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Deputy Commissioner Don Beatty
Chair, NAIC HMO Issues Subgroup
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 2321

Dear Deputy Commissioner Beatty:

I am writing on behalf of a Coalition[1] of health insurers that represents some of the country's largest major medical insurers and health maintenance organizations. This Coalition strongly urges the HMO Issues Subgroup ("Subgroup") to act with caution before adopting any amendments to the Health Maintenance Organization Model Act ("Model 430"). In March of last year, this Coalition opposed the initial referral of this issue to the Health Insurance and Managed Care (B) Committee. The concerns that we raised then are still valid today.

<u>Changes to the HMO Model Act are Unnecessary</u>

The issues addressed by the changes to the Life and Health Guaranty Association Model Act ("Model 520"), i.e., the financial stability of the state-based guaranty associations, protections for insureds impacted by potential future long-term care insolvencies and the new protections given to HMO consumers, are so critically important that they should be dealt with at the state-level as expeditiously as possible. The concern remains that if the Subgroup undertakes major changes to Model 430 it will cause confusion in state legislatures that have not yet adopted the guaranty association changes, and thus delay state-level adoption of the revisions to Model 520. It is important that the work of this Subgroup not be used by opponents the guaranty association revisions as a reason for state legislatures to wait to adopt Model 520.

If the Subgroup moves forward with drafting revisions to Model 430, it is imperative that the Subgroup make clear, as stated by the Receivership and Insolvency (E) Task Force, that the Subgroup is "is not suggesting that implementation of the revisions to Model 520 should be

[1] Aetna, Anthem, Cigna, HCSC and United, who together provide health insurance coverage to more than 227 million members world-wide, are the members of this Coalition.

deferred pending the review of the relevant HMO models"[2]. We also recommend that the Subgroup include a drafting note, based on the following language drafted by the Task Force, to make it clear that the amendments prepared by the Subgroup are "not intended to delay implementation of Model 520 revisions and therefore should not be considered a reason to defer introduction and adoption of legislative changes."[3]

Consumer and Solvency Protections Should Remain

In carrying out its charge, the Subgroup should only make the minimum changes necessary to Model 430 and should not adopt amendments to Model 430 would either weaken existing consumer protections or reduce or eliminate solvency requirements. The October 15, 2018 staff memorandum identifies several potential areas for changes to Model 430. . The memorandum identifies the following sections as potential targets for revisions: Section 14—Continuation of Benefits; Section 18—Deposit Requirements; Section 19—Hold Harmless Provision Requirements for Covered Persons; Section 20—Uncovered Expenditures Deposit; and Section 31—Rehabilitation, Liquidation or Conservation of Health Maintenance Organizations.

All of the sections listed above offer important consumer or financial protections and, as a result, should not be amended:

**Section 14-** regarding continuity of coverage, ensures that individuals undergoing a course of treatment at the time an HMO becomes insolvent do not get kicked out of their hospitals or terminated from their treatments because providers fear non-payment. This is a significant consumer protection to ensure that consumers get care - but does not address who pays for that care. At the time of liquidation, under Model 520, the guaranty association assumes responsibility for paying claims, and providers, pursuant to this section, are required to continue to provide services. This provision of Model 430 should remain unchanged.

**Section 18-** deposit requirements, provides important solvency protections. This is a common feature of the existing state-based solvency oversight system, and is a protection for the state. Insurers have similar statutory deposit requirements. Generally, the Commissioner will take down the statutory deposit when an insolvency occurs, and will use it to defray the initial cost of declaring a liquidation. At this point the guaranty association will take over the payment of claims. In the alternative, the commissioner may choose to give the guaranty association access to the statutory deposit to assist in paying claims. When the $1M is exhausted, the guaranty association will be required to assess its members. Making HMOs members of the guaranty association system in the states does not impact the costs to the Commissioner in the declaration of a liquidation, and therefore Model 520 has no bearing on whether states may wish to have this

[2] NAIC Memorandum from the Receivership and Insolvency (E) Task Force to the Health Insurance and Managed Care (B) Committee dated May 1, 2018 regarding Adoption of Amendments to Life and Health Insurance Guaranty Association Model Act (#520).
[3] NAIC Memorandum from the Receivership and Insolvency (E) Task Force to the Capital Adequacy (E) Task Force dated April 12, 2018 regarding Risk-Based Capital Charge for Guaranty Association Assessment Risk.

protection for themselves in the event of an HMO insolvency. This deposit requirements should be maintained in Model 430.

**Section 19** - Hold harmless provisions, are also important consumer protections and should be maintained. These provisions prevent network providers from balance billing consumers. It does not mean that providers are not to be paid, and it does not mean that the guaranty associations should not pay their claims. It only requires that, when the new Model 520 changes are adopted, providers are required to look to the guaranty association for payment, not their patients. Most large insurers also have these provisions in their contracts and they these provisions can and do operate within existing guaranty fund systems.

**Section 20** - the uncovered expenditures deposit provisions are another key safeguard designed to attempt to prevent insolvencies. When the insolvency actually occurs, the deposit amount is used to defray the cost of the liquidation. The NAIC has already considered that a liquidation estate would handle insolvencies – under the new amendment to Model 520, the guaranty association merely steps in where the liquidation estate would have been. The Subgroup should keep these provisions intact.

**Section 31-** provisions regarding the rehabilitation, liquidation or conservation of HMO's does not need to be changed. These provisions provided that the rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. This ensures that HMO insolvencies operate under the same rules as an insurance company insolvency. This should make the application of the Model 520 provisions to HMOs relatively simple.

Other Provisions

**Section 21-**Open Enrollment and Replacement Coverage in Event of Insolvency could likely be amended or deleted since the adoption of the Affordable Care Act requires all insurers and HMO's to offer guaranteed issue coverage to individuals that lose their coverage. It would not seem necessary for insurance commissioner to order an open enrollment period through other HMOs.

Thank you for allowing us to submit these comments. Please feel free to call me at 202-247-0316 if you have any questions regarding our comments.

Sincerely yours,

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cc: Jolie Matthews