Maine Comments on Revisions to HMO Model Act

November 18, 2019 (Corrected Version)

In August, the Virginia Bureau of Insurance proposed some revisions to the HMO Model Act (# 430) to bring it into conformance with the current version of the Life & Health Insurance Guaranty Association Model Act (# 520), which no longer excludes HMOs from the guaranty association. Comments on the proposed revisions pointed out that not all states have updated their guaranty find laws to include HMOs. In response, Virginia has proposed a new approach, which would leave the HMO Model Act unchanged but add drafting notes describing the revisions that would be necessary for those states that no longer exclude HMOs from guaranty association membership.

While we agree that the revisions to the Model need to recognize that at least at this time, adoption of the model guaranty fund amendments has not been uniform, we believe the current proposal sends an unfortunate message, by treating the previous exclusion of HMOs as the default and recognizing the inclusion of HMOs in the guaranty association as an optional alternative some states might choose. We believe it should be the other way around – the text of the HMO Model should conform to the current version of the Guaranty Association Model, and there should be drafting notes describing what states should do if they choose to retain the prior version.

Also, NOLHGA observed that the proposed replacement for Section 14 does not accurately describe the responsibilities of the guaranty association to provide replacement coverage. While policies would remain in place for a brief period of time after the date of insolvency, backed by the guaranty association, long-term replacement coverage will be available from any solvent insurance carrier through a "special enrollment period." This is the case whether or not there is guaranty association coverage. In general, in states that have adopted the 2017 amendments to the Guaranty Association Model, insolvent HMOs are treated like any other insolvent insurance carrier under the guaranty association laws, the health insurance laws, and the receivership laws. Therefore, there is no longer any need for the HMO laws to include an insolvency plan section that is unique to HMOs, and Section 14 should simply be repealed, not replaced.

Accordingly, we recommend the following substitute:

I. Preserve the prior numbering for ease of reference.

II. Repeal Subsection 3(HH), which currently defines the term "uncovered expenditures." Amend the drafting note that will now follow Subsection 3(GG) to read as follows:

> **Drafting Note:** Sections 3(HH), 14 and 20 have been repealed to bring this Model Act into conformity with the Life and Health Insurance Guaranty Association Model Act (Model #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 former Subsection HH, which defined ~~defines~~ the term "uncovered expenditures." These are costs that could be the responsibility of consumers if a health maintenance organization became insolvent without guaranty association protection ~~for use in Section 20~~. 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.

III. Repeal Section 14, and replace it with the following drafting note:

Drafting Note: States that exclude health maintenance organizations from guaranty association membership should retain former Section 14, which required HMO-specific insolvency planning procedures to facilitate continuation of benefits after an insolvency.

IV. Consider amending the new drafting note after Section 19 to read as follows:

Drafting Note: Pursuant to Section 3B(1) of the Life and Health Insurance Guaranty Association Model Act (Model #520), both enrollees and health care providers will be protected against loss due to an impairment or insolvency of ~~an insurer (HMO)~~ a health maintenance organization, in states that have adopted the current version of Model #520. This section has been retained because its primary purpose is no longer protecting consumers against insolvency, but protecting consumers against unfair billing practices. Many states now also require similar protections for consumers covered by other types of health carriers.

V. Repeal Section 20, and replace it with the following drafting note:

Drafting Note: States that exclude health maintenance organizations from guaranty association membership should retain former Section 20, which required health maintenance organizations to post uncovered expenditures insolvency deposits if their uncovered expenditures, as defined in former Section 3(HH), exceeded 10% of total health care expenditures.

VI. Repeal Section 21. No replacement drafting note is necessary, as open enrollment in replacement coverage is now governed by the ACA and state guaranteed-issue laws and is no longer an HMO-specific concern.