National Organization of Life and Health Insurance Guaranty Associations
13873 Park Center Road, Suite 505 | Herndon, VA 20171
Phone: 703.481.5206 | Fax: 703.481.5209
www.nolhga.com

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Deputy Commissioner Don Beatty
Chair, NAIC HMO Issues (B) Subgroup
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218

Jolie H. Matthews, Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
444 North Capitol Street, N.W.
Hall of the States, Suite 700
Washington, D.C. 20001-1509

Re: Proposed Revisions to the NAIC Health Maintenance Organization Model Act

Dear Deputy Commissioner Beatty and Ms. Mathews:

This letter is in response to the HMO Issues (B) Subgroup's request for comments on proposed revisions to the Health Maintenance Organization Model Act ("HMO Model Act"), as set forth in the February 6, 2020 exposure draft posted to this Subgroup's page on the NAIC website. We understand that the purpose of the revisions is to reconcile provisions of the HMO Model Act with the Life and Health Insurance Guaranty Association Model Act, as amended on December 21, 2017 ("GA Model Act").

The proposed revisions are directed towards states that have adopted or will adopt the 2017 amendments to the GA Model Act. The revisions consist of the deletion of former sections 14, 20 and 21, as well as the definition of "uncovered expenditures" in former section 3HH, and the replacement of those provisions with an explanatory drafting note. NOLHGA does not have a position on the proposed revisions, but we did want to offer a few technical comments for your consideration. Our suggestions are redlined and attached for ease of reference.

Two options for the drafting note were exposed for comment. Both options omit reference to retaining section 21 (open enrollment and replacement coverage in the event of insolvency) for states that have not adopted the 2017 GA Model Act amendments. It is not clear whether this omission was intentional.

Both options indicate that the referenced sections were repealed "*to bring this Act into conformity with the Life and Health Insurance Guaranty Association Model Act,...*" The term "*conformity*" suggests a higher standard of assimilation than we believe was intended. These two

models have different functions. We want to encourage states to *conform* their GA laws to the GA Model Act as much as possible, and to harmonize or *reconcile* provisions in the HMO Model Act and the GA Model Act. This meaning could be clarified, in either option, by replacing the italicized clause above with *"to reconcile this Model Act with the Life and Health Insurance Guaranty Association Model Act,...*" or "*in response to changes to* the *Life and Health Insurance Guaranty Association Model Act,...*"

The option one drafting note includes an explanation for the term "uncovered expenditures." The existing definition of "uncovered expenditures" in the HMO Model Act refers to costs that could fall on consumers if their HMO became insolvent, with no alternative arrangements having been made that are acceptable to the Commissioner. In the option one drafting note, the reference to "no alternative arrangements" has been changed to "without guaranty association protection," which alters the meaning of the term by eliminating the mitigating criteria of "alternative arrangements" leaving the reference out of step with the actual definition. If the Subgroup should elect to proceed with option one, we would suggest conforming the language in the narrative explanation of uncovered expenditures to track with the actual definition, by using "*without alternative arrangements acceptable to the Commissioner*" rather than "*without guaranty association protection*."

In addition, the Subgroup might want to consider including the full text of the repealed provisions as an appendix to the HMO Model Act in order to preserve the text.

If the Subgroup should elect to proceed with option two, we would suggest a clarification concerning the purpose of the repealed HMO Model Act provisions by replacing "*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.*"

Finally, we would like to call to your attention an additional section in the HMO Model Act that may not yet have been discussed, but which could conflict with the GA Model Act. Section 31 (formerly section 34) essentially provides that, except as provided in the HMO Model Act, provisions of state insurance laws do not apply to HMOs. Section 28 (formerly section 31) of the HMO Model Act, provides that HMOs are subject to state receivership laws. However, there is no reference to state guaranty association laws. This potential conflict could be resolved by adding "*or other applicable laws*" in the opening sentence of this section.

We appreciate the opportunity to provide comments on the proposed revisions to the HMO Model Act, and we look forward to the Subgroup's continuing discussions of this matter.

Sincerely,

Joni L. Forsythe

Drafting Note:

Option 1
Section 3HH, the definition of "uncovered expenditures," Section 14—Continuation of Benefits and Section 20—Uncovered Expenditures have been repealed *to reconcile this Act with* (or *in response to changes to*) ~~to bring this Act into conformity with~~ the *Life and Health Insurance Guaranty Association Model Act* (#520), which was amended in 2017 to make health maintenance organizations members of the guaranty association. States that continue to exclude health maintenance organizations from guaranty association membership should retain the former Section 3HH, which defined the term "uncovered expenditures." These are costs that could be the responsibility of consumers if a health maintenance organization became insolvent without *alternative arrangements acceptable to the Commissioner* ~~guaranty association protection~~. They will vary in type and amount, depending on the arrangements of the health maintenance organization. They may include out-of-area services, referral services and hospital services. They do not include expenditures for services when a provider has agreed not to bill the covered person even though the provider is not paid by the health maintenance organization, or for services that are guaranteed, insured or assumed by a person or organization other than the health maintenance organization. States that exclude health maintenance organizations from guaranty association membership also should retain former Section 14, which required health maintenance organization-specific insolvency planning and procedures to facilitate continuation of benefits after an insolvency and former Section 20, which required health maintenance organizations to post uncovered expenditures insolvency deposits if their uncovered expenditures, as defined in former Section 3HH, exceeded 10% of total health care expenditures.

The text of these provisions is included in the Appendix.

Option 2:

Former Section 14—Continuation of Benefits and Section 20—Uncovered Expenditures *provide consumer protections for HMO enrollees in the event of an HMO insolvency, in the absence* ~~addressed issues arising from the lack~~ of guaranty association protection for health maintenance organization enrollees. Those sections (along with Section 3HH, defining the term "uncovered expenditures") have been repealed *to reconcile this Model Act with* (or *in response to changes to*) ~~to bring this Model Act into conformity with~~ the *Life and Health Insurance Guaranty Association Model Act* (#520), which was amended in 2017 to make health maintenance organizations members of the guaranty association. States that continue to exclude health maintenance organizations from guaranty association membership should retain provisions, comparable to former Sections 3HH, 14 and 20, requiring health maintenance organizations to develop advance insolvency plans that include procedures to facilitate continuation of benefits after an insolvency, and to post deposits to secure any uncovered expenditures in excess of 10% of total health care expenditures.

The text of these provisions in included in the Appendix.

Former Section 34, now Section 31 - Statutory Construction and Relationship to Other Laws

A. Except as otherwise provided in this Act *or other applicable laws*, provisions of the insurance law and provisions of hospital or medical service corporation laws shall not be applicable to a health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance law or the hospital or medial service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this Act.