.

Treatment of Workers Compensation Large Deductible Policies

In 2021, the NAIC adopted the *Guideline for Administration of Large Deductible Policies in Receivership* (GDL#1980) to address the treatment of large deductible policies in receivership. The Guideline makes significant improvements over IRMA §712 Administration of Loss Reimbursement Policies, and the National Conference of Insurance Guaranty Funds (NCIGF) Model Large Deductible Legislation, Administration of Large Deductible Policies and Insured Large Deductible Collateral. The Guideline provides that the guaranty associations, on behalf of the claimants, are entitled to any deductible reimbursements from the policyholder and the right to draw on the collateral. While some states already have existing laws on this topic, states that do not or that wish to update their existing laws, are encouraged to consider Guideline #1980.³

2017 Revisions to the Life and Health Insurance Guaranty Association Model Act (#520)

The 2017 amendments to Model #520 aimed to address issues arising in connection with guaranty fund coverage in insolvencies of insurers writing long-term care insurance. While states have made good progress adopting these

¹ https://content.naic.org/sites/default/files/inline-files/cmte_e_receivership_related_170717_committee_recommendation.pdf

² <https://content.naic.org/sites/default/files/GL1985.pdf>

³ <https://content.naic.org/sites/default/files/GL1980.pdf>

amendments with 34 states adopting to date, remaining states are encouraged to consider adoption. Further guidance is available in the Task Force's 2018 memorandum, which is posted to the NAIC website.⁴

For further resources or information about these Model Laws and Guidelines, states may contact NAIC staff, jkoenigsman@naic.org.

⁴ https://content.naic.org/sites/default/files/inline-files/committees_e_receivership_related_rev_memo_520.pdf