

The Maine Bureau of Insurance has the following comments on the Request for Model Law Development:

As we commented in Kansas City, the Request as currently worded might be too narrow in scope, for two reasons. One is that the need to clarify Model # 540 isn't limited to insurance business transfers. The real issue here is that any time a covered policy is novated to a new insurer, the new insurer's needs to be deemed to be a guaranty association member by operation of law, relating back to the date the old insurer issued the covered policy. We don't see any new issues arising from IBTs that aren't already relevant to assumption reinsurance, similar regulatory processes such as bulk reinsurance, or novation by contractual agreement.

The other issue is that we should consider whether to look at Model # 520 as well as Model # 540. Under Model # 520, if a foreign insurer becomes insolvent, This State's guaranty association only covers resident policyholders and their beneficiaries (*e.g.*, covered household members) if the insolvent insurer is a Member Insurer. This is a fairly broad protection, because on the life and health side, membership under the Model isn't based on licensure at any specific time – as the term “member insurer” is defined, it “includes an insurer or health maintenance organization whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn.” And even if the insurer was never licensed in This State, coverage is still available as long as the failed insurer's domiciliary state has an “Orphan Clause,” substantially similar to Subparagraph 3(A)(2)(b) of Model 520. However, as the NOLHGA comment explained (*emphasis added*), “policyholders [should] maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction,” so as to minimize the domiciliary guaranty association's exposure under the Orphan Clause.

What all this means is that if I understand the situation correctly, we don't need to revisit Model 520 if all we care about is whether protection is still available from some guaranty association, but if we want to ensure that protection is still available from the guaranty association in the consumer's state of residence in most or all cases, I think 520 does raise the same general issue as 540 – whether we need to add some mechanism to specify that the resulting insurer inherits the membership obligations of the original insurer. Relating back to policy issuance isn't a 520 issue because it doesn't matter when they were licensed or deemed to have been licensed, but the issue of novations in general (as opposed to IBTs/CDs) is still relevant on the life and health side.

NOLHGA has proposed an alternative approach, but it doesn't seem realistic: “the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.” This gives a veto to every state where the transferring insurer has ever been licensed to issue one or more transferred policies, and legislatures seem unlikely to be willing to do this if they have any inclination to allow transfers at all.