



To: States' Departments of Insurance
From: Kristine A. Maurer (NJ), Chair, Receivership and Insolvency (E) Task Force
Date: March 8, 2018
Re: Adoption of Amendments to *Life and Health Insurance Guaranty Association Model Act* (#520)

In 2017, the Receivership Model Law (E) Working Group of the Receivership & Insolvency (E) Task Force was charged to evaluate the need for amendments to the *Life and Health Insurance Guaranty Association Model Act*, Model 520, to address issues arising in connection with insolvencies of insurers writing long-term care insurance.

In response to this charge, the Working Group solicited comments from regulators and interested parties, and drafted revisions to Model 520 to address the issues identified in the comments. Among the revisions was to include health maintenance organizations (HMOs) as members of the life and health insurance guaranty association. The revisions to Model 520 were adopted by the NAIC Executive (EX) Committee and Plenary on December 21, 2017.

The Working Group recommends that states consider the effect of the enactment clause in amendments to state laws based on Model 520. If amendments are applicable to future insolvencies, it will ensure that the changes to the guaranty act will not impact assessments on existing insolvencies.

The Working Group noted that the inclusion of HMOs in guaranty associations might necessitate changes in other statutes to ensure consistency between state laws. To avoid conflicts between a state's guaranty association act and other laws, states that adopt the revised Model 520 should review: (1) the law governing insurer receiverships, and (2) laws and regulations related to HMOs. It may be necessary to enact changes to these laws to comport with Model 520. Below are examples of laws that should be reviewed, and issues that may need to be addressed.

Insurer Receivership Act

The *Insurer Receivership Model Act*, Model 555, contains provisions that are consistent with Model 520:

- Section 103 - defines "Covered Persons" to include HMOs. Under the revised Model 520, it is essential that an HMO be placed in receivership to trigger guaranty associations. Also, the inclusion of an HMO as an entity subject to receivership can be a factor in determining that an HMO is not eligible for bankruptcy.
- Section 801 - states that the priority of distributions includes HMO enrollee and provider claims as policy claims. The receivership act should classify these claims as policy claims.
- Section 502 D - provides that policies covered by a life and health insurance guaranty association may be continued after liquidation.

Laws related to HMOs, including but not limited to:

Individual Market Health Insurance Coverage Model Act, Model 36
Small Group Market Health Insurance Coverage Model Act, Model 106
Health Maintenance Organization Model Act, Model 430

- The impact of tax exempt status on options for recoupment of assessments (see Model 520, Section 13)

- Consistency of definitions of HMOs (or similar entities), health benefit plans, etc.
- Conforming changes for HMO laws, specifically, Model 430 Section 19–Hold Harmless Provision Requirements for Covered Persons; Section 20–Uncovered Expenditures Deposit; and Section 31–Rehabilitation, Liquidation and Conservation of HMOs

Please contact NAIC staff support, Jane Koenigsman (jkoenigsman@naic) if you have any questions.