

Draft: 6/18/20

HMO Issues (B) Subgroup
Conference Call
June 11, 2020

The HMO Issues (B) Subgroup of the Regulatory Framework (B) Task Force met via conference call June 11, 2020. The following Subgroup members participated: Don Beatty, Chair (VA); Keith Warburton (CO); Toma Wilkerson (FL); Ryan Gillespie (IL); DJ Wasson (KY); Robert Wake (ME); Carrie Couch (MO); Laura Arp (NE); Nathan Houdek (WI); and Joylynn Fix (WV).

1. Discussed March 18 Comments on Proposed Revisions to Model #430

Mr. Beatty said the purpose of the call is for the Subgroup to discuss the comments received on the proposed revisions to the *Health Maintenance Organization Model Act* (#430) for consistency with the revised *Life and Health Insurance Guaranty Association Model Act* (#520). He said the Subgroup received comments from the NAIC consumer representatives, the Blue Cross and Blue Shield Association (BCBSA), and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA).

Anna Howard (American Cancer Society Cancer Action Network—ACS CAN) said the NAIC consumer representatives strongly urge the Subgroup to retain Section 14—Continuation of Benefits and Section 21—Open Enrollment and Replacement Coverage in the Event of Insolvency because of the explicit consumer protections these sections provide. She said the NAIC consumer representatives have provided language for a potential drafting note for Section 14 suggesting that those states that have adopted the revised Model #520 consider alternative continuation of benefits language for Section 14 to ensure that enrollees' claims are paid during the transition period and/or while waiting for the commencement of alternative coverage.

Mr. Wake agreed that retaining Section 14 is important for those states that have not adopted the revised Model #520, which added health maintenance organizations (HMOs) as members of the guaranty association. He said, however, that for those states that have adopted the revised Model #520, it is unnecessary to retain Section 14 because continuation of benefits is covered through the guaranty association procedures. He also noted that the proposed drafting note for Section 2—Purpose and Intent alerts those states that have not adopted the revised Model #520 to retain Section 14. Mr. Wake said Section 21 is obsolete because of the guaranteed issue provision and other provisions in the federal Affordable Care Act (ACA). He said this is true regardless of whether a state has adopted the revised Model #520.

Mr. Beatty asked Joni Forsythe (NOLHGA) if the Subgroup needed to address a gap in coverage and retain Section 14. Ms. Forsyth said NOLHGA has not identified any gap in coverage that would require retaining Section 14. Ms. Howard said the NAIC consumer representatives are apprehensive about removing Section 14 just in case there is an issue. Chris Petersen (Arbor Strategies LLC) expressed support for the NAIC consumer representatives' concern, noting comments he had previously submitted to the Subgroup on this issue. He said, however, that he could support the Subgroup's decision to remove Section 14 if that is what it decides. Mr. Beatty said the Subgroup would proceed with deleting Section 14, but he urged anyone who believes that there will be a gap in coverage to alert the Subgroup.

Ms. Forsyth said NOLHGA takes no position on the proposed revisions to Model #430 as whole, but it has a few technical comments for the Subgroup's consideration. She said NOLHGA's first technical comment concerns the use of the word "conformity" in both option 1 and option 2 of the proposed drafting note to Section 2. She said NOLHGA believes the term "conformity" suggests a higher standard of assimilation with Model #520 than what the Subgroup intends with respect to the Model #430 revisions. To address this concern, she said NOLHGA suggests using the term "reconcile" instead. Ms. Forsyth also said NOLHGA does not understand why neither option 1 nor option 2 of the drafting note explains why Section 21 is being deleted. She said NOLHGA also suggests the Subgroup consider including the full text of the repealed provisions as an appendix to Model #430 in order to preserve the text.

Ms. Forsyth said that if the Subgroup decides to proceed with option 2, NOLHGA suggests clarifying language in option 2 concerning the purpose of the repealed Model #430 provisions by replacing the language "addressed issues arising from the lack of guaranty association protection" with "provided consumer protection for HMO enrollees in the event of an HMO insolvency, in the absence of guaranty association protection." She said NOLHGA's final technical comment concerns an additional section in Model #430 the Subgroup has not discussed, but which could conflict with the revised Model #520. She said Section 31—Statutory Construction and Relationship to Other Laws (formerly section 34) provides that, except as provided

in Model Act #430, provisions of state insurance laws do not apply to HMOs. She said Section 28—Rehabilitation, Liquidation or Conservation of Health Maintenance Organizations (formerly section 31) provides that HMOs are subject to state receivership laws, but it does not include any reference to state guaranty association laws. Ms. Forsyth said this potential conflict could be resolved by adding “or other applicable laws” in the opening sentence of Section 31.

John Troy (BCBSA) said the BCBSA supports the Subgroup’s proposed revisions. He said the BCBSA supports including option 2 in the proposed revisions instead of option 1 because it is briefer and more to the point and, as such, more likely to be reasonably well understood.

The Subgroup discussed NOLHGA’s comments. Mr. Wake said he could support NOLHGA’s suggested revision to Section 31 with one change. He suggested the Subgroup add the language “or in other laws expressly referring to health maintenance organizations.” He said he suggests this language because it specifies the type of applicable law. Ms. Arp expressed support for Mr. Wake’s suggested revision because of its similarity to Nebraska law. Mr. Wake also expressed support for NOLHGA’s other suggested technical revisions. Ms. Wilkerson expressed similar support, but she asked if any other NAIC models included an appendix as NOLHGA suggests. Jolie H. Matthews (NAIC) said she has not seen similar appendices in other NAIC models, but that this would not preclude the Subgroup from adding such an appendix as part of the Model #430 revisions.

After additional discussion, the Subgroup directed NAIC staff to prepare another draft of proposed revisions to Model #430 that would include the following: 1) option 2 of the proposed drafting note for Section 2 with NOLHGA’s suggested revisions; 2) NOLHGA’s suggested revision to Section 31, with Mr. Wake’s additional suggested revision; and 3) NOLHGA’s suggestion to add an appendix with the repealed provisions. Mr. Beatty said the Subgroup would hold another conference call sometime in July to consider adopting the proposed revisions and forwarding the revised Model #430 to the Regulatory Framework (B) Task Force for its consideration.

Having no further business, the HMO Issues (B) Subgroup adjourned.

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